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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B280850

(Los Angeles County
Super. Ct. No. CK37769)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Debra Losnick, Juvenile Court Referee. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Senior Associate County Counsel, for Plaintiff and Respondent.

K.L. (Father) is the father of eight children, three of whom are the subjects of this appeal: nine-year-old K.A., four-year-old J.L., and two-year-old E.L. (collectively, the Minors).¹ The juvenile court took jurisdiction over the Minors in 2014 after finding Mother and Father engaged in a violent physical altercation while the Minors were present in the home. The juvenile court ultimately terminated jurisdiction over the Minors with a custody order granting joint legal custody to both parents, but sole physical custody to J.A. (Mother). We are asked to decide whether the terms of the juvenile court's custody order closing the case were an abuse of the court's discretion.

I. BACKGROUND

A. *The Domestic Violence Incident that Triggered Dependency Court Jurisdiction*

This case arose out of a January 2014 fight involving Mother and Father, during which Mother was hit in the face by an object, which caused her nose to bleed. Mother and Father provided conflicting accounts of the altercation. Mother stated Father threw a shoe that hit her in the face (she would later claim that Father aimed the shoe at one of their adult sons and mistakenly hit her instead). Father maintained he was fighting with one of their adult sons, not Mother, and the adult son accidentally hit Mother when he threw a tree branch at Father.

A neighbor who heard Mother and Father yelling, and who reported seeing K.A. "frantically" run up the stairs, called the police. That neighbor told DCFS he "heard [K.A.] screaming for help." Father had already left the home by the time the police arrived at the scene. Mother was offered an Emergency

¹ These were the children's ages at the time the dependency proceedings commenced.

Protective Order, but declined it.² Mother admitted that the Minors were in the house at the time of the fight, but denied any of them saw her get hit with the shoe. In a statement to the responding officers, K.A. said she was in bed and heard her parents yelling at each other, but did not witness the incident.

Several of Mother and Father's neighbors reported ongoing domestic violence between the parents, including "domestic disputes on a daily basis" and "constant[] fighting," though none reported having seen Mother and Father physically fight. Two of their neighbors told DCFS they had been the subject of death threats by Father.

B. The Dependency Petition and Removal of the Minors from Mother and Father's Custody

DCFS obtained a removal order and detained the Minors. A few days later, DCFS filed a petition asking the juvenile court to assume jurisdiction over the Minors under Welfare and Institutions Code section 300, subdivisions (a) and (b).³ The petition alleged Father's violent conduct against Mother and Mother's failure to protect the Minors from that violence endangered their physical health and safety, created a detrimental home environment, and placed the Minors at risk of physical harm. Specifically, the petition referenced the aforementioned January 2014 incident, as well as an earlier

² Father was charged with a domestic violence offense (Pen. Code, § 273.5, subd. (a)) as a result of the January 2014 altercation. He was sentenced to three years' summary probation.

³ Statutory references that follow are to the Welfare and Institutions Code.

September 2013 altercation during which Father allegedly struck Mother in the face and bruised her eye.

At the initial detention hearing in February 2014, the juvenile court found that substantial danger existed to the physical or emotional health of the Minors, that there were no reasonable means to protect them without removal, and that reasonable efforts had been made to prevent the need to remove the Minors from their home. The juvenile court detained the Minors, vesting temporary placement and custody with DCFS. Mother and Father were granted monitored visits.

DCFS filed both a first and second amended petition in the following months that alleged additional grounds for jurisdiction under section 300. DCFS also continued to investigate the Minors' welfare. Mother had entered a domestic violence shelter, and in an interview with DCFS, she admitted that there had been ongoing domestic violence (mainly financial and emotional, she claimed) for most of her relationship with Father. Mother's neighbors reported they continued to see her at home with Father on numerous occasions while she was staying at the domestic violence shelter.

While the dependency petition (as twice amended) was pending, Mother and Father were participating in monitored visits with the Minors. Father repeatedly exhibited anger issues at these visits. At one visit, for instance, Father insulted the social worker, was verbally aggressive, and used profanity in front of the Minors—ultimately prompting the social worker to call security to escort Father out of DCFS's offices. Father was also otherwise uncooperative with DCFS, refusing to provide DCFS with documentation of his participation in any programs required by the case plan. Mother, by contrast, provided documentation of the programs she had participated in to-date.

The juvenile court held an adjudication hearing and sustained count a-1 of the second amended petition that alleged Mother and Father “engaged in a physical altercation in the children’s home in which a shoe struck [Mother’s] face, resulting in [Mother] sustaining bleeding to [Mother’s] nose. Such conduct by [Father] places the children at risk of physical harm.”⁴ The court ordered the Minors released to Mother, once DCFS verified Father was not living in the home, and family maintenance services for both parents. Father was ordered not to reside in or visit the family home, but was granted visitation with the Minors.

C. Supplemental Petition and Removal

Several months later, one of Mother’s neighbors told DCFS Father had been at the family home on numerous occasions. A DCFS social worker visited the home in an attempt to verify the report and observed an adult male exiting the house while Father remained inside. When interviewed, K.A. and J.L. denied Father had been at the home but E.L. admitted that not only had Father been in the home, he had, in fact, been living there “for a long time.”

DCFS requested a removal warrant in light of Father’s violation of the court order barring him from the family home. The juvenile court granted the request and DCFS detained the Minors. DCFS removed K.A. and J.L. from school, and Mother and Father dropped E.L. off at a DCFS office. Father exuded a “strong smell of marijuana” and became confrontational as soon as he saw the social worker. DCFS subsequently filed a supplemental petition under section 387 alleging Mother and Father failed to comply with the juvenile court’s orders. The

⁴ The court dismissed the remaining counts of the petition.

juvenile court ordered the Minors detained from Mother and placed in shelter care.

In the meantime, Father continued to exhibit contentious behavior during some—but not all—of his interactions with DCFS and his visits with the Minors. During a visit in January 2015, Father verbally abused one of the Minors' foster parents, became belligerent and confrontational when the social worker tried to intervene, and had to be removed from the office by security, which prompted a call to law enforcement. At another visit that month, Father was again loud, belligerent, and used explicit language in the lobby. At an April 2015 visit at the DCFS office, Father became upset because the visit was conducted in an interview room rather than a family room, and because the social worker informed him he could not give certain gifts to the Minors. Father screamed at the social worker and another DCFS employee and threatened to have the office sanctioned. Later that month, Father became upset at a visit when the monitor reminded him he could not talk about the case with the Minors. In August 2015, Father yelled at and was otherwise disrespectful to the foster parent of J.L. in the presence of K.A. and E.L.'s foster parent. As a result, K.A. and E.L.'s foster parent was not sure she was willing to continue caring for the children.

Mother and Father partially complied with the case plan during this period. Mother had participated in a domestic violence support group as ordered, but had not enrolled in individual therapy. Both parents participated in marriage counseling and developmentally appropriate parenting. Father had not provided any documentation indicating he had participated in domestic violence for offenders, and he had refused to submit to drug tests.

D. Twelve Month Case Review and Related Developments

Over the next few months, Mother and Father continued to visit with the Minors. Many of those visits took place at the Grace Resource Center, rather than the DCFS offices. While the monitor did not report any significant issues with Father's behavior at most of the visits, the monitor reported some conflict during visits in December 2015 and January 2016. At one of these visits, Mother and Father "seemed very agitated with each other," and Mother told Father that she was very unhappy with his continued refusal to cooperate with DCFS, noting that she had to live with his uncooperative nature for many years. At the other visit, Father insisted on allowing the Minors to play an age-inappropriate video game and "showed a complete refusal to follow [the] monitor's directions." Shortly after that visit, Father informed Grace Resource Center that he no longer wished to have monitored visits through their program because he felt the program had too many rules.

The juvenile court conducted a twelve-month case review in March 2016. DCFS recommended the court continue family reunification services for the parents. Pursuant to DCFS's case status review, Mother was in partial compliance, and Father had not submitted documentation verifying his compliance with court orders. The court ordered the Minors would remain dependents of the court and continued their placement in foster care.

Not long after the 12-month hearing, Mother informed DCFS she was living alone at a house in Needles, California and Father was living in Lancaster, California. Mother stated she had no intention of living with Father at that time, but they were "working on reconciling the relationship if possible." Father refused to speak to the assigned case worker, and the case worker was unable to verify his whereabouts. Both parents failed to

provide DCFS with documentation verifying their progress in court-ordered programs.

Later that year, in August 2016, Mother filed a section 388 petition asking the court to change its March 2016 order and allow the Minors to live with her because, she contended, she had complied with the case plan and had adequate housing in Needles. DCFS visited the home in September 2016 and verified it was adequate, with the exception of a few items that could easily be remedied. In interviews with DCFS, K.A. and J.L. stated that they wanted to return home.⁵ The court denied Mother's request that the Minors be placed with her, but the court did grant Mother unmonitored visits with the Minors.

Father then filed his own section 388 petition requesting to change the court's previous order barring Father from living in the family home. Father noted he had completed a domestic violence program and had participated in one-on-one counseling, parenting classes, anger management classes, and orientation for a parenting progress program. Father submitted, among other things, a letter dated May 2016 from a mental health professional confirming Father was receiving psychotherapy. The letter stated that Father was "doing a good job working on issues that caused his children to be removed from his care," had undergone marriage counseling and "discussions regarding domestic violence," had "finished marriage counseling and domestic violence," but was continuing therapy "for his own

⁵ The children consistently expressed a desire to return home and be reunited with their parents. In September 2016, K.A. told the social worker, "I want to be back with my mother and family again." J.L. said he was "ready to go home already." E.L. was too young to make a meaningful statement. In December 2016, the social worker reported that the children "like visiting with their parents and want to return home as soon as they can."

benefit.” Father asked that he be allowed to return home, and that the Minors be returned home with Father and Mother.

DCFS did not oppose Father’s request to move back home with Mother, but DCFS did express reservations about moving the Minors back into the home to live with Mother and Father. DCFS was specifically concerned Father’s visits with the Minors had been inconsistent and there was no approved visitation monitor at the time because his “unruly behavior” had made the foster caregivers unwilling to serve as monitors.

The court scheduled a hearing on Father’s 388 petition and ordered DCFS to provide an update regarding Mother’s and Father’s respective visits with the Minors. In December 2016, DCFS reported that both Mother and Father were in compliance with the visitation orders, Father’s visits with the Minors were going well, and there was no indication Father was present at Mother’s unmonitored visits. Father and Mother had also maintained consistent contact with the social worker in the month since the last DCFS report. DCFS advised the court, however, that it was unable to recommend the return of the Minors to their parents’ custody because Mother had yet to verify her participation in individual counseling, because the “risk level” for the Minors was “moderate for future abuse and neglect,” and because DCFS had been unable to verify “whether [Mother and Father] are addressing the issues that brought their case to the attention of [DCFS].”

The court set an 18-month permanency planning hearing pursuant to section 366.22 and trailed consideration of Father’s section 388 petition to that hearing. The court released the Minors to Mother’s custody pending the next hearing and ordered unmonitored visits for Father. The court also ordered unannounced visits by DCFS and a family preservation referral.

E. Section 366.22 Hearing

Prior to the section 366.22 hearing (at which the juvenile court made the orders challenged in this appeal), DCFS reported the Minors appeared to be doing well in Mother's home and Father's unmonitored visits were, according to Mother, "going well with the exception of consistency." DCFS continued to express concern that Mother had not completed individual counseling, but DCFS believed her failure to certify she had completed individual counseling was not reason to remove the Minors from her care.

Instead, DCFS noted that its main concern was with Father. Although he had completed his case plan, DCFS stated it was still unable to assess whether he and Mother were addressing the domestic violence issues that brought the family to DCFS's attention. DCFS recommended the court terminate jurisdiction, grant Mother sole custody, and order visitation for Father.

At the section 366.22 hearing in February 2017,⁶ the juvenile court noted it had reviewed the reports submitted in advance of the hearing and had been supervising the case for a number of years. Father asked the court to make a "home of parents' order," arguing he had completed the case plan, he had been having unmonitored visits for two months without incident, and there was insufficient evidence to show returning the Minors to his care would create a substantial risk of detriment. Counsel for all other parties (DCFS, Mother, and the Minors) concurred in DCFS's recommendation: termination of jurisdiction with

⁶ Father withdrew his section 388 petition at the hearing because the issues raised were "pretty much the same" as the issues the court would resolve in connection with the contested section 366.22 hearing.

primary physical custody to Mother, joint legal custody to Mother and Father, and unmonitored visits for Father.

The court followed the majority recommendation, terminating jurisdiction with a custody order providing for joint legal custody of the Minors, sole physical custody of the Minors vested in Mother, and four unmonitored, overnight visits per month for Father (to be arranged between the parents).⁷ The court briefly explained the basis for its order as follows: “I no longer feel that this case needs to be supervised by the court. The parents have shown that they are able to conduct themselves with unmonitored visits for [Father] and home of parent since the last two months or at least release to [Mother]. [¶] So I am happy to close the case”

II. DISCUSSION

Father presents two arguments on appeal, but we need discuss only one: his contention that the custody order the juvenile court entered in terminating jurisdiction is infirm and requires reversal. He specifically contends the juvenile court had an obligation to make findings on the record supporting the custody order and failed to do so, and he further argues that even if findings supported by the record are implied, the order is still an abuse of the court’s discretion. Father is wrong on both counts. We presume the juvenile court was aware of applicable law requiring a best interests analysis when making a custody order closing the case, and the facts disclosed by the record establish the court’s decision was not an abuse of its discretion. This conclusion is alone dispositive because the other argument Father makes, that the court should have placed the Minors in

⁷ The order for unmonitored *overnight* visits was made over DCFS’s objection.

the home of both parents (not just Mother's home) before ordering jurisdiction terminated, would not alter the correctness of the final custody determination the court made when it closed the case.

“Section 362.4 states: ‘When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court . . . , the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.’ The section further provides that on termination of dependency, an order determining visitation with the child ‘shall be filed in the [existing family law proceeding], at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof. [¶] If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides.’ (*Ibid.*)” (*In re Chantal S.* (1996) 13 Cal.4th 196, 202-203 (*Chantal S.*)). “[W]hen the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*Id.* at p. 203.)

“When making a custody determination in any dependency case, the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 (*Nicholas H.*); see also *Chantal S.*, *supra*, 13 Cal.4th at p. 206.) While family law courts often apply a statutory presumption favoring joint custody, the presumption does not apply in the dependency context. (*Chantal S.*, *supra*, at p. 206 [“application of a family-law-based joint custody presumption would be inconsistent with the purpose of juvenile

court law”].) Rather, a “juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case” (*Nicholas H.*, *supra*, at p. 265, fn. 4), and we accordingly review such orders for abuse of that discretion (*In re M.R.* (2017) 7 Cal.App.5th 886, 902).

Taking Father’s procedural argument first, he asserts the juvenile court did not articulate the basis for its decision to award Mother sole custody of the Minors, and he maintains this asserted absence of an explanation means we must conclude the court failed to conduct a best interests analysis. The argument runs contrary to well-established law, which requires us to do the opposite of what Father contends.

“A “‘judgment or order of the lower court is *presumed correct*[, and a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” [Citation.]’ As [our Supreme Court] has stated, ‘we apply the general rule “that a trial court is presumed to have been aware of and followed the applicable law. [Citations.]” [Citation.] ‘This rule derives in part from the presumption of Evidence Code section 664 “that official duty has been regularly performed,” and thus when ‘a statement of reasons is not required and the record is silent, a reviewing court will presume the trial court had a proper basis for a particular finding or order.’ [Citation.]” (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499; *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 447 [“Absent an indication to the contrary, we are required to presume a court was aware of, and followed, the applicable law and considered all the relevant facts and arguments”].) With no indication the juvenile court applied an incorrect legal standard, we therefore proceed on the understanding the juvenile court’s custody order is a product of its assessment of the facts before it in light of the Minors’ best interests.

Substantively, Father contends that the juvenile court's decision to award Mother sole physical custody of the Minors was an abuse of the court's discretion. Father believes he should have been awarded joint physical custody of the Minors because he had successfully completed his case plan, his unmonitored visits with the Minors had been going well for the preceding two months, the court granted Father unmonitored overnight visits in the custody order and entrusted Father and Mother with coordinating those visits, the court did not make a finding that returning the Minors to Father's custody would create a risk of detriment, and the Minors expressed a desire to live with both of their parents. While these facts are relevant to a best interests inquiry, they do not establish the court abused its discretion by impliedly relying on or giving greater weight to other facts in the record to conclude a joint custody order would not be in the Minor's best interests.

Based on our review of the record, there is ample evidence indicating K.A., J.L., and E.L.'s best interests were served by granting Mother sole physical custody. Mother had a home large enough to accommodate the Minors in Needles that DCFS had verified was acceptable, and the juvenile court could reasonably believe granting sole physical custody to Mother would provide the Minors with greater stability. Additionally, "all ha[d] gone well" in the two months during which the Minors were released to home of Mother, and the Minors had "appeared extremely happy to be with their mother" when the social worker visited them at the home. Further, whereas counsel for DCFS and the Minors had no concerns about giving physical custody of the Minors to Mother, the record does not demonstrate the same can be said with respect to Father. The juvenile court could have been justifiably concerned about his history of domestic violence notwithstanding his more recent progress in counseling programs

(progress that likely influenced the juvenile court to grant unmonitored, overnight visits while stopping short of a joint custody order). And while it is true the Minors had expressed a desire to reunite with their parents generally, not just Mother, a “child’s preference is not the deciding factor in a placement decision” (*In re K.B.* (2015) 239 Cal.App.4th 972, 980; *In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1265.)

There were also other facts working against Father in a best interests analysis. He had exhibited instances of aggressive behavior even after completing some of the programs ordered by the court. He had repeatedly refused to cooperate with DCFS or to modify troubling behavior during visits earlier in the case. Moreover, in a report filed the day of the section 366.22 hearing, DCFS remained of the view that “[Father] is where the main concern lies”; though DCFS did not report any problems with Father’s visits during the two months prior to the termination of jurisdiction, the record reflects that his participation in scheduled visits remained somewhat inconsistent.

Under these circumstances, it was immaterial whether the juvenile court believed Father posed a danger to the physical or emotional well-being of the Minors. (*Nicholas H., supra*, 112 Cal.App.4th at p. 268 “[A] finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child’s best interests for a variety of reasons”]; *In re John W.* (1996) 41 Cal.App.4th 961, 974 “[J]ust because custody with neither parent was held to pose any danger to the child does not mean that both parents are equally entitled to half custody”].) At the time the juvenile court ruled, there is no basis to say the court exceeded the bounds of reason by concluding some caution was still warranted before making a full joint custody order.

We need not discuss Father’s remaining argument at any length. Even if we assume the absence of a detriment finding at the section 366.22 hearing meant the juvenile court should have returned custody of the Minors to both parents before closing the case, the juvenile court would not then have been required to award Father joint physical custody when crafting its custody order pursuant to section 362.4. The court instead would be free, regardless of whether detriment had been shown, to issue the exact same custody order it did by considering the best interests of the Minors. We have affirmed that best interests determination, and we accordingly need say no more.

DISPOSITION

The order of the juvenile court is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.