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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re R.K., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

G045677

(Super. Ct. No. DP020832)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,  
Cheryl L. Leininger, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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## INTRODUCTION

A.L. (Mother), the mother of now one-year-old R.K., challenges the juvenile court's order denying her reunification services as to R.K. We affirm.

At the disposition hearing, the juvenile court ordered that custody of R.K. remain vested with R.K.'s father, M.K. (Father). Welfare and Institutions Code section 16507, subdivision (b) provides that family reunification services "shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court." (All further statutory references are to the Welfare and Institutions Code.) The record shows Father lived with R.K. "at the time that the events or conditions arose that brought the child within the provisions of Section 300" (§ 361.2, subd. (a)), and thus was not a "noncustodial parent" within the meaning of section 16507, subdivision (b). The juvenile court therefore did not err by denying Mother reunification services. To the extent the court's reference, in its minute order from the disposition hearing, to section 361.5, subdivision (a)(1) as the basis for the denial of reunification services constituted error, any such error was harmless.

## BACKGROUND

### I.

#### THE PETITION

On February 3, 2011, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition alleging that then one-month-old R.K. was within the juvenile court's jurisdiction pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). R.K. was detained and placed in the care of her maternal grandmother.

As amended by the juvenile court, the petition (the petition) alleged that on December 5, 2007, R.K.'s three brothers were declared dependents of the juvenile court

under section 300, subdivision (b) and that reunification services were ordered. Mother tested positive for the presence of amphetamine at the birth of one of R.K.'s brothers in July 2007. R.K.'s sister was born in May 2008 at 33 weeks' gestation suffering from respiratory problems, and was placed in the neonatal intensive care unit; Mother admitted using cocaine during her pregnancy and failing to obtain regular and consistent prenatal care. R.K.'s sister was detained and declared a dependent of the juvenile court in June 2008; family reunification services were ordered as to R.K.'s sister. On December 11, 2009, all four siblings were placed with Mother on a 60-day trial visit. Custody of the siblings was given to Mother under court-ordered family maintenance services in February 2009. Father is not the father of any of R.K.'s siblings.

The petition stated R.K. was born in December 2010. On February 1, 2011, illegal drugs and drug paraphernalia were found within the reach of the children in the family home, including approximately two grams of marijuana and "half of a marijuana joint/roach" on the kitchen counter, and a pipe, commonly used to smoke marijuana, on a recliner chair. Father admitted he had a history of using marijuana. Mother first smoked crystal methamphetamine at 13 years of age.

On February 1, 2011, an application for a petition was filed on behalf of R.K. and her siblings due to physical abuse, the risk of further physical abuse, and Mother's failure to comply with her case plan. The petition alleged, "[o]n numerous occasions," Mother physically abused R.K.'s siblings by hitting them with an open hand, a belt, a studded belt, and household objects such as a hanger. "On a regular and continual basis," Mother hit one of R.K.'s siblings on the face, with a hanger or her hand, causing him to bleed from his mouth or nose. Mother failed to comply with court-ordered drug testing, having missed five such tests. She also had "not complied with her psychotropic medication compliance and evaluation," which placed her "at risk of mood swings, anxiety, and depression."

## II.

### SSA FILES THE JURISDICTION/DISPOSITION REPORT AND ADDENDUM REPORTS; THE JUVENILE COURT SUSTAINS THE ALLEGATIONS OF THE PETITION.

In the jurisdiction/disposition report dated March 9, 2011, SSA recommended that the juvenile court sustain the petition, declare dependency as to R.K., and provide no family reunification services to Mother as to R.K. or R.K.'s siblings.<sup>1</sup> SSA further recommended, however, that reunification services be provided to Father as to R.K. The report stated that R.K. was placed with the paternal grandparents on February 8, 2011.

In addendum reports dated March 21, March 30, and May 9, 2011, SSA recommended that reunification services be provided to Mother as to R.K. None of the reports explains the change in SSA's recommendation since the filing of the jurisdiction/disposition report.

At the jurisdiction hearing on May 11, 2011, Mother submitted to the allegations of the petition. Father pleaded no contest. The juvenile court found the allegations of the petition true by a preponderance of the evidence. The court approved a trial release of R.K. to Father on the condition that Father and R.K. reside in the home of the paternal grandparents.

## III.

### THE JUVENILE COURT ORDERS CUSTODY OF R.K. TO REMAIN WITH FATHER UNDER THE SUPERVISION OF THE SOCIAL SERVICES DIRECTOR AND DENIES REUNIFICATION SERVICES TO MOTHER; MOTHER APPEALS.

In addendum reports dated June 16 and July 7, 2011, SSA recommended that the juvenile court order family maintenance services to Father as to R.K. In a stipulation filed on July 11, 2011 and signed, inter alia, by Mother's counsel, the parties

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<sup>1</sup> SSA also recommended in the jurisdiction/disposition report that the court schedule a permanency hearing as to R.K.'s siblings. Our record does not show that this recommendation ever changed in subsequent addendum reports.

agreed that at the disposition hearing, the court should (1) declare R.K. a dependent child of the court; (2) order that custody of R.K. should be taken from Mother; (3) order that custody of R.K. should “remain vested” with Father under the supervision of the social services director; (4) adopt the recommendation of SSA as set forth in the July 7, 2011 addendum report; (5) approve a case plan as to Father only; (6) find pursuant to section 361.5, subdivision (a)(1), that reunification services need not be provided to Mother; (7) approve the visitation plan for Mother as set forth in the July 7, 2011 addendum report; and (8) schedule a six-month review hearing.

At the disposition hearing, the juvenile court denied Mother’s request for increased visitation with R.K. The court accepted into evidence the stipulation and the jurisdiction/disposition report and addendum reports. The court declared R.K. a dependent child and ordered that custody of R.K. remain vested with Father under the supervision of the social services director. The court approved a case plan as to Father only and a visitation plan as to Mother only. The disposition hearing minute order stated the court “finds pursuant to sec. 361.5(a)(1) . . . , that reunification services need not be provided as to parents.” The juvenile court set a six-month review hearing. Mother appealed.

## DISCUSSION

Mother argues the juvenile court erred by denying her reunification services as to R.K., “pursuant to an incorrect statute and absent a finding by clear and convincing evidence that any of the subdivisions set forth in section 361.5, subdivision (b) applied.” (Capitalization and boldface omitted.) Mother did not raise this issue in the juvenile court and, indeed, through her counsel, stipulated that reunification services should not be provided to her under section 361.5, subdivision (a)(1). Even assuming Mother has not forfeited this issue, for the reasons we will explain, the juvenile court did not err by denying Mother reunification services as to R.K.

Section 361.5, subdivision (a) provides that, unless certain exceptions apply, “whenever a child is removed from a parent’s or guardian’s custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child’s mother and statutorily presumed father or guardians.” (§ 361.5, subd. (a).) The term “child welfare services” includes both reunification and maintenance services. (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19 (*Pedro Z.*)) “The remaining provisions of section 361.5 set out ‘who is *entitled to receive* mandatory reunification services, who *may receive* reunification services, the circumstances under which the court *may deny* reunification services to someone otherwise entitled to receive them, and those circumstances under which the court *must deny* reunification services.’” (*Ibid.*)

In *Pedro Z.*, *supra*, 190 Cal.App.4th at page 19, the appellate court “reject[ed] [the f]ather’s contention that the juvenile court was *required* as a matter of law to provide him with family reunification services under section 361.5,” and held “section 361.5 is inapplicable when at the disposition hearing a child is returned to the custody of a parent.”

The *Pedro Z.* court began its analysis with the language of section 361.5, subdivision (a)(1) itself, which provides in pertinent part that “[f]amily reunification services, when provided, shall be provided as follows: [¶] (A) Except as otherwise provided in subparagraph (C), for a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, *court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care* as defined in Section 361.49, *unless the child is returned to the home of the parent or guardian.* [¶] (B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months *from the dispositional hearing* as provided in subdivision (e) of Section 366.21, *but no longer than 12 months from the date the child entered foster care*

as defined in Section 361.49 *unless the child is returned to the home of the parent or guardian.*” (Italics added.)

The appellate court in *Pedro Z.*, *supra*, 190 Cal.App.4th at page 19, stated that the language of section 361.5, subdivision (a)(1)(A) “contemplates that the period for mandatory reunification services begins at the time of disposition and continues while the child is in foster care or until the child is returned to the home of the parent.” The court further stated, “[i]n other words,” that language “implies that the statute does not apply when, at the disposition hearing, a child does not enter foster care, but is returned to a parent.” (*Pedro Z.*, *supra*, at p. 19.) As R.K. was under three years of age at the time she was initially removed, section 361.5, subdivision (a)(1)(B) would potentially apply in this case. Section 361.5, subdivision (a)(1)(B) contains similar language to section 361.5, subdivision (a)(1)(A) and, thus, it too contemplates mandatory reunification services while the child is in foster care, not in the home of the parent.

The *Pedro Z.* court explained: “As here, when a child is adjudged a dependent but is placed in the custody of a parent subject to the supervision of a social worker, the applicable statutory provision is section 362, subdivision (b), which provides that ‘[w]hen a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.’” (*Pedro Z.*, *supra*, 190 Cal.App.4th at pp. 19-20.) Citing section 16506, the court noted, however, that “[t]he services referred to in section 362, subdivision (b), are not reunification services but *family maintenance services*, which are provided ‘in order to maintain the child in his or her own home’ [citation], and are available to families ‘whose child or children have been adjudicated a dependent of the court under Section 300, and where the court has ordered the county welfare department to supervise while the child remains in the child’s

home.”” (*Pedro Z., supra*, at p. 20.) The court further explained, “when the child remains in a parent’s home, the court reviews the status of the case every six months under section 364; under such review, the court is not concerned with reunification, but in determining ‘whether the dependency should be terminated or whether further supervision is necessary.’ [Citations.] This is so because the focus of dependency proceedings ‘is to reunify the child with *a parent*, when safe to do so for the child. [Citations.]’ [Citation.] The goal of dependency proceedings—to reunify a child with at least one parent—has been met when, at disposition, a child is placed with a former custodial parent and afforded family maintenance services.” (*Ibid.*)

Here, at the disposition hearing, the juvenile court ordered that custody of R.K. remain vested with Father under the supervision of the social services director. Consequently, the court was not required to provide Mother with reunification services under section 361.5, subdivision (a)(1)(B).

In her reply brief, Mother argues that, notwithstanding the court’s order at the disposition hearing, vesting custody of R.K. with Father, the juvenile court had discretion to order reunification services for Mother because Father was R.K.’s noncustodial parent at the time of the jurisdiction hearing. She argues the juvenile court failed to exercise that discretion and, instead, incorrectly cited section 361.5, subdivision (a)(1) as the basis for the denial of reunification services.

Section 16507, subdivision (b) provides that “[f]amily reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court.” (See *Pedro Z., supra*, 190 Cal.App.4th at p. 20.) When a child has been placed in the care of a previously noncustodial parent under the supervision of the juvenile court, “the court *may* order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later

custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366 [periodic status review for children in foster care], which parent, if either, shall have custody of the child.’ (§ 361.2, subd. (b)(3).)” (*Id.* at pp. 20-21, italics added.)

Here, however, the record shows Father was a *custodial* parent of R.K. Section 361.2, subdivision (a) provides: “When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child.” In subdivisions (b)(1) and (e)(1) of section 361.2, the juvenile court refers to such a parent as the “noncustodial parent.” (See *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55, fn. 6 [“The Legislature and the courts have used the phrase ‘noncustodial parent’ to refer to a parent described by section 361.2, subdivision (a)”].)

The record contains undisputed evidence that Father lived with Mother and R.K. “at the time that the events or conditions arose that brought the child within the provisions of Section 300.” (§ 361.2, subd. (a).) The jurisdiction/disposition report contains the social worker’s summary of her discussion with Mother about the allegations of the petition. The jurisdiction/disposition report states that Mother was asked about the petition’s allegation that Father was present in the family’s residence and witnessed the incidences of physical abuse to R.K.’s brother, but failed to intervene to protect the child. Mother did not deny the allegation but responded, “[h]e lived with us.” Father similarly reported that he had been living with Mother and the children. Mother does not cite to any evidence disputing that Father resided in the same home with Mother, R.K., and R.K.’s siblings at the time the events or conditions occurred which gave rise to dependency jurisdiction as to R.K.

Because Father was a custodial parent and the juvenile court ordered that custody remain vested in Father at the disposition hearing, the juvenile court was not

statutorily authorized to order reunification services for Mother in light of section 16507, subdivision (b) quoted *ante*. Thus, to the extent the minute order's reference to section 361.5, subdivision (a)(1) constituted error, it was harmless.

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.