



Children's Law Center of California

“DEPENDENCY LEGAL NEWS”

Vol. 21, No. 4: May 13, 2025

Issued by the Children's Law Center of California on the second Tuesday of each month.

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NEW DEPENDENCY CASE LAW

DISPOSITION—CUSTODY—WIC 361(d); WIC 361.2

In re A.T.—published 4/14/25; Fourth Dist., Div. One

Docket No. D085053; 110 Cal.App.5th 722

Link to case: <https://www4.courts.ca.gov/opinions/documents/D085053.PDF>

THE COURT'S APPLICATION OF SECTION 361.2, RATHER THAN 361(D), WAS PROPER BECAUSE FATHER WAS SEEKING CUSTODY OF THE CHILD FOR THE FIRST TIME. UNDER THAT STANDARD, SUBSTANTIAL EVIDENCE SUPPORTED REMOVING THE CHILD FROM FATHER'S CARE.

The agency filed a petition alleging that A.T. had been born positive for methamphetamine and that mother's drug use placed A.T. at risk. Mother and father had prior child welfare history with other children due to a history of domestic violence. Father completed programming and reunified with the child, Y.M. Prior to A.T.'s birth, father allowed mother to stay in his home, where mother alleged that father hit her with a belt and called her names. The juvenile court detained A.T. from mother and ordered paternity testing for father. Father had visitation with A.T. but made accusations against the caregiver and the social worker; but for texts and emails, father refused to communicate with the agency. Father denied needing any services.

Meanwhile, A.T. was diagnosed with developmental delays and health issues and father failed to participate in the therapy sessions. Father's individual therapist reported that father was combative, requiring the therapist to set boundaries. The juvenile court made findings against father under both 361(d) and 361.2 and ordered A.T. suitably placed. Father timely appealed the disposition order.

Affirmed. Section 361(d) governs removal of a child from the custody of a parent with whom the child did not reside at the time of the petition. Section 361.2 concerns placement of children following removal from a custodial parent. Section 361(d) requires a finding that there were no reasonable means to prevent removal where section 361.2 does not. "Custody" has been previously defined as a parent seeking sole legal and physical custody of a child, whereas "placement" is a temporary arrangement that involves the supervision of the juvenile court. Section 361.2 was the correct standard to apply in this case: father was seeking placement, he did not "have custody" of A.T. Father was not on the birth certificate, he did not learn A.T. was his child until after detention, and A.T. never resided with father. Applying section 361.2, substantial evidence supported the court's order denying father's request for placement of A.T. Father's ongoing contact with mother, their history of domestic violence, and father's refusal to pursue services for himself or A.T. demonstrated that placing A.T. in his care would be detrimental to A.T.'s physical and emotional well-being. (DS)

REUNIFICATION—WIC 366.21(e)

In re B.D.—published 4/30/25; First Dist., Div. Three
Docket No. A172485

Link to case: <https://www4.courts.ca.gov/opinions/documents/A172485.PDF>

[1] THE AGENCY PROVIDED REASONABLE ADDITIONAL SERVICES TO MOTHER THAT ADDRESSED HER SPECIAL NEEDS; [2] ALTHOUGH THE JUVENILE COURT ERRED IN FINDING MOTHER FAILED TO MAKE SUBSTANTIVE PROGRESS IN HER CASE PLAN PURSUANT TO 366.21(E)(3), BECAUSE MOTHER'S 366.21(E) HEARING WAS HELD CLOSER TO THE 12-MONTH DATE, ANY ERROR WAS HARMLESS BECAUSE MOTHER DID NOT DEMONSTRATE A SUBSTANTIAL PROBABILITY THAT THE CHILDREN WOULD BE RETURNED TO HER CARE IF SERVICES WERE EXTENDED FURTHER.

The agency filed a petition concerning four-year-old S.R. and two-year-old O.R. after mother inappropriately physically disciplined S.R. by closing a sliding door on her arm. The juvenile court detained both children from their

parents, placed the children with paternal grandparents, and ordered monitored visits. At the time of the jurisdictional hearing, the court appointed a guardian ad litem for mother upon her request and sustained the petition against her. The agency noted in its report that mother had a possible special needs disability, although she had previously not qualified for Regional Center services because of a lack of documentation. The agency stated it would assist mother with Regional Center enrollment and also recommended a case plan addressing her special needs, including a parenting program, an in-person parenting coach and individual counseling. Mother submitted on the agency's case plan without objection. In its 366.21(e) report, the agency reported that although mother completed parenting and was actively engaging in the coaching and counseling programs, she continued to require assistance when visiting her children. Although mother did not physically punish her children, she was not able to properly engage with them when they required redirection. Both social workers and her therapist stated she appeared overwhelmed. The agency stated it was still in the process of enrolling mother in Regional Center services due to difficulty in obtaining the necessary records from mother and obtaining a release of information from her. At the 366.21(e) hearing, the social worker reviewed his concerns about mother, explaining that although mother had slight improvements overall, she would not likely be able to reunify with the children by the 12-month date, or even in 18 months. The juvenile court terminated mother's reunification services and set a 366.26 hearing. Mother appealed through a petition for extraordinary writ.

Affirmed. [1] Mother argues that the agency failed to provide her with reasonable reunification services because her original case plan did not address accommodations for her disability and the agency did not offer additional services once she became overwhelmed. Mother forfeits the challenge to her case plan because she agreed to those services at the disposition hearing without further objection or appeal. With regard to her ability to receive additional services, mother is correct that the juvenile court is able to order services in addition to those in the original case plan pursuant to section 366.21, subdivisions (e)(2) and (e)(7). However, the record reflects that the agency made reasonable efforts in attempting to obtain additional services for mother by submitting a Regional Center application on her behalf. Additionally, mother already had access to a number of other existing resources to assist her with reunification. [2] While the Legislature did not define the meaning of "substantive progress in a court-ordered treatment plan," a review of section 366.21 indicates a parent must meaningfully engage in the case plan without merely going through the motions. The Legislature also set up escalating stages of compliance for a parent to demonstrate: at the six-month review hearing, it is "substantive

progress”, compared to the twelve-month and eighteen-month review hearings where a parent is required to show “significant progress . . . in resolving the problems that led the child’s removal from the home.” In this case, the juvenile court erred in finding mother did not demonstrate substantive progress because it conflated the different legal standards between the six-month and the twelve-month hearings. However, the error was harmless in this instance as the 12-month review hearing was imminent. In applying the applicable standards for the 12-month review hearing pursuant to section 366.21(g)(1), mother did not prove that she made significant progress in resolving the issues which led to her children’s removal from her or that she had the ability to provide for the children’s safety and special needs such that there was a substantial probability of her children being returned by the 18-month date. (SW)