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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.E. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

K.E. et al.,

Defendants and Appellants.

G048385

(Super. Ct. Nos. DP023004 &
DP023005)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Kimberly
Menninger, Judge. Affirmed.

Law Office of Chandler Parker and Chandler A. Parker, for Defendants and
Appellants.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Jr., Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minors.

INTRODUCTION

Krystal and K.E., the parents of the minors A.E. and Zachary, have appealed from the juvenile court's order finding jurisdiction over the minors and vesting custody in Orange County Social Services Agency (SSA).¹ A.E. was 13 years old and Zachary was nine when SSA detained them in September 2012 after Tustin police officers arrested their parents. During the seven months it took to adjudicate jurisdiction, SSA repeatedly asked the parents to do one simple thing: let SSA inspect your house – or a relative's house – to make sure it is safe for the children to be released to you or to a relative. During the seven months it took to adjudicate jurisdiction, the parents never did.

The court found that SSA had established the basis for jurisdiction and that returning the children to their parents would expose them to risk of physical and emotional harm. The parents have appealed from these findings on a wide variety of grounds. They claim their due process rights were violated. They accuse the judge of being biased and personally hostile to Krystal and contend the court lacked jurisdiction to decide the case. They assert SSA's evidence was insufficient to support the findings. They complain about the "exclusion" and "suppression" of evidence.

We affirm the orders. Appellants' due process arguments are meritless. They have failed to secure appellate review of their bias claims. Substantial evidence supported the juvenile court's findings that K.E. and Krystal had neglected A.E.'s and Zachary's physical and emotional well-being and that this neglect was very likely to continue into the future. The court reasonably concluded the children are better off in SSA's custody until some disturbing aspects of their parents' behavior can be addressed.

¹ SSA and the minors have both filed briefs opposing the parents' appeal.

FACTS

A.E. and Zachary came to SSA's attention at the beginning of the school year in September 2012, when Tustin police officers called from Zachary's school. School officials had become alarmed when it appeared that the documents in the children's school files were false or forged.² The officials contacted the Tustin police.

One of the officers eventually reached K.E., whom he described as uncooperative. K.E. came to Zachary's school and spoke to the investigating detective. K.E. would not give the detective Krystal's last name, address, and phone number. The address in Tustin he claimed was his home address proved to be that of a vacant house under construction. The property manager at the business address Krystal listed on Zachary's enrollment papers did not know of her. When Krystal finally turned up, she would not give police the children's dates of birth, and she appeared to be unable to spell A.E.'s name. In fact, K.E. and later Krystal were so evasive and uncooperative and behaved so oddly that the police officers initially suspected they had stumbled onto some sort of kidnapping.³

K.E. was arrested for bringing a knife to a school campus, resisting arrest, and driving without a valid California license. Krystal was arrested because she had an outstanding warrant in the state of Colorado and was obstructing an investigation. Both

² Among other things, A.E. was able to answer correctly only 10 percent of the questions on a math placement exam, notwithstanding the straight-A report card from a school in Texas she supposedly attended, which did not have a working phone number or any internet presence. The address listed for the school was a Federal Express warehouse. A call to the Texas Department of Education revealed that neither child had ever been enrolled in a Texas school.

Zachary's teachers were also uneasy about him. Although he was supposed to be nine years old and in the fourth grade, he was so small and slight (44 pounds) that the teachers thought he was six, and they were not entirely sure he was a boy. He failed every question on a second-grade math assessment test. He was also telling the teachers about his "dark power" and that he was a prophet from ancient Egypt.

³ The detective's interviews with A.E. and Zachary were also raising red flags. A.E. told the police that her parents had instructed her to lie about where she lived, and, Zachary described guns and ammunition in the home accessible to him.

At a subsequent team decision meeting, held on September 10, "[t]he parents had 1 ½ hours . . . to answer 2 basic questions: Where do you live and where did the children go to school last year? They would not provide this information." The address for the school in Texas Zachary was supposed to have attended the previous year was that of a UPS store.

were subsequently released on bail. The children were taken to Orangewood Children and Family Center.

Tustin police eventually located a residence in Corona, by finding utility bills in K.E.'s name. After obtaining a warrant, the officers searched the house. The house was in "deplorable" condition; not only was it filthy and unsanitary, there were also guns and other weapons accessible to the children. A police photographer took over 600 pictures documenting the state of the Corona house.

The juvenile court held the detention hearing on September 12, 2012, and appointed individual counsel for K.E. and Krystal. Krystal's counsel asked the court to trail the matter to September 17. At the hearing, both parents gave an address on Santa Monica Boulevard in Beverly Hills as their mailing address. Krystal's adult son Nicholas and her mother attended the hearing, and Krystal asked that they be assessed immediately for placement. The court ordered DNA testing for K.E. and Krystal, to set to rest the issue of whether they were the children's parents.

At the hearing on September 17, the court appointed new counsel for Krystal after her then-counsel reported a conflict. The court ordered two-hour monitored visitation twice a week at Orangewood, although parentage had not yet been established. Relative placement with Krystal's adult son or her mother was not yet possible, because neither had provided SSA with an address, and SSA had to assess the home before it could release the children to a relative.⁴ Trial was set for October 3.

On September 28, the Orange County Crime Lab notified the lead Tustin police investigator by phone that Krystal and K.E. were the parents of A.E. and Zachary. The investigator noted the phone call in the police report, but it is not clear when SSA received the report. SSA referred to the phone message in an addendum report dated October 23, 2012.

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Krystal claimed at the hearing that the Corona address was that of her son Nicholas.

For the October 3 trial, SSA filed a jurisdiction/disposition report with further information from the children. A.E. told the social worker that her parents used a fake address so that she and her brother could go to school in Tustin rather than in Corona. Her schooling had been erratic up to that point – she would go to school for a short time and then her mother would pull her out. She did not attend school between the fifth and seventh grades, because of her mother’s fear about swine flu. She also reported that neither her mother nor her father cleaned the house, despite the household’s nine dogs.⁵ A.E. also stated K.E.’s hobby was building guns for sale, a statement confirmed by Zachary. The social worker was unable to schedule meetings to discuss medical records, visitation, and DNA testing with K.E. and Krystal because K.E.’s cell phone would not accept voicemail messages and because Krystal would not respond to requests for return calls or meetings.

The October 3 trial date was continued because the social worker was not available to testify and, more important, the DNA testing of the parents ordered by the juvenile court had not yet occurred. SSA was therefore unable to make a recommendation as to disposition. K.E. submitted to the continuance, but Krystal’s counsel objected, while acknowledging that further evidence was needed for the trial. The court also ordered the parents to cooperate with SSA regarding medical information and paperwork for educational needs.

On October 23, private counsel began representing K.E. and Krystal. The parents’ counsel agreed to continue the trial to November 14 to obtain police reports and the results of the DNA tests, as well as to evaluate placement with relatives.

Between October 23 and November 14, the parents’ counsel was quite busy. He filed a petition for a writ of habeas corpus,⁶ an ex parte application to dismiss

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The Tustin police photographs of the Corona house documented dog feces on the floor.

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The court denied the habeas corpus petition on November 26, 2012. The petition itself is not part of the record.

the dependency petition, and voluminous evidentiary objections to SSA's detention report of September 12. He also subpoenaed the Tustin Police Department for its records of the case.

On November 14, SSA and the minors were ready to proceed with the trial, but the parents' counsel was ambivalent. On the one hand, he objected to continuing the trial. On the other hand, he complained he did not have essential evidence, such as the police report that had been quoted at length in the October 23 addendum report, and therefore could not proceed. SSA noted that the flurry of activity between October 23 and November 14 had not included a written request for discovery, which was required before the agency could turn over documents and which had been discussed between counsel at the previous hearing. In addition, it appeared that the Tustin Police Department was objecting to the parents' subpoena. They had not moved to compel discovery.

With the acquiescence of all parties, the court found K.E. and Krystal the presumed parents of A.E. and Zachary.⁷ That issue having been settled, the court ordered SSA to consider relative placement with either Krystal's mother or her adult son. The court admonished Krystal's mother, who was present, that she or her grandson would have to cooperate with SSA in the matter of an appropriate place to live.⁸ Trial was continued to December 3.

⁷ SSA received the results of the DNA testing for K.E. ordered by the juvenile court on November 8, 2012. Krystal's test had not yet been completed. The results came back on November 14, apparently after the hearing.

⁸ The court indicated that SSA had been trying to contact Krystal's son about placement, but he had not been returning phone calls.

On that date, the Tustin Police Department filed an objection to the subpoena for the police report, on the ground the case was an active one. The trial was continued for two days because of illness of counsel. The parents' counsel continued to object to a continuance while asserting that he could not go to trial because he lacked the police department records. On December 5, the court ordered the Tustin Police Department to produce the subpoenaed records for in-camera review, pursuant to *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036 (*Michael P.*). The court set the review for December 19. The police department produced the records for review on that date, but the size of the production required the court to continue the matter to the next day.

At the hearing on December 19, the issue of Zachary's teeth came up for discussion. Zachary needed to have some cavities filled. SSA was willing to take care of this problem on the county's dime, but K.E. and Krystal insisted they wanted Zachary treated by his usual dentist. SSA agreed, but then the parents never made any arrangements to get the work done. In the meantime, Zachary's teeth were deteriorating. The court set a January 9th deadline for K.E. and Krystal to make a dental appointment for Zachary. If the parents did not act by then, SSA would make the necessary arrangements with the dentist of its choice. Zachary was also tested for food allergies in mid-December, in light of Krystal's objections to the food provided for him at Orangewood.⁹ He had only a mild sensitivity to pork and none of the allergies claimed by Krystal. He was to be monitored for gastrointestinal sensitivity to dairy and wheat.

On December 20, the court issued the results of its in-camera review of the police department documents. The court listed the documents it was ordering produced, mainly reports and recorded interviews, and the documents it was withholding, including fingerprint packets and some videotaped interviews. The court also reminded everyone

⁹ At one point during a phone call, Krystal told Zachary not to eat anything provided by Orangewood, but only food she gave him. Zachary later told one of the Orangewood staff that he would not eat anything until he was released.

of the January 9 deadline to arrange for Zachary's dental care. Trial was continued to January 3, 2013. The parents' counsel did not object to this continuance.

On January 3, trial was continued again – to January 14 – on the parents' counsel's representation that he needed time to transcribe recordings produced by the police department. Also on January 3, after repeatedly denying that they lived there, Krystal & K.E. submitted photographs of the Corona house and a report prepared by their hired inspector indicating that the house had been cleaned up.

On January 14, trial was continued yet again. During the interim, in addition to transcribing recordings, parents' counsel also prepared a petition to rehear the evidence supporting the court's ruling at the detention hearing in September 2012 and two motions in limine.¹⁰ At this hearing, SSA filed an amended petition.¹¹

Trial was continued, at the parents' counsel's request, so that SSA could assess the Corona house in anticipation of returning the children to their parents. The court stated, "I'm going to tell the parties it's important that you cooperate with the social worker in getting that assessment done. That assessment, as your counsel has noted, is a condition on which the children can be released if it's possible, so you do need to make sure to return phone calls. Will you cooperate? [¶] . . . [¶] And the parents are also to provide to the social worker proof of residency at the Corona address. That could be either a lease agreement, mortgage documents, you know, gas bills, whatever it is that social services is going to need. [¶] You have any questions?" The parents' counsel replied, "No, Your Honor, . . . and I do want to clarify that, you know, we will be allowing the social services in to inspect the particular residence" SSA's attorney confirmed, "We are just trying to assess for the current suitability for their [the children's] placement." The court then secured a supposedly working cell phone number. In response to A.E.'s question, "[w]hen am I going home?" her counsel replied, "One of

¹⁰ The court denied the request for rehearing and reserved ruling on the motions in limine.

¹¹ The petition was amended yet again in April 2013.

the things that has to happen by law is that the social worker has to have eyes on the home and the parents in the home, and so that's what we are setting this case over for, so that in the next couple of days the social worker can call and speak to [K.E.], they can arrange to meet at a convenient time and so on so that they can actually do what they're supposed to do" Trial was continued to January 17.

The juvenile court's admonitions to the parents fell on deaf ears. A social worker went to the Corona address during the late afternoon of January 15. Krystal's adult son answered the door and informed the social worker that the parents were not there. Calls to the purported cell phone number either went unanswered or failed to secure an appointment to inspect the house. Two social workers went to the house on January 16, but, even though K.E.'s car was in the driveway, no one answered the door to repeated knocking.

On January 17, the case was assigned to the Honorable Kimberly Menninger, with whom it remained for the duration, after having been shuttled among several juvenile court judges. Judge Menninger explained to K.E. and Krystal in detail the perils of having one lawyer (in this case, one law firm, two lawyers) representing both of them.¹² After hearing this explanation, Krystal wanted a separate lawyer. And she wanted a continuance. The court appointed the public defender for K.E. and told him he could get private counsel if he wished. The court was, however, very concerned about the length of time the children had spent at Orangewood (at this point more than four months), and therefore announced that retention of private counsel for K.E. would not be grounds for another continuance. The court also reiterated that until SSA could inspect a home, the children would not be released to their parents.¹³

¹² Another judge had explained the potential for conflict to K.E. and Krystal during a previous hearing in October, when they had first hired private counsel.

¹³ Judge Menninger had obviously worked up the case before this hearing. Her comments from the bench reflected a thorough knowledge of the case's main issues, including the state of Zachary's teeth, the alarming remarks he had been making about having nightmares and wanting to die, the children's educational deficiencies, and the problem SSA was having with getting a home inspection.

Trial was continued to February 7, to allow K.E.'s new appointed counsel to get up to speed, with a pretrial conference on January 28. In addition, the court issued an arrest warrant for the lead investigator of the Tustin Police Department, who had not appeared for trial despite being subpoenaed.¹⁴

At the pretrial hearing, the Tustin police officer appeared, so the bench warrant was withdrawn. The court also received a report that Zachary's teeth were being seen to.

Trial did not go forward on February 7. K.E.'s counsel was not ready. After setting a new date, the court responded to Krystal's counsel's renewed request to release the children to their parents: "[A] long time ago, we talked about that that's possible, if they allow [SSA] in the house. It still hasn't happened. I have no idea what would promote [*sic*] anyone not to have that happen, failure to allow anyone in the house, still. [¶] That falls right on your client – your clients' heads. I can't help you there. They are not ever going back into the house, if [SSA] never walks in the door. I don't know how much clearer to make that. [¶] I have said it over and over again. Open the doors. Let them walk in and see if we can get them back and every time [SSA] shows up at the doors, they are locked, lights are off, and nobody is home." "Understood," replied Krystal's counsel.¹⁵ Trial was continued to February 19.

On February 19, Krystal filed a motion under Code of Civil Procedure section 170.3 [*sic*] to disqualify Judge Menninger. The basis of the motion was that certain statements made by the judge were such that a person aware of the facts might

¹⁴ "If the Tustin Police Department received [a trial subpoena], which they did, and they don't tell their officers and they're not here on time, then I issue a warrant. That's how it works."

¹⁵ An exchange between the court and Krystal foreshadowing her behavior at trial occurred at this hearing. The parents were complaining about visitation, evidently expecting that they could pop in to see their children whenever they liked. Since the visits were monitored, this expectation was unreasonable. Trying to see whether some schedule could be worked out, the court asked Krystal what she and her husband did for a living. Krystal claimed that she was a doctor, but when the court asked her what kind of doctor, Krystal replied, "I would rather not say to the court." Nonplussed, the judge said, "Sorry?" Krystal reiterated, "I would not disclose that to the court." The judge still struggled to grasp the response: "You're not going to disclose that – what you are doing for a living to the court?" "No," replied Krystal.

reasonably entertain a doubt that the judge would be able to be impartial. (See Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).) The court struck the statement of disqualification, finding that Krystal's statement on its face disclosed no legal grounds for disqualification.

Trial on jurisdiction finally got underway on February 19.¹⁶ Krystal was SSA's first witness, and things got off to an unpromising start. In response to the oath recited by the bailiff, Krystal said, "I take the Fifth." She was finally persuaded to agree to the oath and take the stand. She testified that she had lived at a certain address on 9th Street in Los Angeles for six years. She gave the full legal names for A.E. and Zachary and their dates of birth. Then things went downhill.

Krystal claimed to be a doctor with two Ph.D. degrees. Her current occupation was "doctor." "Of what?" asked SSA's counsel. "That's enough. Doctor." Krystal replied. "What sort of medicine do you practice?" "Doctor." "Okay. Where do you work?" "I'm not going to answer," Krystal informed counsel and the court.

And so it went. When asked where she worked, she replied, "Los Angeles." Where in Los Angeles? "Los Angeles." "So you just sit in the city of Los Angeles and practice medicine?" "Yes." Even the court's asking questions and admonishing her about contempt could not elicit a straight answer from Krystal. Her counsel had to take her outside to confer with her.

Things did not much improve when Krystal returned. Now her response to most questions was "I don't remember." For example, she could not remember where she went to college, or the year she graduated, or where she obtained her master's degree. She obtained her first Ph.D. degree at the University of Cairo in Egypt, but could not recall when, or how long she had lived in Egypt, or even in what field she had received the Ph.D. She could not remember where she had obtained her second Ph.D. degree, or

¹⁶ Krystal's counsel evidently believed that the disqualification motion would delay the trial until another judge could rule on it.

how long it had taken to get it, or where she had studied for it. She claimed the house in Corona was a “family home,” but could not explain who owned it or how she knew it belonged to her family. Questions about the children’s schooling were answered with equal vagueness and evasiveness.

Similar testimony occupied the rest of the session. Counsel was in the midst of examining Krystal regarding Zachary’s purported food allergies and sensitivities when the session ended. And that was the last time Krystal, or K.E., appeared in court during the jurisdiction proceedings.¹⁷

When trial resumed on February 21, neither Krystal nor K.E. was present. Krystal claimed illness. The court issued a bench warrant for her, to be held until February 25. A.E. and Zachary testified. Both Zachary and A.E. identified photographs of the Corona residence as pictures of their home.

Additional trial proceedings took place on February 25 and 28, March 4, 5, 11, 12, 18, 19, 21, 25, and 26, and April 4, 8, and 16, 2013.¹⁸ On April 16, the court found jurisdiction under Welfare & Institutions Code section 300, subdivision (b),¹⁹ because of neglectful conduct by K.E. and Krystal that caused substantial risk of harm to Zachary and A.E. and a strong likelihood the children would be subjected to substantial risk of harm in the future. The court based its findings on the condition of the house when the children were detained – not only extremely dirty and unsanitary but also larded with weapons accessible to the children. It also cited the state of Zachary’s health at the time he was detained. He did not have the food allergies Krystal attributed to him and

¹⁷ Despite being represented by counsel, Krystal and K.E. filed a motion in propria persona to transfer the case to Los Angeles County. The motion was denied as untimely and because jurisdiction had not yet been established.

¹⁸ A.E. and Zachary were placed in foster care on April 1. On April 6, after SSA refused to give out the foster parent’s contact information, Krystal called the FBI and told an agent that her children had been kidnapped.

¹⁹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

upon which she based a diet that caused him to be significantly underweight for his age.²⁰ Moreover, the parents had neglected Zachary's dental needs to such an extent that he needed drastic dental treatment instead of simple fillings for cavities. And finally, the court noted that as of the final date of the jurisdiction trial, the parents had still not provided SSA with an address of a home that could be inspected for the childrens' placement.

As for disposition, the court found by clear and convincing evidence that returning the children to the parents' custody would endanger the children's physical and emotional well-being, based on the parents' failure or refusal to identify a home for the children or a relative for placement and their failure to participate with SSA to meet the children's educational and health needs. The court adopted SSA's recommendations with respect to visitation and, on its own, ordered mental health examinations for both parents. Referring to the examinations, the court stated, "[T]he court is making this order because the parents' behavior has been extraordinarily unusual and not normal. It does appear there is something wrong with each of them. I'm not quite sure what it is, but I would find it psychological in nature. [¶] The fact that they haven't visited their children or hadn't visited their children for long blocks of time, over months at some point, the strange behavioral activity that is recorded in the last three supplemental reports from [SSA]²¹ are all the reasons the court is going to depend on our psychological experts to tell us whether or not [Krystal] and [K.E.] do have psychological problems"

²⁰ The court noted his weight gain at Orangewood from a more normal diet.

²¹ The report dated April 16 recounted Krystal's call to the FBI stating that her children had been kidnapped. The March 18 report described a call to the Orange County Sheriff's Department demanding an ambulance to be sent to Orangewood for A.E. and Zachary because they had been poisoned. The Sheriff's Department actually sent the ambulance. The report before that documented A.E.'s flight from Orangewood with two other girls and her subsequent return with drugs in her system, after being picked up by Garden Grove police for shoplifting. Even though her parents were informed of her hospitalization because of the drugs, they never even called to see how she was.

K.E. and Krystal appealed from the jurisdictional and dispositional orders entered on April 16, 2013, and from the denial of Krystal’s motion to quash or recall Krystal’s arrest warrant. A second notice of appeal was filed for K.E. alone from the April 16 order. Although they had separate counsel for the jurisdiction and disposition trial, the same counsel – Krystal’s trial counsel – represents both parents on appeal. The motion to quash or recall the arrest warrant is not included in the record, and appellants’ opening brief presents no argument or authority as to why the denial of the recall motion was erroneous. We therefore do not consider the arrest warrant issue.²²

DISCUSSION

I. Procedural Due Process

K.E. and Krystal argue that the juvenile court deprived them of procedural due process in several respects: The court failed to tell them that they could hire private counsel. A.E. was not provided with notice of each proceeding. SSA suppressed exculpatory evidence, and the jurisdiction trial was delayed without good cause.

“Procedural due process . . . focuses upon the essential and fundamental elements of fairness of a procedure which would deprive the individual of important rights. As stated in *Fuentes v. Shevin* (1972) 407 U.S. 67, 80: ‘. . . the central meaning of procedural due process [is] clear: “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.” [Citations.] It is equally fundamental that the right to notice and an opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.” [Citation.]’ [¶] Due process requirements in the context of child dependency litigation have similarly focused principally on the right to a hearing and the right to notice. [Citation.] A meaningful hearing requires an opportunity to examine evidence and cross-examine witnesses, and hence a failure to provide parents with a copy of the social worker’s

²² See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [contention waived in absence of legal argument and authority].

report, upon which the court will rely in coming to a decision, is a denial of due process. [Citation.] Where an investigative report is required prior to the making of a dependency decision, and it is *completely* omitted, due process may be implicated because a cornerstone of the evidentiary structure upon which both the court and parents are entitled to rely has been omitted. [Citation.]” (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 412.)

A. Notice of Right to Private Counsel

K.E. and Krystal have presented us with no authority to the effect that parents have a due process right to be informed by the court that they can hire private counsel or that failing to inform parents of their ability to hire private counsel implicates their due process rights, that is, their entitlement to notice and a hearing.²³ The juvenile court appointed counsel for each of them at the first opportunity, the detention hearing of September 12, 2012. By October 23, they had retained private counsel. On October 31, their counsel filed an *ex parte* application to dismiss the dependency petition.

K.E. and Krystal now argue that if they had had private counsel from the beginning, that person would not have submitted at the detention hearing. Even assuming this hindsight speculation has something to do with notice and a hearing, their private counsel immediately did what they claim their publicly appointed counsel should have done: challenged the petition. The record does not explicitly reflect the resolution of the *ex parte* application,²⁴ but the fact that the case continued after the application strongly suggests that the parents’ publicly appointed counsel would have fared no better on September 12 than their private counsel did on October 31.

²³ California Rules of Court, rule 5.534(k)(1) requires the court to advise a parent in a juvenile dependency case of “(A) [a]ny right to assert the privilege against self-incrimination; (B) [t]he right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; (C) [t]he right to use the process of the court to bring in witnesses; and (D) [t]he right to present evidence to the court.” The rule does not require the court to advise them of their right to hire private counsel.

²⁴ The court observed that it should have been filed as a noticed motion, not an *ex parte* application, so it appears to have been, in effect, denied. The application was not renewed as a noticed motion.

California Rules of Court, rule 5.534(g) does not support K.E.'s and Krystal's argument that their due process rights were violated because the juvenile court did not inform them about private counsel.²⁵ This rule applies to self-represented parties; K.E. and Krystal never represented themselves in this proceeding. At all times they had counsel, either appointed or privately retained. The rule does not apply to them.

B. Notice of Proceedings to A.E.

K.E. and Krystal complain that A.E., who was over the age of 10 and therefore entitled to attend the hearings under section 349, subdivision (d), was not properly notified of the multiple hearings in this case²⁶ or of her right to appeal the court's jurisdictional rulings. If these were errors, the person to complain about them was A.E. (through her counsel), not her parents.

In general, an appellant may contest only those orders that injuriously affect him or her. The appellant cannot raise errors that affect only another party who does not appeal. (*In re Desiree M.* (2010) 181 Cal.App.4th 329, 333.) To confer standing, an injury from a court's ruling must have an immediate and substantial effect on the appellant rather than a nominal or remote consequence. (*Ibid.*) Whether A.E. received notice of the jurisdiction trial and wanted to be present at the hearings are matters that affect her rights, not her parents' rights. (*Id.* at p. 334.) A.E.'s right to be present at the hearings is a statutory right that belongs to her. (*Id.* at p. 333.) K.E. and Krystal do not have standing to raise this issue on appeal.

²⁵ California rules of Court, rule 5.534(g) provides: "At each hearing the court must advise an self represented child, parent, or guardian of the right to be represented by counsel and, if applicable, of the right to have counsel appointed, subject to a claim by the court or the county for reimbursement as provided by law."

²⁶ Section 349, subdivision (d) provides: "If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend."

The same analysis applies to notice of A.E.'s right to appeal. If the court failed to give that notice, A.E. is the one to complain about it. (See *In re Jeffrey A.* (2002) 103 Cal.App.4th 1103, 1009 [appellant lacks standing to raise notice issue on behalf of another party]; *In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) Neither Krystal nor K.E. may do so on her behalf.

C. Delay of Proceedings

Section 352, subdivision (a), provides: "Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.

"Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. . . . Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court." We review the court's ruling on a continuance for abuse of discretion. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481.)

K.E. and Krystal argue that their due process rights were impaired by the numerous continuances. The children were detained on September 7, 2012, the detention hearing took place on September 12, and the jurisdiction and disposition hearing commenced on February 19, 2013. Between those dates, trial was continued 13 times. Seven of those times, over half, were at the behest of either K.E.'s or Krystal's counsel or were granted because their counsel claimed the parents needed more documents to prepare for trial. Two of the continuances were due to illness of counsel. Two more continuances allowed the court to conduct its *Michael P.* review.

Over half of the continuances benefited the parents in some way. The continuances allowed documents their counsel claimed were needed for trial to be gathered for review and allowed them to present their opposition to SSA's petition in the best possible light. After benefiting from delay, Krystal and K.E. cannot be heard to complain that the continuances operated against them.

D. Suppression of Evidence

K.E. and Krystal assert that the "suppression" of two items of evidence constituted a violation of their due process rights. First, they claim that the results of DNA testing, confirming their parentage of A.E. and Zachary, were not revealed until after the 60-day period mandated by section 352, subdivision (b). Second, they assert that the "suppression" of the Tustin Police Department report quoted at length in the October 23 addendum report caused an unreasonable delay and violated their due process rights.

According to the record before us, there were two sets of DNA tests, one by the Tustin Police Department in connection with its criminal investigation and the other ordered by the juvenile court at the September 12 detention hearing. The addendum report dated October 23, 2012, stated that the Tustin Police Department received a phone call from the Orange County Crime Lab on September 28 with the results of the police DNA tests. The record does not indicate when the police department conveyed this information to SSA, but it was disclosed via the addendum report within a month. At that time, SSA was still trying to schedule its own DNA tests, pursuant to the juvenile court's order. The results for K.E. did not arrive until November 8, 2012. By November 14, well before trial actually began, this issue had been put to rest, even without test results for Krystal.

K.E. and Krystal now argue that "suppression" of the DNA evidence caused a delay in the proceedings past the statutory time-limit, thereby depriving them of their procedural due process rights. The record refutes this argument. Importantly, the

evidence was not “suppressed.” K.E. and Krystal received notice of the Orange County Crime Lab’s telephone call to the Tustin Police Department in the October 23 report.²⁷ Moreover, whether K.E. and Krystal were the children’s parents was the least of the problems facing the juvenile court. Far more significant were issues such as the condition of the home, the parents’ refusal to give SSA an address for home inspection, children’s education, and Zachary’s health, mental and physical.

As stated above, the delay in the proceedings was attributable to several causes, including the continuances requested by the parents’ counsel. To suggest that an earlier resolution of the DNA issue would have resulted in a different outcome is to substantially misrepresent the record.

K.E. and Krystal argue also that suppression of the Tustin police report on their case also deprived them of their due process rights. Once again, the record indicates otherwise. The police report was quoted at length in SSA’s October 23 addendum report. After the police department objected to its discovery, the report itself was subjected to a *Michael P.* hearing, on December 19 and 20, 2012, and released. The parents’ counsel did not bring to the court’s attention any differences at all between what had been quoted in the first addendum report and the actual text of the police report, or any omissions. The court made its final determination on jurisdiction on April 16, 2013, almost four months later. The testimony of the first witness took place after Krystal and K.E. had had the police report for two months, and their counsel did not inform the juvenile court that their clients’ right to a fair hearing was impaired because the lawyers did not get the actual police report earlier. Even if this were a legitimate objection, it was waived by appellants’ failure to raise it in the court below. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222 [failure to raise due process claim in lower court results in forfeiture].)

²⁷ A report of a phone call from a lab to the police department is hardly the kind of solid evidence SSA needed to present to the court.

II. Judicial Bias, Personal Animus, and Jurisdiction

The fair-hearing component of procedural due process includes the right to a hearing before an impartial judge. (7 Witkin, Summary of Cal. Law (10th ed. 2005), Constitutional Law, § 642, p. 1042.) We consider this issue separately from the other due process challenges because it presents unique issues.

Echoing the United State Supreme Court, our Supreme Court has affirmed a defendant's due process right to an impartial judge. A "violation of this right is a fatal defect in the trial mechanism." (*People v. Brown* (1993) 6 Cal.4th 322, 333 (*Brown*).)

Krystal filed a motion to disqualify Judge Menninger under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), which requires disqualification when "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Krystal based the motion on three statements made by the judge and on her refusal to permit an after-court visit between Krystal and the children or a more flexible schedule of monitored visitation. The court struck the statement of disqualification. Krystal petitioned for writ review, which was summarily denied.

On appeal, appellants included two of the same grounds for disqualification cited in the motion. They supplemented these grounds with other statements and incidents that took place after the motion was filed and struck, all supposedly indicating judicial bias and personal animosity against Krystal.

A. Appealability

A threshold issue with respect to appellants' assertion of judicial bias is whether they can appeal this issue at all, given the facts of this case. Code of Civil Procedure, section 170.3, subdivision (d), provides in pertinent part: "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." After Judge Menninger struck her motion, Krystal petitioned for review by writ, and this petition was denied.

In *Brown*, the California Supreme Court distinguished between statutory and constitutional grounds for disqualifying a judge when it decided whether courts can review an unsuccessful disqualification motion on appeal. (*Brown, supra*, 6 Cal.4th at p. 334.) The court concluded, “[Code of Civil Procedure section] 170.3[, subdivision] (d) applies to all *statutory* judicial disqualification claims – even those claims based on *statutory* provisions that, like [Code of Civil Procedure] section 170.1, subdivision (a)(6)(C), appear to codify due process grounds for relief – but [Code of Civil Procedure] section 170.3[, subdivision] (d) does not apply to, and hence does not bar, review (on appeal from a final judgment) of *nonstatutory* claims that a final judgment is constitutionally invalid because of judicial bias.” (*Id.* at p. 335, second italics added.) With respect to an appeal based on judicial bias, the court held, “In order to give maximum effect to the Legislature’s clear intent that disqualification challenges be subject to prompt review by writ [citation], we conclude that a litigant may, and should, seek to resolve such issues by statutory means, and that his negligent failure to do so may constitute a forfeiture of his constitutional claim. But we also conclude that, because defendant (i) sought writ relief as required by section 170.3(d) . . . and (ii) writ relief was summarily denied, he may assert on appeal, based on facts alleged in his unsuccessful disqualification motion . . . , a constitutional due process claim that the judge who presided over his hearing was not impartial. [Citation.] Accordingly, on his due process claim, defendant is entitled to the procedural protections afforded on appeal, namely, oral argument and – most important – a written opinion.” (*Id.* at p. 336.)

Krystal based her disqualification motion on Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), which permits disqualification if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” Our Supreme Court, relying on a recent United States Supreme Court case regarding judicial disqualification (*Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868) has held that although a “public perception of partiality” or “the appearance of bias”

may permit disqualification under the relevant statutes, it is not a constitutional due process basis for disqualification. “[W]hile a showing of actual bias is not required for judicial disqualification under the due process clause, neither is the mere appearance of bias sufficient. Instead, based on an objective assessment of the circumstances in the particular case, there must exist “the probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable.” [Citation.] Where only the appearance of bias is at issue, a litigant’s recourse is to seek disqualification under state disqualification statutes: “Because the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will be resolved without resort to the Constitution.” [Citation]. Finally, the court emphasized that only the most “extreme facts” would justify judicial disqualification based on the due process clause. [Citation.]’ [Citation.]” (*People v. Cowan* (2010) 50 Cal.4th 401, 456.) In other words, a person is constitutionally entitled to an impartial judge; he is not, however, constitutionally entitled to a hypothetical person’s good opinion of the judge’s impartiality. (See Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).)

Because Krystal based her disqualification motion on the mere appearance of partiality, she has not stated a cognizable constitutional claim for judicial bias. As to the motion for disqualification, she is restricted to her statutory remedies. The statements allegedly indicating bias in the motion that was the subject of writ review are not reviewable on appeal.²⁸

In her appeal, Krystal identified other statements she claims indicated Judge Menninger’s bias against her, statements made after the ruling on her disqualification motion of February 19, 2013. Krystal failed, however, to move to disqualify Judge Menninger under the statute for these statements. Assuming she had

²⁸ The appeal and the disqualification motion have only two statements in common. We would not, in any event, review statements not specified in the opening brief. (See *In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1477.)

one, her right to appellate review of Judge Menninger’s impartiality based on these statements is forfeited. (See *People v. Freeman* (2010) 47 Cal.4th 993, 1006; *Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Ca1.App.4th 1028, 1038.)

B. Jurisdiction

K.E. and Krystal argue that Judge Menninger ignored the statutory procedure triggered by a motion for disqualification by not immediately stopping the proceedings to allow another judge to rule on the request. Code of Civil Procedure 170.4, subdivision (b) provides: “Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of disqualification is untimely filed or if on its face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken.”²⁹ (See also *People v. Panah* (2005) 35 Cal.4th 395, 446.)

Krystal filed her disqualification motion on February 19, 2013, before trial had commenced by calling the first witness. (See Code Civ. Proc., § 170.4, subd. (c)(1).) Judge Menninger found that Krystal’s statement disclosed no legal grounds for disqualification on its face and ordered it stricken on the same day. Neither K.E. nor Krystal has challenged these findings on appeal. Instead, they argue that Judge Menninger could not continue to hear the matter, at least not until another judge had ruled on the motion.³⁰

²⁹ Code of Civil Procedure section 170.3, subdivision (c)(1) provides: “If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.”

³⁰ They also accuse Judge Menninger – without the slightest hint of a basis for this accusation – of altering court documents to “conceal” her procedural error, by altering file stamps and registered mail receipts.

Code of Civil Procedure section 170.4, subdivision (b), permits a judge to strike the motion for the reasons – untimeliness or lack of legal grounds – specified in the statute. Code of Civil Procedure section 170.4, subdivision (c), which requires referral to another judge, applies only *after* trial has commenced, as it had not in this case. The subdivision also does not require the trial to be halted while another judge rules on the motion, even if the motion is filed after trial has begun. Judge Menninger had jurisdiction to continue to hear the dependency proceedings.

III. Sufficiency of the Evidence

The juvenile court assumed jurisdiction over A.E. and Zachary pursuant to section 300, subdivision (b), which provides in pertinent part:

“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶]

“(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child. . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

We review the juvenile court’s jurisdictional and dispositional findings for substantial evidence. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) If any evidence, contradicted or uncontradicted, supports the findings, we affirm. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 84; *In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.)

The three elements for jurisdiction under section 300, subdivision (b) are: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the [child], or a “substantial risk” of such harm or

illness.’ [Citation.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; see also *In re S.O.* (2002) 103 Cal.App.4th 453, 461 [past conduct probative “if there is reason to believe that the conduct will continue.”]) “[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

K.E. and Krystal challenge only some of the allegations of the amended petition as lacking in sufficient evidence. It is not necessary to have evidence supporting all of the allegations in order to find jurisdiction. Even one allegation supported by substantial evidence will suffice.³¹ (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.)

The juvenile court unquestionably had sufficient evidence to find jurisdiction under section 300, subdivision (b), over both A.E. and Zachary, that is, that they were at risk of serious physical harm. Substantial evidence supported the allegation the home was unsafe and unsanitary and had been that way for a long time.³² The parents’ refusal to allow SSA to look at the house even after it had supposedly been cleaned up strongly implied it would sink back into its former condition once SSA was out of the picture.³³ Likewise the state of Zachary’s teeth and his weight suggested a long-standing failure to attend to his health needs likely to continue into the future, given Krystal’s unfounded convictions about his diet. The children’s education, or lack of it, was also not a one-time lapse, but the result of some unresolved problem of Krystal’s and of K.E.’s inability to override Krystal’s decisions, regardless of their effects on the children. This pattern too was likely to be continued into the future without SSA’s intervention.

³¹ K.E. and Krystal seek to repair these omissions by challenging rest of the allegations in the reply brief. We do not consider arguments raised for the first time in a reply brief. (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1503.)

³² After seeing the police photographs of the Corona house, the expert K.E. and Krystal hired to inspect the Corona house after it had been cleaned up and to testify as to its suitability was of the same opinion.

³³ The parents’ expert testified to this effect.

The court also had sufficiently clear and convincing evidence to find that releasing the children to their parents would place them at risk under section 361, subdivision (c)(1).³⁴ It is not necessary for the parents to be dangerous or the children actually harmed. The focus is on preventing future harm to the children. (See *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

K.E. and Krystal never allowed SSA to inspect a home – any home – so SSA could never ascertain that the children could be released into a safe and sanitary environment. Given the state of the Corona house when the children were detained, this was a legitimate concern for both the court and SSA. The evidence also established that K.E.’s and Krystal’s failure to communicate with SSA regarding the children’s medical and educational needs placed the children at substantial risk. Zachary, in particular, suffered needless pain and illness because his parents thwarted SSA’s efforts to get his teeth fixed.³⁵

Ironically, SSA was willing, even eager, to release the children to their parents’ custody. As the court explained directly to the parents several times, SSA had a duty to assure itself of the safety of the home before the children could be released to their parents. This meant that someone from SSA had to inspect the home. Despite promises and representations from K.E., Krystal, and their counsel, SSA was never allowed to perform its duty. This intransigence baffled both the court and SSA – why on

³⁴ Section 361, subdivision(c)(1) provides in pertinent part: “A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6):

“(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor 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 or guardian’s physical custody.”

³⁵ Appellants’ argument that their substantive due process rights were violated because the relevant statutes did not warn them that they could lose custody if they failed to cooperate with SSA is meritless. Appellants did not lose custody of their children because they failed to cooperate with SSA. They lost it because they neglected their children and because their failure to communicate or cooperate with SSA placed their children in danger of further harm.

earth would parents who professed to want their children back act in this way? – and contributed to the juvenile court’s impression that something was seriously wrong with this family.³⁶

IV. Exclusion of Evidence

Finally, Krystal and K.E. take issue with the court’s withholding videotapes of police interviews and fingerprint packets as a result of the *Michael P.* review. The parents characterize the court’s act as excluding evidence.

The court has broad discretionary powers to admit or exclude evidence. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1135; *In re Cole C.*, *supra*, 174 Cal.App.4th 900) and a party appealing from an evidentiary ruling must show not only error but also a miscarriage of justice. (Evid. Code, § 354; see also *In re Mark C.* (1992) 7 Cal.App.4th 433, 443.)

Although the parents characterize this issue as evidentiary, it is actually a discovery issue. A *Michael P.* review is held in response to an objection to a subpoena by a government agency on privilege grounds. (*Michael P.*, *supra*, 92 Cal.App.4th at pp. 1042-1043.)

“Discovery in juvenile matters rests within the control of the juvenile court[,] and the exercise of its discretion will be reversed on appeal only on a showing of a clear abuse. [Citations.] The juvenile court rules encourage the informal exchange of information between the parties and create an affirmative duty to disclose favorable evidence, subject only to a showing of privilege or other good cause. [Citation.]” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1166; see also Cal. Rules of Court, rule 5.546.)

³⁶

Krystal’s performance on the stand at the beginning of trial reinforced this impression.

The Tustin Police Department objected to the parents' broad subpoena of its records on privilege grounds, and the juvenile court conducted an in-camera review of the records, pursuant to *Michael P.*, *supra*, 92 Cal.App.4th 1036 [court required to review documents in camera when public entity claimed public-interest privilege.] After the review, the court released a large number of reports, DVDs, and other documents, but withheld some of the produced items.

The juvenile court held an open-court hearing on December 20, after completing the in-camera review, and listed the documents being released.³⁷ It also entered a protective order governing the records' release and use.

The parents' counsel never objected to the court's *Michael P.* rulings or asked for a hearing on them.³⁸ (See *Michael P.*, *supra*, 92 Cal.App.4th at p. 1047 [adversary hearing].) In fact, at the next hearing, on January 3, Krystal's counsel asked for a continuance so that he could transcribe the recordings the police department had produced. The court received additional documents from the department, which were opened at the hearing and discussed with all counsel, and still the parents' counsel never referred to having a hearing on the privilege issue or objected to the withholding of any police records.

The issue of erroneously withheld discovery records has surfaced for the first time on appeal. It is too late to bring it up now. (See *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-641.)

³⁷ The record does not include a reporter's transcript of this hearing.

³⁸ On appeal, the parents protest that "the reasons for [the videos'] exclusion are . . . unknown." The videos were withheld because the court determined that the potential for jeopardizing the criminal investigation outweighed the parents' constitutional right to their children. (See *Michael P.*, *supra*, 92 Cal.App.4th at p. 1047.) How the court reached that conclusion is unknown because the parents never asked to have it explored in a hearing.

DISPOSITION

The jurisdiction and disposition orders are affirmed. The order denying Krystal's motion to quash or recall the arrest warrant is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.