

Telephone: [REDACTED] / Fax: [REDACTED]

Attorneys for Father

Father

SUPERIOR COURT OF CALIFORNIA

COUNTY OF [REDACTED]

JUVENILE DIVISION

IN THE MATTER OF

Child,

Minor

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Case No., JV [REDACTED]

FATHER' S DISPOSITIONAL BRIEF

Date: [REDACTED]

Time: 9:00 am

Dept: [REDACTED]

I. INTRODUCTION

This matter is now before the court for a contested dispositional hearing under section 361 of the Welfare and Institutions Code.¹ This brief is filed by father in support of the court ordering custody of [REDACTED] Child to him, as he is the non-custodial, " non-offending" parent, as the Department of Social Services fails to prove by clear and convincing evidence that the minor is at substantial risk of detriment in his custody.

II. STATEMENT OF FACTS

Child was born to Mother and Father. Child tested positive for opiates at birth. Child received court-ordered services through County from through. During this period, father, Father successfully completed the reunification service plan and was awarded joint physical and legal custody of Child at the dismissal, with the order: " it is the intention of the parties that the minor child will spend substantial time with each parent on a consistent basis." See Custody Order.

Child came to the attention of in late while in the care and custody of his mother, Mother. Child was removed from Mother on and placed in the custody of his father Father on under the supervision of the Department. Father was arrested on and Child was placed in foster care. Father requested and arranged for Child's care with his niece and her husband immediately upon being taken into custody. and her husband also expressed a willingness and desire to have Child placed with them, and were assessed and approved by the Department as placement for Child. Child currently remains in foster care placement, pending this Dispositional hearing.

III. ARGUMENT

When a court orders removal of a child pursuant to WIC Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. Here, Father has spent a considerable amount of time caring for his son, and shares joint legal and physical custody of the child with

¹ Hereinafter referred to as WIC

1 Mother Father was not residing in the home of the child and is requesting custody
2 of Child.

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4 If such a parent requests custody, the court must place the child with that parent unless it
5 finds by clear and convincing evidence that placement with that parent would be detrimental to
6 the child' s safety, protection, physical or emotional well-being. WIC 361.2(a); *In re Marquis D.*
7 (1995) 38 Cal. App. 4th 1813, 1827-1829.

8 The Department fails to meet their burden of proving by clear and convincing evidence
9 that placing Child with his father will be a substantial detriment to the child. Rather, there is
10 supporting evidence showing that Child was well cared for by his father. In the Jurisdiction
11 Report from [REDACTED], Mother stated to the Department that " Father took very
12 good care of the child." After Child was placed with his father, the Department indicated that
13 Child looked clean and well cared for during a visit on [REDACTED]. (See Jurisdiction Report
14 [REDACTED], page 9) Maternal Aunt [REDACTED], who is now seeking placement of Child, also
15 expressed that she did not feel that Child was unsafe with his father. (See Detention Report
16 [REDACTED], page 9) In an addendum to the jurisdictional report from [REDACTED], the father is
17 described as being " very concerned with the welfare of the child."

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19 The Department placed Child with his father prior to the jurisdiction hearing in this
20 case. If not for father being taken into custody due to allegations by Mother, Child would still
21 be in his custody absent a clear and convincing showing of detriment. Upon being taken into
22 custody, the father arranged immediately for the care of his child with family members pending
23 his release from custody. This family was assessed and approved by the Department for
24 placement. They are able and willing to provide a temporary or permanent home for Child. The
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1 fact that a noncustodial father is in jail, by itself, is wholly insufficient to support a detriment finding
2 as required by WIC 361.2.

3 Recently, the court in *In re S. D.* (2002) 99 Cal. App. 4th reiterated the finding in *In re*
4 *Brittany S.* (1993) 17 Cal.App.4th 1399, 1407 that there is no “ Go to jail, lose your child” rule in
5 California. The court found that the mother in *In re S.D.* could arrange for the care of the child
6 during the period of her incarceration therefore, the juvenile court had no jurisdiction in the case.
7 Similarly, here at the dispositional stage, the burden of proof is on the Department to prove by
8 clear and convincing evidence that there is a substantial detriment in giving custody of [Child] to
9 his father, as he has arranged for his son’ s care during his time in jail.
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12 In the Disposition Report, the Department claims serious detriment to the child “ not
13 only because [Father] is incarcerated, but because [Father] did not cooperate with the
14 Department after the child was returned to him.” Yet in the Jurisdiction Report from [redacted]
15 [redacted], the Department clearly expresses: “ [Father] was cooperative and gave his telephone
16 and address in [redacted]. The child looked clean and well cared for.” While [Father]’ s
17 trailer is described as “ somewhat dirty,” the dog in the trailer is described as “ friendly and
18 playful with the child.” [Father] also scheduled an appointment with the Department for a
19 visit to his apartment for the every next day. The same Jurisdiction Report again indicates that the
20 Maternal Aunt did not feel that [Child] was unsafe with his father.
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23 The Department further claims detriment to the child because “ [Father] insisted on
24 placing [Child] with his relatives in [redacted] which is certainly insensitive to the child’ s needs
25 and interferes with bonding between the child and his mother and interferes with bonding
26 between the child and his mother and the relationship of the children.” Even if this attempt by
27 the father to arrange for the safe care of his son could somehow be proven to be insensitive,
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1 mere insensitivity is not a proven detriment. There is insufficient evidence which shows that
2 placing Child in [redacted] with family will be a substantial detriment to him.

3 Finally, the Department raises the issue of father taking his son to visit Mother
4 against the recommendations of the Department, and an alleged ensuing altercation. While
5 taking Child to visit his mother may have been poor judgment, this incident must be viewed in
6 the context of the entire record to determine whether placing Child with his father would be
7 detrimental.
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9 There are no allegations of any abuse or neglect as to the father in this case. On the
10 contrary there is evidence of the father taking care of his son, Child.
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12 13 IV. CONCLUSION

14 The Department fails to provide substantial evidence from which a reasonable trier of
15 fact could find clear and convincing evidence that the child would suffer a detriment from being
16 placed with his father. Therefore, we respectfully request that custody of Child be given to his
17 father.
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21 Dated: [redacted]

Respectfully submitted,

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23 [redacted]
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25 Attorneys for father
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