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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.C., a Person Coming Under the  
Juvenile Court Law.

H038458  
(Santa Cruz County  
Super. Ct. No. DP002573)

SANTA CRUZ COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

The juvenile court sustained a petition filed by the Santa Cruz County Human Services Department (the Department), finding that then two-year-old A.C. came within the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 300, subs. (b), (g), (j).)<sup>1</sup> A.C.'s mother, S.G. (mother), appeals from the juvenile court's order approving the Department's decision to remove A.C. from the home of her maternal grandmother (grandmother). Finding no error, we affirm the order.

**I. BACKGROUND**

In light of the limited issues on appeal it suffices to note, by way of background, that mother has a long history of substance abuse, domestic violence, and homelessness

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<sup>1</sup> Further undesignated section references are to the Welfare and Institutions Code.

and an extensive criminal record, mostly involving crimes related to drugs and violent behavior. A.C. is her second child. Mother's parental rights to her first child were terminated after mother failed to successfully complete reunification services. That child was adopted by a maternal aunt.

Mother and A.C. had no permanent home and moved frequently. In June 2011, mother reported having been hit in the face by her husband while A.C. was in her arms. Mother and A.C. were living in a shelter at the time. In November 2011, the Department received another report of concerns about mother's involvement in a violent relationship. The whereabouts of A.C.'s alleged father were unknown. The Department filed a petition pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of a sibling).

A.C. was not detained initially but in February 2012, A.C.'s attorney filed an ex parte application for a protective custody warrant due to mother's failure to appear in court when ordered and the Department's inability to locate her. The juvenile court issued the warrant and sustained the section 300 petition. On March 12, 2012, the juvenile court ordered: "Temporary placement and care is vested with the [Department] pending disposition or further order of the court." The court ordered mother to have supervised visitation only.

A.C. was soon placed with grandmother but in less than two months A.C. was removed from grandmother's home and placed in foster care. A.C.'s removal was prompted by a report from a "concerned member of the community" who told the Department that grandmother had allowed A.C. to leave her home with mother, unsupervised. According to the reporting party, on the nights of April 26 and 28, 2012, mother showed up at a friend's house drunk, with A.C. in tow, asking to stay the night. On May 2, 2012, a social worker investigated the report, making an unannounced visit to grandmother's home. The social worker found A.C. present, looking healthy and well cared for. When told about the report that prompted the visit, grandmother replied that

she had “used her ‘best judgment’ when allowing the mother to take [A.C.] from her care.” Grandmother did not appear to understand the reason for the Department’s involvement. The Department’s program manager spoke with grandmother by telephone while the social worker was in the home. Grandmother stated that she did not believe mother put A.C. at risk. Given grandmother’s noncompliance with the court’s orders for supervised visitation, and the concern that grandmother had allowed mother to have access to A.C., when mother was “reportedly under the influence of alcohol,” the program manager instructed the social worker to remove A.C. from grandmother’s home that day. The social worker discussed the Department’s process with grandmother but grandmother became angry and told the social worker that it was against the law not to tell mother where her child was placed.

The Department recommended that the court bypass reunification services (§ 361.5, subd. (b)) and set a hearing pursuant to section 366.26 for selection of a permanent plan for A.C. A contested dispositional hearing was held on May 11, 2012. The juvenile court accepted into evidence the Department’s reports to the court. The court granted mother’s motion to bifurcate the issues of disposition and placement, hearing the question of disposition first. The court denied mother’s hearsay objection to the reports of the “concerned member of the community,” concluding that the reports were not hearsay because they were not offered for their truth but as the basis for the subsequent investigation. To the extent the reports related to the placement issue, they were not then relevant. The court heard testimony from mother and the reporting social worker. The juvenile court issued its ruling on May 14, 2012, bypassing reunification services and setting a section 366.26 hearing for September 11, 2012.<sup>2</sup>

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<sup>2</sup> Mother filed a notice of intent to file a writ petition challenging the order setting the section 366.26 hearing. (Cal. Rules of Court, rule 8.452.) A record was prepared and lodged with this court, but no petition was ever filed. We have taken judicial notice of the record in that case. (No. H038289.)

Mother contested the Department's decision to remove A.C. from her placement with grandmother. A hearing on the placement issue was held May 23, 2012. At the hearing, mother testified that on April 24, 2012, she arrived at the grandmother's house and found grandmother to be weak and tired. Mother stated that she took A.C. "a couple of blocks down the street" to get her something to eat and that "I went to Dollar Store, (unintelligible), the park, and back to my mom's." She was gone for "no more than two hours." She denied taking A.C. from the home on April 26 or 28. At this point in the testimony, A.C.'s counsel noted that grandmother was present in the courtroom and moved to exclude her if she was to be called as a witness. The court granted the motion and grandmother exited. When grandmother was called to testify, she stated that mother came to visit her on April 24 but grandmother was sick so mother stayed a little longer than normal. "[S]he took the child to the Dollar Store, bought her balloons." She was away for "two, two hours at the most." Grandmother denied having received instructions from the social worker about supervised visitation. "No, there was no specific clear visitation rights or whatever. There was nothing." Both witnesses denied that mother had taken A.C. out on the evenings of April 26 or 28, 2012, as the Department had been told.

When asked on cross examination whether she believed mother had ever put A.C. at risk of serious physical harm grandmother answered, "No." Grandmother believed she would be better at judging mother's ability to keep A.C. safe than a stranger would be and she would "discount the stranger's position" if she disagreed with it. She said she would comply with visitation orders if A.C. was placed back with her. As to the visits themselves, grandmother stated "I would like for them to be with somebody other than myself."

In rebuttal, the Department offered the testimony of the social worker who explained that her practice is to tell "people who are gonna be supervising visitation is that they need to be present for the entire visit and they're not allowed to authorize any

other contact without prior department approval.” The social worker stated that grandmother did not agree “with the fact that the Department was involved” and did not think A.C. needed to be removed from mother’s care but she said she “would follow the rules that were set forth by the Department so that she could have placement of [A.C.]”

The court questioned grandmother about family. Grandmother testified that she has four other granddaughters, ages five, seven, 11, and 17, who live nearby. The 11-year-old is A.C.’s half-sister. The younger girls visit grandmother’s home nearly every weekend for two or three hours so that A.C. had a chance to be with them and also to get to know her aunts and uncles when she was living in grandmother’s home.

In argument, mother’s counsel asked the court to make a finding that the Department “abus[ed] their discretion by not placing--by removing, and we’re asking for placing again the child with [the] maternal grandmother.” A.C.’s counsel asked that A.C. not be returned to grandmother.

The juvenile court concluded, “As far as the decision that was made by the Department, they are the experts in assessing risk. I am not able to find that there has been an abuse of discretion. Removal was warranted in this situation.” The court explained: “It’s very difficult for maternal or paternal grandparents to be in the middle of trying to be protective of a child while still trying to be the parent for their own adult children. It puts them in a difficult situation. And I believe that that’s what’s happened with [grandmother] is she’s trying to use her own judgment deciding what’s best for her daughter. But yet that judgment doesn’t apply to this process. And this process is a different one where the focus is on [A.C.] and legally within the constraints of risk to the child and reduction and minimization and protection of the child pursuant to very clear statutes and very clear training that the people that assess risk.

“So I don’t have a stranger that has just decided that the child is at risk. I have an expert that has assessed the situation and has an expert opinion that the child is at risk, and the issue is one of trust. Whether or not the Department would be able to know that

[A.C.] is going to be consistently in grandmother's care from here on out based on the comments that I heard. [¶] I didn't hear a firm commitment. I didn't hear a testimony unfortunately from [the] maternal grandmother that, yes, I want her placed with me and I'm gonna do everything to make sure that she's safe, and my daughter's not gonna be able to come over, and I'm gonna do these things, and this is what I'm gonna do to make it work. I think I have a loving grandmother that's in the courtroom who is trying to be the center of all of the adult children and grandchildren to come over and be part of the family and I think she's got a lot on her plate trying to keep everyone taken care of and everyone happy. [¶] But this child needs more. This child needs extra and there won't be the ability to keep mother happy and keep this child happy. Right now they're in two different areas, in two different directions."

The court urged the other family members to "see if there can be room for another little one, another girl in their household because with four cousins and four families with children already situated, it seems like there possibly is room there somewhere." The trial court confirmed that the dispositional orders contained a "general placement order" and that A.C.'s placement and care "is vested with the [Department]."

## **II. DISCUSSION**

### *A. The Juvenile Court's Review of Department's Placement Decision*

Mother argues that the juvenile court improperly applied the abuse of discretion standard in reviewing the Department's decision to remove A.C. from grandmother's care. According to mother, the abuse of discretion standard applies only after parental rights have been terminated; before that time, the court must exercise its independent judgment when reviewing the Department's placement decisions. The Department argues that mother invited the error and forfeited the issue on appeal when mother's counsel described the Department's decision as an abuse of discretion. We also note that counsel did not mention the requirements of section 361.3, which is the basis for mother's challenge here.

It is true that a reviewing court ordinarily will not consider a challenge where no objection was raised below. “The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) “But application of the forfeiture rule is not automatic. . . . Although an appellate court’s discretion to consider forfeited claims extends to dependency cases [citations], the discretion must be exercised with special care in such matters. . . . Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance. (§ 366.26.)” (*Ibid.*) Given the importance of the placement decision, we shall entertain the argument.

On the merits, the Department maintains that because the juvenile court had made a general placement order, the Department had discretion to decide placement and the juvenile court’s review of such a decision is for abuse of discretion. The Department’s argument ignores the fact that the present case involved a relative’s request for placement. It is for that reason that mother is correct that the juvenile court must exercise its independent judgment.

When a child is removed from his or her parents’ custody the juvenile court places the care, custody, control of the child under the supervision of the child welfare agency. (§ 361.2, subd. (e).) The agency may place the child in several locations, including the approved home of a relative. (*Id.* subd. (e)(1)-(8).) Relatives who request placement of a dependent child are given preferential consideration. (§ 361.3, subd. (a).) “In determining whether placement with a relative is appropriate, the county social worker *and court* shall consider, but shall not be limited to, consideration of [a list of eight factors].” (*Ibid.*, italics added.) Those eight factors include: the best interest of the child, the wishes of the parents and relative, placement of siblings together, the nature and duration of the child/relative relationship, the relative’s desire to care for the child, the ability of the relative to protect the child from her parents, and the safety of the

relative's home. (*Id.* subd. (a)(2), (4), (6), (7)(D), (8).)<sup>3</sup> “The linchpin of a section 361.3 analysis is whether placement with a relative is in the best interests of the minor. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)” (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 862-863 (*Alicia B.*.)

Because section 361.3, subdivision (a) specifies that the social worker *and court* are to consider the listed factors, *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033 (*Cesar V.*), concluded that the juvenile court “must exercise its independent judgment rather than merely review [the agency's] placement decision for an abuse of

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<sup>3</sup> Section 361.3, subdivision (a) provides, in pertinent part:

“In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

“(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

“(2) The wishes of the parent, the relative, and child, if appropriate.

“(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

“(4) Placement of siblings and half siblings in the same home . . . .

“(5) The good moral character of the relative . . . .

“(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.

“(7) The ability of the relative to do the following:

“(A) Provide a safe, secure, and stable environment for the child.

“(B) Exercise proper and effective care and control of the child.

“(C) Provide a home and the necessities of life for the child.

“(D) Protect the child from his or her parents.

“(E) Facilitate court-ordered reunification efforts with the parents.

“(F) Facilitate visitation with the child's other relatives.

“(G) Facilitate implementation of all elements of the case plan.

“(H) Provide legal permanence for the child if reunification fails. [¶] . . . [¶]

“(I) Arrange for appropriate and safe child care, as necessary.

“(8) The safety of the relative's home. . . .”

discretion.” The Department’s authority to the contrary is not on point. *In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1489-1491 held that a child welfare agency did not have to file a supplemental petition under section 387 in order to remove a child from the home of her de facto parents when the juvenile court has entered a general placement order; section 387 requires a supplemental petition only when the agency seeks to change a specific order for placement. *M.L. v. Superior Court* (2009) 172 Cal.App.4th 520, 529, rejected a mother’s demand that the agency place her child with certain nonrelatives, noting, “The social services agency possesses discretion to place a dependent child under a general placement order.” Neither of these cases considered section 361.3 or any other statutory provision that expressly requires *the court* to consider a legislatively mandated list of factors to be applied when making a placement decision. Since this matter involves a relative’s request for placement, we agree with mother that the juvenile court was bound to independently consider the section 361.3 factors.

Although the court did not expressly state that it was independently considering the factors set forth in section 361.3, subdivision (a), the court’s findings clearly demonstrate that it did so. The court considered the wishes of mother and grandmother, the fact A.C. was familiar with grandmother and, if placed with her, would be able to spend time with her cousins, her half-sister, and her aunts and uncles. But the court also expressed concern about grandmother’s ability to keep A.C. safe from her parent. True, the court relied in large part upon the opinion of the social worker who, as the court noted, was the expert at assessing risk. In so doing, the court did not abdicate its responsibility to independently consider the section 361.3 factors. In evaluating a relative placement under section 361.3, the juvenile court examines the evidence without deferring to the Department’s decision. (*Cesar V., supra*, 91 Cal.App.4th at pp. 1033-1034.) The social worker’s opinion was *evidence* upon which the juvenile court relied, along with the grandmother’s own testimony, which did not persuade the court that the

grandmother would, indeed, comply with the Department's directives designed to keep A.C. safe.

Mother implicitly challenges the substance of the ruling but, again, we find no error. "We review a juvenile court's custody placement orders under the abuse of discretion standard of review; the court is given wide discretion and its determination will not be disturbed absent a manifest showing of abuse." (*Alicia B.*, *supra*, 116 Cal.App.4th at p. 863.) Although the juvenile court independently considers the section 361.3 factors, we may not interfere with the juvenile court's ruling unless it manifestly abused its discretion in making its independent evaluation. That is, after viewing all the evidence in light most favorable to the lower court's ruling, it must appear to us that no judge could reasonably have made the same determination. (*Alicia B.*, *supra*, at p. 863.)

Mother points to the evidence favorable to her position but the juvenile court was not bound to accept that evidence. The record demonstrates that the court was persuaded, instead, by evidence showing that grandmother's ability to keep A.C. safe might be compromised by grandmother's loyalty to and concern for mother. That evidence included the social worker's testimony that grandmother did not believe A.C. should have been removed from mother's care and grandmother's own testimony that she believed she knew best whether A.C. could be safe with mother. This is substantial evidence to support the juvenile court's finding that the Department could not trust that grandmother would follow the rules that the Department felt were necessary to keep A.C. safe. Thus, the court's order refusing to reverse the Department's placement decision was not an abuse of discretion.

*B. The Statements of "A Concerned Citizen"*

The juvenile court denied mother's hearsay objection to the statements of the concerned citizen that prompted the unannounced visit to grandmother's house. The court also refused mother's request for an order requiring the Department to identify the person. Mother argues that the rulings violated her constitutional right to due process in

that they deprived her of the opportunity to confront a witness against her. In reviewing the juvenile court's order overruling the hearsay objection, we apply the deferential abuse of discretion standard of review. (*People v. Fields* (1998) 61 Cal.App.4th 1063, 1067 (*Fields*).

“ ‘Hearsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).) “ ‘Under this definition, as under existing case law, a statement that is offered for some purpose other than to prove the fact stated therein is not hearsay.’ ” (*Fields, supra*, 61 Cal.App.4th at p. 1068, citing Cal. Law Revision Com. com. Deering’s Ann. Evid. Code (1986 ed.) § 1200.) However, “[a] hearsay objection to an out-of-court statement may not be overruled simply by identifying a nonhearsay purpose for admitting the statement. The trial court must also find that the nonhearsay purpose is relevant to an issue in dispute.” (*People v. Armendariz* (1984) 37 Cal.3d 573, 585.)

Evidence of a declarant’s statement is not hearsay evidence if it is offered to prove, as relevant to a disputed fact, that the hearer of the statement learned certain information by hearing the statement and, believing such information to be true, acted in conformity with such belief. (*People v. Scalzi* (1981) 126 Cal.App.3d 901, 905-907.) Such a statement is not hearsay because it is the hearer’s reaction that is the relevant fact; not the truth of the matter asserted in the statement. (*People v. Hill* (1992) 3 Cal.4th 959, 987-988.) Because the declarant’s statement is not being offered to prove the truth of the matter stated, the trier of fact does not need to cross-examine the declarant to determine whether he or she was telling the truth. (1 Jefferson, Cal. Evidence Benchbook (Cont.Ed.Bar 4th ed. 2012) Hearsay and Nonhearsay Evidence § 1.29, pp. 21-23.)

In this case, the statements of the concerned citizen were not admitted to show that what was said was true; they were admitted for the nonhearsay purpose of showing what prompted the social worker’s unannounced visit to grandmother’s home and the social

worker's state of mind at the time. That is, the social worker visited grandmother because she had a concern, prompted by the statements, that grandmother had allowed mother to leave with A.C. unsupervised, while mother was under the influence of alcohol. The statements were the basis for the social worker's confrontation with grandmother, which led to grandmother's substantiating the concern that she allowed mother to leave with A.C. unsupervised. The matters stated by the concerned citizen, if true, would have been relevant to the issue of placement, but they were not admitted for that purpose and the juvenile court's thorough and thoughtful ruling demonstrates that the court did not consider them for their truth.

Given our conclusion that the statements of the concerned citizen were properly admitted for a nonhearsay purpose, mother's claim that her constitutional right to confrontation was violated also fails. (*People v. McKinnon* (2011) 52 Cal.4th 610, 656, fn. 28; *Crawford v. Washington* (2004) 541 U.S. 36, 60, fn. 9.)

**III. DISPOSITION**

The juvenile court's general placement order of May 23, 2012, is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.