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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re AUSTIN M., a Person Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

GILBERT M.,

Defendant and Appellant.

G051357

(Super. Ct. No. DP022752)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Craig E.  
Arthur, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for  
Defendant and Appellant.

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

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Austin M., a diabetic child, was subject to juvenile dependency proceedings due to his father's failure to provide him with badly needed medical care. After a period of family maintenance, Austin's father (father) walked out on his children, including Austin, who ultimately was placed with his maternal aunt in San Diego County. Father appeals from the termination of his reunification services<sup>1</sup> under Welfare and Institutions Code section 361.5, subdivision (a)(2)(B).<sup>2</sup> He claims the fact that he once tried to contact Austin should have precluded the early termination of services under that statute. We disagree and affirm.

## I

### FACTS

#### A. *BACKGROUND:*

##### *(1) Initial Petition and Family Maintenance—*

##### *(a) Failure to provide medical care*

The Orange County Social Services Agency (SSA) filed a juvenile dependency petition on July 2, 2012 with respect to 11-year-old Austin, whose parents were divorced. Austin had been diagnosed with juvenile diabetes when he was only 18 months old. SSA alleged that Austin, who was insulin dependent, was not being properly cared for and was at risk for “blindness, kidney damage, cardiovascular difficulties[,] circulation problems, blindness, coma and potential death.”

SSA alleged that in 2007 and 2008, when Austin's mother had primary responsibility for him, she failed to take him to a number of regularly scheduled doctor's visits. In 2009, father obtained sole physical and legal custody of Austin. SSA alleged

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<sup>1</sup> In his notice of appeal, father also challenged the order transferring the juvenile dependency case to San Diego County. However, he has abandoned that issue by failing to address it in his briefs. (*G.R. v. Intelligator* (2010) 185 Cal.App.4th 606, 610, fn. 1.)

<sup>2</sup> All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specifically stated.

that Austin's father had failed to contact his doctors when Austin's blood sugar levels were below 29 or above 300 (70 to 100 being normal) on 25 different dates from April 15, 2012 to June 24, 2012, and had failed to take him to numerous doctor's appointments necessary to manage his diabetes. Furthermore, Austin was hospitalized twice, in October 2011 and January 2012 due to diabetic ketoacidosis. In short, SSA asserted that there was a substantial risk that Austin would suffer serious physical harm or illness. SSA recommended that Austin remain in the custody of father, with certain protective orders regarding Austin's diabetes care.

*(b) Family maintenance*

At the July 3, 2012 hearing on the initial petition, the court released Austin to father, subject to certain conditions. Father was ordered to ensure that Austin attended all scheduled medical appointments and to supervise Austin's blood tests, insulin injections, and glucose, ketone, and food logs.

At the dispositional hearing on August 15, 2012, the court ordered Austin declared a dependent child of the court. Custody was to remain with father, subject to orders regarding Austin's medical care, including an order that father enroll Austin in Dr. Riba's Health Club.

In its January 28, 2013 status review report, SSA stated father and Austin's stepmother had been demonstrating minimal to moderate compliance with the court orders on Austin's medical care. It reported that Austin had been hospitalized again, in November 2012, for abdominal pain and vomiting due to an enlarged liver, and that he again had been suffering from diabetic ketoacidosis. Also, father had failed to take Austin to see his pediatrician following the hospitalization.

In addition, it was reported to SSA that school officials had observed Austin's blood sugar levels running both low and high and that they had sent him home one day because of high blood sugar. However, father had not contacted the doctor's office as he was required to do in these circumstances. Father was aware that Austin's

blood sugar levels had been ranging between 39 and over 400 on the glucometer for several weeks, but he didn't understand why until he realized Austin had gotten a key to the pantry full of food he is not allowed to eat. Father explained that Austin's mother always told him he could eat whatever he wanted and make up for it with insulin later.

In January 2013, SSA received an e-mail from a nutritionist who had checked Austin's glucometer and reviewed his blood sugar level readings for the preceding 30 days. She reported that there were many high and low blood sugar level readings for that time period.

SSA filed another status review report on July 17, 2013. Austin's average blood sugar level over the preceding three months (hemoglobin A1C reading) had increased. Austin's doctor expressed frustration that Austin's blood sugar records were incomplete. The bedtime blood sugar readings were missing. Father stated he was usually asleep by the time Austin took his bedtime blood sugar readings and that Austin's stepmother should be the one monitoring the bedtime readings. Father also had failed to provide the doctor with information regarding the blood sugar readings taken at school, which were reported to contain a lot of low readings. Father was supposed to be taking Austin to Dr. Riba's Health Club, but Austin was ultimately discharged from the club due to 10 missed visits. Father had been provided with several referrals for counseling, but Austin had yet to be seen by a therapist.

SSA's January 22, 2014 status review report reflected that blood sugar anomalies had been noted at a September 17, 2013 doctor's visit and father had been admonished not to leave Austin to check his own blood sugar levels and administer his own insulin without supervision. Austin had been hospitalized in December 2013 with diabetic ketoacidosis and a blood sugar reading of 729. The doctor had noted it was apparent Austin had not taken his insulin as prescribed for many days. Austin had confessed that he lied to father about taking his insulin.

Father agreed to a seven-point safety plan with respect to Austin's diabetes control: (1) father to be the one to draw the insulin and watch Austin administer it; (2) father to observe Austin check his ketones; (3) father to be the one to test Austin's blood sugar level; (4) father to have possession of the main glucometer; (5) father to log Austin's carbohydrate consumption; (6) Austin's mother to assist as necessary; and (7) Austin to receive diabetes therapy at Children's Hospital of Orange County.

On January 29, 2014, the social worker spoke with both the school nurse and Austin's stepmother. The school nurse expressed concern that Austin's blood sugar levels were either very high or very low. The stepmother said that father had "not been in the home since after Thanksgiving." He was in a relationship with another woman and had moved out, leaving Austin behind. However, the stepmother, who had not been trained to deal with Austin's diabetes, said she was not able to care for him in any event.

This being the case, SSA was recommending that Austin be taken into protective custody. The court issued a protective custody warrant on January 31, 2014.

*(2) Supplemental Petition and Detention—*

*(a) Child abandonment*

On February 4, 2014, SSA filed a supplemental juvenile dependency petition under section 300, subdivision (b)—failure to protect. It recommended that Austin, who was then at Orangewood, be detained. In its detention report, SSA noted that father had failed to comply with the court-ordered case plan and with the seven-step safety plan he had agreed to in December 2013. It further noted that Austin's mother was subject to frequent hospitalization and was unable to care for him.

On February 5, 2014, the court made a temporary detention order removing Austin, who was then 13 years old, from the home. At the continued detention hearing the following day, the court reaffirmed the temporary detention order and also ordered reunification services for the family.

According to SSA's March 5, 2014 jurisdiction and disposition report, Austin's mother confirmed that father had "done a disappearing act" and abandoned the stepmother and three children. She said he "had moved in with a twenty-three year old girl in Long Beach."

SSA reported that the social worker had scheduled two appointments with father in February, to provide him with referrals for services and with photographic identification so he could visit Austin. However, father did not show up for either appointment. SSA also reported that mother had visited Austin at Orangewood many times in February 2014, but that father had not visited him at all. SSA had also provided mother with referrals for reunification services, but had been unable to provide the information to father, due to his failure to keep appointments.

A March 19, 2014 addendum report disclosed that the paternal aunt and uncle, with whom Austin had been placed, said mother had been in and out of the hospital. They also said father had wanted to visit Austin on one occasion, but Austin did not want to see him because he was mad at father for having left him.

*(b) Disposition*

On March 20, 2014, father and mother both submitted on the supplemental petition. The court found the allegations of the supplemental petition to be true and found that section 361, subdivision (c)(1) applied. The court vested custody of Austin in SSA.

In its August 29, 2014 status review report for the section 366.21, subdivision (e) six-month review hearing, SSA reported that the paternal aunt and uncle said they would be unable to continue to care for Austin. However, a maternal aunt living in Carlsbad said she would be able to take care of him, and that she had received training in caring for a diabetic child. Mother favored this arrangement because she herself was moving to Carlsbad to reside with her own mother. Mother suffered from both Addison's disease and Graves disease and recently had "been hospitalized on three

occasions for at least one week.” She had been attending parenting classes, and receiving therapy services and caregiver classes, but was unemployed.

During the entire reporting period, father had neither visited Austin nor made telephone contact with him, not even once. He had not even contacted the caregivers to check on Austin. Father had not completed any portion of his case plan. SSA noted that father had made no effort or progress towards alleviating the causes necessitating court involvement and that he had returned none of the social worker’s telephone calls. Certified mail sent to him had been returned. SSA had made numerous efforts to contact father, via certified mail, telephone, and in person at the paternal grandmother’s residence, with no success. The paternal grandmother stated only that father no longer resided in the home. On August 18, 2014, SSA had learned that father was incarcerated 11 days earlier.

SSA noted that when father moved away, he had left one of Austin’s siblings at the paternal grandmother’s house. The paternal uncle stepped in and took over the care of that sibling because he was concerned the boy was not receiving proper care.

SSA was recommending that Austin remain in protective custody while mother continue to work on her case plan, in the hopes he might be able to reunify with mother by the 12-month review hearing. It was further recommending the termination of reunification services for father, who had made no effort at all to comply with his case plan or to visit Austin.

In a September 4, 2014 addendum report, SSA said Austin was then living with his maternal aunt. It also reported having learned that father had been released from jail on August 22, 2014. SSA had made additional attempts to contact father via his cell phone and his last known address, but was unsuccessful.

The six-month review hearing was continued to October 6, 2014. In an October 2, 2014 addendum report, SSA said mother had moved to Carlsbad and was then living with her own mother and Austin’s brother, who had been cared for by the paternal

uncle following father's departure. Mother was making progress in her case plan and was then employed as a certified nurse assistant. Mother was having regular contact with Austin.

SSA reported that Austin was doing well in the home of his maternal aunt and appeared well cared for. Moreover, he was having contact with not only his mother, maternal grandmother, and brother, but also with a second maternal aunt who lived in the area and his paternal uncle and half brother. Austin was doing well in his placement and indicated he would be interested in residing with mother in the future. SSA said Austin had a strong support network in the San Diego County area and that his medical care had been transferred to a children's hospital in that vicinity.

In addition, SSA reported that it continued to make efforts to contact father via both telephone and mail, but that father did not respond. For his part, father made no contact with either Austin or SSA.

SSA recommended that father's reunification services be terminated and the case be transferred to San Diego County. The six-month review hearing was continued to October 21, 2014 and set as a contested matter due to the recommendation. On that date, the parties agreed to a continuance to November 10, 2014.

In a November 6, 2014 addendum report, SSA stated father continued to have no contact with either Austin or SSA. However, Austin continued to do well in his placement, mother continued to work, and SSA had completed the Southern California intercounty transfer protocol to have the case transferred to San Diego County. SSA continued to recommend that the case be transferred to San Diego County and that father's reunification services be terminated. A November 24, 2014 addendum report was largely the same and continued to reflect father had made no contact with either Austin or SSA.

At the continued six-month review hearing on November 25, 2014, the court found mother had made moderate progress towards alleviating the causes necessitating placement. However, it found father had made no progress. It ordered father's reunification services terminated. It also ordered the case transferred to San Diego County and set the matter for a 12-month review hearing on March 9, 2015 in that county.

Father filed an appeal from the orders terminating reunification services as to him and transferring the case to San Diego County.

## II

### DISCUSSION

#### A. SECTION 361.5:

Section 361.5, subdivision (a), provides that, with certain exceptions, "whenever a child is removed from a parent's . . . custody, the juvenile court shall order the social worker to provide child welfare services to . . . the child's mother and statutorily presumed father . . ." It further specifies that the family reunification services shall "be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care . . ." (§ 361.5, subd. (a)(1)(A).)

Section 361.5, subdivision (a)(2) permits the filing of a motion to terminate services before the 12-month period has lapsed, under certain circumstances. It further provides: "A motion to terminate court-ordered reunification services shall not be required at the hearing set pursuant to subdivision (e) of Section 366.21 if the court finds by clear and convincing evidence *one* of the following: [¶] (A) That the child was removed initially under subdivision (g) of Section 300 and the whereabouts of the parent are still unknown. [¶] (B) That the parent has failed to contact and visit the child. [¶] (C) That the parent has been convicted of a felony indicating parental unfitness." (§ 361.5, subd. (a)(2), italics added.)

*B. STATUTORY CONSTRUCTION:*

To aid in our application of that statute, father cites *In re Michael R.* (2006) 137 Cal.App.4th 126, which provides: “When interpreting a statute, we must ascertain the legislative intent so we may ‘effectuate the purpose of the law.’ [Citation.] Our first step is to consider the statutory language, ‘being careful to give the statute’s words their plain, commonsense meaning. [Citation.] If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature’s intent is unnecessary.’ [Citation.] If the statutory language is unclear, we may consider the history and background of the measure to discern the Legislature’s intent. [Citation.]” (*Id.* at pp. 138-139.)

Father claims the statute here is ambiguous on the question whether, in the absence of a motion, reunification services may be terminated in less than 12 months where “the parent has failed to contact and visit the child” but nonetheless has made an effort to do so. Consequently, he contends we must look to the legislative history of section 361.5, subdivision (a)(2)(B). He says the legislative history shows that the provision authorizing early termination of reunification services without a motion only applies where (1) the child was initially removed under section 300, subdivision (g), and (2) in the context where visitation is at issue, the parent has made *no effort* to see his child. We disagree as to each point.

*(1) Lack of Ambiguity—*

First, the statute is unambiguous. Section 365.1, subdivision (a)(2) plainly provides that no motion is needed when any “one” of subparagraphs (A), (B), or (C) applies. In other words, it is not the case that, absent a motion, services may not be terminated early unless the requirements of subparagraph (A), pertaining to detention under section 300, subdivision (g), are met. If the requirements of subparagraph (B) alone are met, nothing more is required. We do not look to the legislative history to seek out a contrary intention. (*In re Michael R., supra*, 137 Cal.App.4th at pp. 138-139.)

Second, the plain wording of section 361.5, subdivision (a)(2)(B) says no motion is required where “the parent has failed to contact and visit the child.” It does not say no motion is required where “the parent has failed to *make any effort to either* contact or visit the child.” We do not inject additional words into a statute that is perfectly clear in order to change its meaning and superimpose additional requirements. (*Warmington Old Town Associates v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840, 857.) In other words, we do not add an efforts exception here.

(2) *Legislative History*—

Even if we were to consider father’s limited argument about the legislative history, we would find it to be unpersuasive.

Assembly Bill No. 706 (2009-2010 Reg. Sess.) as originally introduced on February 26, 2009 proposed certain amendments to section 361.5, but that did not include the addition of an exception to the motion requirement at issue here. On June 16, 2009, the Senate proposed an amendment to Assembly Bill No. 706 to add the following exception to section 361.5, subdivision (a)(2): “A motion to terminate court-ordered reunification services shall not be required at the hearing set pursuant to subdivision (e) of Section 366.21 if the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence one of the following: [¶] (A) That the whereabouts of the parent are still unknown. [¶] (B) That the parent has failed to contact and visit the child. [¶] (C) That the parent has been convicted of a felony indicating parental unfitness.”

Father cites a June 16, 2009 Senate Judiciary Committee comment with respect to the proposed amendment. The comment stated: “Lastly, existing law provides that a child may be adjudged a dependent of the juvenile court if the child was removed because of abandonment, [voluntary] surrender by the parent, the whereabouts of the parent are unknown, or the parent is incarcerated and cannot arrange for the care of the child. (Wel. & Inst. Code Sec. 300(g).) This bill would provide that a motion to

terminate court-ordered services shall not be required at the six month review hearing after the initial dispositional hearing *if the child was removed under Section 300(g), and* the court finds by clear and convincing evidence one of the following: (1) the whereabouts of the parent are still unknown; (2) the parent has failed to contact and visit the child; or (3) the parent has been convicted of a felony indicating parental unfitness. Under these circumstances, the parent is absent, *made no efforts to contact the child*, or [is] unfit, and the court would not have to entertain a formal motion in order to terminate services since reunification is clearly no longer a viable goal.” (Sen. Com. on Judiciary, com. on Assem. Bill No. 706 (2009-2010 Reg. Sess.) as amended June 16, 2009, italics added.)

Father says this comment shows the legislative intent was for the exception to the motion requirement to apply only when the child was initially removed under section 300, subdivision (g). He further argues it shows the clause permitting the early termination of reunification services for failure to visit was intended to apply only when a parent had “made no efforts” at all to visit. The problem with father’s position is that the comments about the proposed June 16, 2009 Senate Amendment are of little value inasmuch as the amendment was not ultimately enacted. As we have said, “very limited guidance can be drawn from a proposed amendment that is not enacted. [Citation.]” (*Warmington Old Town Associates v. Tustin Unified School Dist.*, *supra*, 101 Cal.App.4th at p. 855.)

The Senate proposed another amendment to Assembly Bill No. 706 on June 25, 2009. That amendment deleted the previously proposed language providing that a child must have been removed under section 300, subdivision (g) for the motion exception to apply. The June 25, 2009 Senate Amendment to Assembly Bill No. 706 added the following exception to section 361.5, subdivision (a)(2): “A motion to terminate court-ordered reunification services shall not be required at the hearing set pursuant to subdivision (e) of Section 366.21 if the court finds by clear and convincing

evidence *one of the following*: [¶] (A) That the child was removed initially under subdivision (g) of Section 300 and the whereabouts of the parent are still unknown. [¶] (B) That the parent has failed to contact and visit the child. [¶] (C) That the parent has been convicted of a felony indicating parental unfitness.” (Sen. Amend. to Assem. Bill No. 706 (2009-2010 Reg. Sess.) June 25, 2009, italics added.)

This is the same language contained in the statute as enacted. (Stats. 2009, ch. 120, § 2, pp. 479-480.) In other words, the legislative history shows that consideration was given to enacting a statute containing certain of the requirements father suggests. But the statute ultimately enacted did not contain those requirements. Father cites no authority for the proposition that an analysis of proposed statutory language the legislature rejected demonstrates that the legislature intended the final version to be interpreted to include the rejected language.

### *C. APPLICATION OF STATUTE:*

That being said, we apply the statute as enacted to the facts at hand. “When a dependent child is removed from parental custody, the court generally orders services for the family to facilitate its reunification. (§ 361.5, subd. (a); [citation].) Reunification services for a parent of a dependent child over the age of three are ordinarily limited to 12 months . . . . (§ 361.5, subd. (a).) A parent, however, has no entitlement ‘to a prescribed minimum period of services.’ [Citation.] Instead, the court has discretion to determine whether continued services are in the best interests of the minor, or whether services should be terminated at some point before the applicable statutory period has expired. [Citation.]” (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 876.)

Father claims the court erred in affording him less than 12 months of reunification services because he had attempted to see Austin once, but Austin had refused to see him. SSA responds that the court properly terminated reunification services under section 361.5, subdivision (a)(2)(B) because father’s solitary effort to

contact Austin took place before the reunification period began and father neither had any contact with Austin, nor made any attempt to contact him, during the entire reunification period. We agree with SSA.

Section 361.5, subdivision (a)(1)(A), by its terms, states that reunification services shall “be provided *beginning with the dispositional hearing . . .*” (Italics added.) As this court stated in *In re A.C.* (2008) 169 Cal.App.4th 636: “The section 361.5, subdivision (a) ‘clock’ does not start to run . . . unless and until the children are removed from the physical custody of the parent(s) . . . . Despite the existence of an actual (if brief) removal from the parent’s ‘custody’ (or ‘physical custody’) between the initial detention and the dispositional hearing, section 361.5 is inapplicable in the absence of a disposition ordering a placement with someone other than a parent.” (*In re A.C.*, *supra*, 169 Cal.App.4th at p. 650, fn. omitted; accord, *In re T.W.* (2013) 214 Cal.App.4th 1154, 1165.)

So, as SSA asserts, the reunification period in this case began to run as of the date of the March 20, 2014 dispositional order. (§ 361.5, subd. (a)(1)(A).) The order terminating reunification services was not entered until November 25, 2014—eight months later. Father made no attempt whatsoever to contact Austin during that entire period of time. His one and only attempt to contact Austin was sometime prior to the date of SSA’s March 19, 2014 addendum report.

“There is no purpose served in continuing to offer services where a parent, absent extenuating circumstances, makes no effort to reach out to his or her child for six months in the dependency process.” (*In re Monique S.* (1993) 21 Cal.App.4th 677, 682-683; accord, *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1010; *In re Katelynn Y.*, *supra*, 209 Cal.App.4th at p. 881.) Father has made no suggestion that there were any extenuating circumstances that would have precluded his contacting Austin for more than six months. Father’s August 2014 incarceration only lasted 15 days and even he does not suggest that this should provide him with an excuse.

Even were we to construe the statute so that the reunification services clock started ticking when the court made its temporary detention order on February 5, 2014, this would not benefit father. The statute plainly requires that the parent both “contact *and visit* the child” to avoid the possibility of early termination of reunification services without a motion. (§ 361.5, subd. (a)(2)(B); cf. *In re Tameka M.* (1995) 33 Cal.App.4th 1747, 1754.) But father did not visit Austin. Inasmuch as father made only one attempt to contact Austin from the date of the temporary detention on February 5, 2014 through the date of the November 25, 2014 order terminating his reunification services, the court did not abuse its discretion in making its order. (*In re Katelynn Y., supra*, 209 Cal.App.4th at p. 881; cf. *Sara M. v. Superior Court, supra*, 36 Cal.4th at pp. 1017-1018 [attempts to contact child blocked by social worker].)

### III

#### DISPOSITION

The orders are affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.