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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re X.C., et al., Persons Coming
Under the Juvenile Court Law.

B272461
(Los Angeles County
Super. Ct. No. DK13829)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Joanne D. Willis Newton, under appointment by the Court of Appeal, for Defendant and Appellant A.D.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Christopher Blake, under appointment by the Court of Appeal for Respondents R.C., Sr., and minors X.C., R.C., Jr., and P.C.

A.D. (Mother) appeals from the dependency court's jurisdictional and dispositional orders, as well as the order terminating jurisdiction and the exit order, entered at the six-month review hearing, granting R.C., Sr. (Father) sole legal custody over their children, X.C., R.C., Jr., and P.C.¹ Among the multiple issues raised on appeal, some of which are moot given the termination of the dependency jurisdiction, Mother contends that the dependency court should not have exercised jurisdiction because insufficient evidence supported the jurisdictional findings and disposition order, and because the tribal court of Mother's Indian tribe in Arizona had exclusive jurisdiction over the matter. In addition, Mother argues that the court abused its discretion when it entered an exit order awarding Father sole legal custody of the children. As we explain, Mother's contentions lack merit, and accordingly, we affirm.

BACKGROUND

A. Family Background and Pre-dependency Proceedings

In 2003, Mother and Father were married and throughout their marriage they lived in Los Angeles with their children X.C. (born in 2003), R.C., Jr. (born in 2006) and P.C. (born in 2008). In 2009, the parents separated and Mother left the family and moved to her ancestral home on the Colorado River Indian Tribes' (CRIT) reservation in Parker, Arizona.²

¹ In April 2017, this court consolidated the appeal from the jurisdictional/dispositional orders with the appeal from the order terminating jurisdiction and the exit order.

² Mother is a member of the CRIT, a federally-recognized Indian Tribe.

In October 2009, Mother filed a petition for dissolution of the marriage in the CRIT tribal court. Father acknowledged service of the petition but did not appear or respond. On February 18, 2010, the tribal court issued a default judgment and dissolution order. In addition, even though the children had always resided in California with Father, had never lived on the CRIT reservation in Arizona, and had not yet been determined to be members of the CRIT, the tribal court enter a custody order awarding joint legal custody to the parents and sole physical custody to Father. The tribal court also granted Mother visitation rights (2010 custody order).

Approximately a week later, Father filed a petition for dissolution and child custody in the Los Angeles County Superior Court case No. BD520173 (the California case). Father did not, however, pursue his petition because he believed the tribal court order was legitimate, and he was satisfied with 2010 custody order.

Mother subsequently established a home on the reservation, remarried and had two children with B.D. (Stepfather). X.C., R.C., Jr., and P.C. spent some portion of their summer vacations in 2011, 2012, and 2013 with Mother, Stepfather and their half-siblings on the CRIT reservation in Arizona.

In 2013, after the children returned to Los Angeles from their summer visit, Mother filed a petition in the tribal court to modify the tribal court's 2010 custody order. After finding that Father had failed to respond, the tribal court issued an order awarding (1) Mother sole physical custody of the minors, (2) the parents joint legal custody, and (3) Father visitation rights (2013 custody order).

Also in the fall of 2013, X.C. reported to Father that during the 2013 summer visit with their Mother, Stepfather had physically abused the children by repeatedly striking, slapping and pushing her younger siblings, that Mother failed to intervene and that the children were afraid of Stepfather. According to Father, Mother

downplayed the situation stating that Stepfather was only disciplining the children and that she supported his methods of discipline. After that, in November 2013, when Mother filed a motion in the California case requesting enforcement of the 2013 custody order, Father opposed it, raised the abuse allegations and asked the family court to intervene.

In January 2014, the court in the California case took Mother's motion off calendar at Mother's request and entered an order prohibiting her from removing the children from the state, but allowing her to visit them in California. In April 2014, Mother registered the 2013 custody order in the California case. Over the next several months, Mother made repeated unsuccessful efforts to enforce the 2013 custody order. The children did not visit Mother in Arizona in the summer of 2014.

B. DFCS Involvement with the Family

In November 2014, Father reported to the Department of Children and Family Services (DCFS) that Stepfather had physically and emotionally abused the children during their visit in the summer of 2013. R.C., Jr., and P.C. disclosed to DCFS that on a number of occasions Stepfather had struck them with a closed fist or hand on their backs, pushed them against the wall, kicked P.C. on her legs and at least once slapped P.C. so hard that it left a handprint on her back. They stated that Mother knew of the abuse and allowed it to happen. R.C., Jr., reported that Stepfather slammed his head against a wall after he accidentally urinated on the carpet and that Stepfather owned guns. The children also disclosed that they had been locked outside in the sun and heat without water on several occasions and that X.C. had been treated for a heat rash because of sun exposure when she returned from Arizona. According to the children, Mother and Stepfather argued and several times Stepfather kicked Mother and the children out of the house in the "hot sun" with nowhere to go. The children

reported that they feared Stepfather, did not feel safe around him and did not want to visit their Mother if he was present.

On December 2014, DCFS social worker called in a referral to the Arizona Child Protection Services, and the referral was transferred to the CRIT Social Services. There is no indication in the record that CRIT Social Services followed up on the allegations at that time. DCFS continued to investigate the matter through the spring and summer of 2015, and ultimately deemed the claims of physical abuse and neglect “inconclusive,” but the claims of emotional abuse “substantiated.” In the late spring of 2015, Father allowed the children to have one overnight visit with Mother; the visit was uneventful.

In August 2015, Mother filed an ex parte application in the California case to enforce the 2013 custody order. And on October 9, 2015, the court entered an order to enforce the 2013 custody order but stayed the enforcement pending the preparation of a formal court order.

Father immediately informed DCFS of the enforcement order entered in the California case and indicated that the children were fearful about living with Mother because of the prior experiences with Stepfather.

C. Dependency Proceedings, Jurisdiction Proceedings, and the First Appeal

On October 15, 2015, the DCFS filed a dependency petition under Welfare and Institutions Code³ section 300 on behalf of the children alleging under subdivisions (a), (b), and (j) that Mother knew that Stepfather physically abused each of the minors “on prior occasions” and did nothing; that Mother allowed the minors to witness verbal altercations between her and Stepfather, including

³ All statutory references are to Welfare and Institutions Code unless otherwise indicated.

one in which he kicked Mother; and that Mother allowed firearms in the home within access of the minors. The detention report informed the dependency court that the children might be members or eligible for membership in the CRIT. DCFS provided notice of the detention proceedings to the CRIT.

At the detention hearing, Mother complained the petition was “ambiguous” but entered a denial of the allegations⁴ and she suggested that jurisdiction lay with the tribal court rather than the dependency court. CRIT’s counsel, however, informed the court that she did not yet have sufficient information to determine jurisdiction (or to make a motion to transfer to the tribal court) or determine the application of the ICWA; tribal counsel also stated that the children had not yet been determined to be members of the CRIT. DCFS argued that the dependency court’s jurisdiction took precedence over the family court order and that the tribal court did not have jurisdiction over the children because they had been born and raised in California and had never resided on the CRIT reservation. The children’s lawyer agreed with DCFS and pointed out that even if the children did become members of the CRIT, the ICWA would not apply in this case because DCFS was not seeking an out-of-home placement for the children. Father’s counsel objected to any proposed transfer of the matter to the tribal court and pointed out that the children were receiving services⁵ in Los Angeles.⁶

⁴ A month after the detention hearing, Mother filed a written demurrer to the petition arguing that allegations were insufficient as a matter of law. The court, however, overruled the demurrer finding that Mother’s general denial of the allegations waived any complaint she had as to the sufficiency of the allegations.

⁵ R.C., Jr. was a current client of the Regional Center in Los Angeles because of a diagnosis of Autism. R.C., Jr., also had an Individualized Education Program (IEP) and received monthly

Thereafter, the court ordered the children detained from Mother and released the minors to Father, and ordered Mother to receive monitored visits without Stepfather present.

DCFS submitted a jurisdiction/disposition report that included forensic interviews conducted with each minor in which they confirmed the reports of Stepfather and Mother's conduct. The DCFS reports also indicated that Mother had refused to be interviewed by DCFS, but submitted a statement describing the difficulties she had been having with Father in scheduling the visits after the children's detention. Stepfather submitted a declaration, denying the allegations of physical abuse. DCFS also reported positive monthly visits for Mother and children, but was unable to recommend unmonitored visits or monitored visits in Arizona because Mother continued to deny that the minors had suffered physical abuse in her care and that she had not done anything to suggest she could protect her children from further abuse. DCFS recommended that Mother only have monitored visits with the children.

On March 24 2016, the court sustained the allegations under section 300, subdivisions (a) and (b) except the subdivision (b) count concerning the firearms. The court declared the minors to be dependent children. The court ordered that Mother's visits

speech and language services. X.C. had an IEP to address a learning disability.

⁶ Thereafter, the CRIT filed a notice of intervention in the proceedings, affirming that the minors were eligible for enrollment in the CRIT and that they were "Indian children" under the ICWA. Mother requested that the court dismiss the dependency case on the grounds that the tribal court had exclusive jurisdiction. The court received briefs from the parties on the issues. At a subsequent hearing, the court granted the CRIT's request to intervene in the proceedings, but also ruled that ICWA did not apply, and that the tribal court did not have exclusive jurisdiction.

be monitored but authorized DCFS to allow unmonitored visits, including overnights. The court also ordered Mother to complete parenting, a domestic violence program for victims, and individual counseling to address case issues. Father was ordered to engage in family preservation services.

Mother timely appealed.

D. Post-disposition Proceedings and the Second Appeal

The DCFS reports indicate that Mother traveled to West Covina to visit the children monthly and that her brother-in-law supervised the visits, which went well. When, however, the brother-in-law was no longer able to supervise the visits, Mother proposed Stepfather serve as the visitation monitor, but DCFS refused the request. Mother had difficulty in finding a parenting class and domestic violence courses in her area; counseling was available through the CRIT, but Mother was unable to take the time off from work to complete the “lengthy intake process.”

At a June 27, 2016 hearing, Mother presented proof that the CRIT had approved the home of her mother-in-law as a suitable place for visitation on the CRIT reservation. DCFS filed a report noting that Mother had just enrolled and begun a domestic violence program and a parenting program which appeared to meet DCFS’s criteria, but Mother was not visiting the children in person because she lacked transportation to the Los Angeles area, and her phone contact with them was sporadic. The children stated they wanted to visit Mother but did not want to see Stepfather.

DCFS acknowledged receiving the assessment of the mother-in-law’s home but noted that it could not proceed without assistance of the CRIT, which appeared unwilling to communicate with DCFS. The report also disclosed that X.C. suffered from suicidal ideation which required hospitalization, and she expressed

ambivalence about seeing Mother. Because of Mother's reluctance to acknowledge Stepfather's role in the abuse of the children, DCFS recommended against unmonitored visits. The court declined to order unmonitored visits but gave DCFS authority to liberalize visits. In fall of 2016, DCFS reported that Father and the children were doing very well with the services and therapy.

At the six-month review hearing on February 17, 2017, Mother submitted a report from the CRIT mental health authority indicating that Mother was making progress in her therapy and domestic violence program. Nonetheless, DCFS social workers were concerned that Mother still lacked insight into her children's experiences with Stepfather. DCFS recommended termination of jurisdiction with exit orders granting Mother and Father joint legal custody, Father sole physical custody and visitation for Mother in California. Father agreed with DCFS's recommendations, except that he sought sole legal custody. The children also concurred with DCFS's recommendation but also noted they were willing to visit Mother on the CRIT reservation if Stepfather did not participate in the visits. Mother did not object to the termination of jurisdiction or DCFS's custody recommendations; she, however, asked for an order for unmonitored visits in California and Arizona with discretion to allow Stepfather to participate in the visits.

The court terminated jurisdiction with exit orders awarding Father sole legal and physical custody and granted Mother unmonitored day visits in California and on the CRIT reservation. The court also awarded Father the discretion to liberalize visitation, including overnight visits.

Mother filed a timely notice of appeal.

DISCUSSION

On appeal from the jurisdictional and dispositional orders, Mother contends that (1) the dependency court erred in exercising dependency jurisdiction because the petition was legally insufficient

as pled and sufficient evidence did not support the section 300 subdivision (a) and (b) jurisdictional findings or the disposition order; (2) the court erred in failing to dismiss the dependency petition because CRIT Tribal Court had exclusive jurisdiction over the matter; and (3) that the court's jurisdiction and disposition orders failed to comply with the procedures in the ICWA. In her subsequent appeal, Mother asserts that (1) the court erred in failing to order DCFS to liberalize her visitation during the period between the disposition and the six-month review hearing; (2) that the court conducted the six-month review hearing under section 364 rather than section 366.21, subdivision (e); and (3) that the court abused its discretion in awarding Father sole legal custody in the exit order. Mother does not, however, contest the court's decision to terminate dependency court jurisdiction or the court's exit order awarding Father sole physical custody or the visitation order. As we shall explain, given the procedural posture of the case and the fact that Mother contests only the exit order relating to the legal custody, most of Mother's appellate contentions are moot. And as to those matters that we review on the merits, we conclude Mother has failed to demonstrate error.

A. Mootness

As a general rule, an order terminating dependency court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.)

Here, Mother's decision not to challenge the orders terminating jurisdiction, dismissing the case or the physical custody and visitation orders arguably renders moot her challenge to the denial of her demurrer to the petition; the sufficiency of the evidence supporting the petition and disposition order; the application of ICWA; her complaint that the tribal court had

exclusive jurisdiction; the interim visitation order and the manner in which the court conducted the six-month review hearing.

Nonetheless, an issue is not moot if the purported error infects the outcome of subsequent proceedings in the dependency or family law courts. (*In re A.R.* (2009) 170 Cal.App.4th 733, 740.) For example, in *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548, the dependency court issued continuing orders relating to custody and visitation upon termination of the dependency. Concluding the review of the jurisdictional findings was not moot, the appellate court reasoned: “The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where [the] exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant. If the jurisdictional basis for orders restricting appellant’s visitation with, and custody of, [the child] is found by direct appeal to be faulty, the orders would be invalid.” (*Ibid.*)

Here, the only rulings with possible adverse or collateral effects on the subsequent proceedings are the orders related to the exercise of dependency jurisdiction and the disposition and the order denying Mother’s request to dismiss the dependency petition based on an argument that the tribal court had exclusive jurisdiction to determine custody.⁷ Indeed, the sustained

⁷ With respect to the challenge as to the application of the ICWA, we conclude that because the dependency court terminated jurisdiction, there is no child custody proceeding to which the ICWA could be applied, and therefore, an order requiring the ICWA compliance would be fruitless. And in any event, the ICWA did not apply because the children remained placed with a custodial parent throughout the proceedings. (*In re J.B.* (2009) 178 Cal.App.4th 751, 758 [finding that “ICWA does not apply to a proceeding to place an Indian child with a parent”].) Likewise, concerning the trial court’s purported error in conducting the six-month review hearing pursuant to section 364 instead of section 366.21, subdivision (e), even appellant concedes that this error was harmless under *In Re*

jurisdiction findings and disposition orders ultimately resulted in the exit order awarding Father sole legal custody of the children which cannot be modified unless the family court finds a “significant change of circumstances.” (§ 302, subd. (d).) Similarly, the dependency court’s refusal to dismiss the dependency petition in favor of the tribal court’s exclusive jurisdiction, also had collateral consequences on the proceedings. Had the dependency court dismissed the dependency petition on that basis, the 2013 custody order rather than the dependency court’s exit order would have determined the physical and legal custody of the children. Accordingly, we consider the merits of Mother’s appeal on these issues.

B. The Jurisdictional Findings and Dispositional Orders

Mother argues the juvenile court’s jurisdictional findings sustaining the section 300, subdivisions (a) and (b) petition and the court’s dispositional order must be reversed because there is insufficient evidence to support them. Before we address the merits, we address a threshold matter related to Mother’s demurrer.

1. Demurrer to the Petition

Mother claims that the dependency court denied her due process when it failed to dismiss the section 300 petition because the allegations were legally insufficient.

In our view, however, the court properly concluded that Mother waived any challenge to the legal sufficiency of the petition

Maya L. (2014) 232 Cal.App.4th 81, 100. Finally, we conclude that the appeal of the interim visitation orders does not warrant further review on the merits because those orders are no longer in effect as they were superseded by the subsequent exit order relating to visitation, which Mother does not challenge on appeal.

when she entered a general denial of the petition. (Los Angeles County Superior Court, Local Rules, rule 7.16 (d) [“Unless otherwise agreed upon, a demurrer must be made in writing and shall be *before* the entry of a denial or admission or plea of ‘no contest.’” (Italics added.)]; see also Seiser & Kumli on California Juvenile Courts Practice and Procedure (Matthew Bender 2016) § 2.42 [1] [“[O]nce a plea is entered[,] a demurrer for vagueness or lack of notice will no longer lie.”].) Mother’s counsel could have asked for a short continuance to prepare a written demurrer, but failed to do so. Instead, Mother’s counsel entered a general denial and a month later filed an objection challenging the sufficiency of the allegations in the petition. Mother’s challenge was untimely.

In any event, Mother’s motion to dismiss lacked merit. The section 300 petition contained legal contentions and factual allegations that identified Stepfather’s particular conduct and Mother’s failure to protect the children. The petition, read in the context of the detention report (and the supporting documents) filed with it, provided Mother with sufficient notice to understand the allegations against her.

2. Jurisdictional Findings

At the jurisdictional hearing the dependency court applies the preponderance of the evidence test to determine whether the allegations in the petition are true. (See § 355.) We apply the substantial evidence test in reviewing the sufficiency of the evidence of the jurisdictional findings. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) In reviewing for substantial evidence, “we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, and resolving all conflicts in support of the order. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Further, “[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary

conflicts. [We] affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

On appeal, Mother argues that the court’s jurisdictional findings cannot stand because DCFS did not demonstrate that the minors suffered serious harm or were at risk of future harm under section 300 subdivision (a)⁸ or (b). We disagree.

A jurisdictional finding under section 300, subdivision (b) requires a showing of the parent’s (1) failure or inability to adequately supervise or protect the child, (2) causation, and (3) serious physical harm or illness to the child, or a substantial risk of such harm or illness. (*In re R.T.* (2017) 3 Cal.5th 622, 632-633.)

Mother claims the harms alleged were not serious physical harms and did not present a future risk of harm because they did not result in the children suffering a serious physical injury. To sustain a finding under subdivision (b), however, it is not necessary that the evidence show the parent will intentionally inflict serious physical injury on the minor. (*Ibid.*)

⁸ Section 300, subdivision (a) provides in pertinent part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: “(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” Here, respondents concede that the dependency court erred in sustaining jurisdiction under subdivision (a) because the harm alleged was inflicted by a stepparent, rather than a parent or guardian as required by subdivision (a). In any event, as we explain, the court properly exercised dependency jurisdiction over these children because sufficient evidence supported the court’s findings under section 300, subdivision (b). (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [“jurisdiction may be based on any single subdivision”].)

Stepfather, here, repeatedly slapped, kicked, pushed and struck the children, and that at least once he left a hand print on P.C. In addition, several times the children were left out in the heat and sun without water or access to shelter for hours at a time and, as a result, X.C. suffered a heat rash that required medical treatment. Mother did nothing to intervene in this conduct on behalf of the children. The court in *In re Veronica G.* (2007) 157 Cal.App.4th 179, 186, concluded there was sufficient evidence of abuse to support jurisdiction where a mother hit her children with an open hand or fist and kicked them and the father did nothing to stop it. (*Ibid.*) The evidence in the present case indicated a similar pattern of sustained abuse and was, likewise, sufficient to support the court's assertion of jurisdiction over the children under section 300, subdivision (b).

Moreover, the children were also exposed to the verbal abuse between Mother and Stepfather and several times Stepfather ordered Mother and the children out of the home after an argument. Exposure to the domestic violence between the parents, even when not directed at the children, presents a risk of harm to them. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [domestic violence not directed at minors creates a substantial risk of minors "encountering the violence and suffering serious physical harm or illness from it"], overruled on other grounds in *In re R.T., supra*, 3 Cal.5th at p. 628.)

Mother has not meaningfully responded to the evidence of current and future risk posed by her conduct, which also forms the basis of the jurisdictional allegations. Until the dependency petition was filed, Mother never took any steps to address Stepfather's treatment of the children and, in fact, told Father that she agreed with Stepfather's methods of discipline. It was only after the dependency petition was filed that Mother began to examine Stepfather's parenting and their domestic relationship,

and even then Mother attempted to have Stepfather included in the visitation and her relationship with her children.

In reaching this conclusion we reject Mother's argument that Stepfather's actions did not create a future risk of harm to the children because the alleged incidents of abuse were remote. Stepfather's conduct must be viewed in its proper context. It appears that children had virtually no contact with Stepfather after the summer of 2013. He was not allowed to accompany Mother on the monitored visits and the record does not disclose whether he was left alone with them during the single overnight visit in the spring of 2015. Thus, Stepfather's opportunities to inflict harm upon the minors were limited in any event. Furthermore, there is no evidence in the record to suggest that Stepfather had taken any steps to address his behavior that led to the abuse.

Given the totality of the circumstances, we cannot say the dependency court's finding that the children were at substantial risk of serious harm lacked a sufficient evidentiary support.

3. Dispositional Order

Mother's challenge to the dispositional order also lacks merit. Although Mother complains that no substantial evidence supported removal of the minors from the mother's custody, as required by subdivision (d) of section 361, there is no indication in the record that the court ever made findings formally removing the children from Mother pursuant to section 361, subdivisions (c)(1) and (d). Under the circumstances, the court was not required to make such findings. Section 361, subdivision (c)(1) indicates a dependent child shall not be taken from the physical custody of his or her parents or guardians with whom *the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence of certain enumerated circumstances. (§ 361, subd. (c)(1)-(6).) Section 361, subdivision (d), indicates the

court must also determine whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home. Here, the children did not reside with Mother at the time the section 300 petition was initiated; thus, neither section 361, subdivision (c)(1) or extension section 361, subdivision (d) applied.

C. Jurisdiction of the Tribal Court

Mother asserts that the dependency court erred in failing to dismiss the section 300 petition because the tribal court had exclusive jurisdiction over custody issues. We disagree.

Title 25 U.S.C. section 1911(a) of the ICWA establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child ‘who resides or is domiciled within the reservation of such tribe,’ as well as for wards of tribal courts regardless of domicile.” (25 U.S.C. § 1911(a); *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36, fn. omitted.) Under Welfare and Institution Code section 305.5, subdivision (d), the *Indian child’s* domicile or place of residence is determined by that of the parent with whom the child maintained his or her primary place of abode at the time the Indian child custody proceedings were initiated. (Welf. & Inst. Code, § 305.5.) Federal law supports the California position. (See *Miss. Band of Choctaw Indians v. Holyfield*, *supra*, 490 U.S. at p. 48 [addressing the meaning of ‘domicile’ in the context of the ICWA, and noting that since most children are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of their parents].)

It is beyond dispute that the children, here, always resided in Los Angeles with Father from the time that they were born through the time that Mother filed for divorce in the tribal court. They never lived on the CRIT reservation in Arizona. Accordingly, Mother’s 2009 change in domicile from California to the CRIT

reservation did not change the children's domicile. Moreover, when the tribal court issued the 2010 custody order, the children had not even visited nor have any substantial connection to the CRIT reservation.

Mother, however, contends that the children were "domiciled" on the reservation because the 2013 custody order awarded her sole physical custody of the minors. But the fact that the tribal court decided to exercise jurisdiction to issue custody orders does not, ipso facto, change the children's domicile from California to the CRIT reservation. As respondents point out, none of the cases Mother cites holds that a child's domicile is with a parent who was recently granted primary physical custody but with whom the child is not yet cohabitating, as opposed to the parent with whom the child has lived his entire life.

Given the preceding, we conclude that the court did not err in refusing to dismiss the petition based on Mother's claim that the tribal court had exclusive jurisdiction to determine custody of the children.

D. The Exit Order Awarding Father Sole Legal Custody

When the juvenile court terminates jurisdiction in a dependency case, it may issue an exit order for custody and visitation. (§ 362.4; see also *In re John W.* (1996) 41 Cal.App.4th 961, 970, fn. 13.) "[I]n making exit orders, the juvenile court must look at the best interests of the child." (*In re John W.*, *supra*, 41 Cal.App.4th at p. 973.) "We . . . review the juvenile court's decision to terminate dependency jurisdiction and to issue a custody (or exit) order pursuant to section 362.4 for abuse of discretion." (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300–301.)

Mother complains that the court abused its discretion when it issued an exit order which gave Father sole legal custody of the children.

At the six-month review hearing, the court expressed a concern that Mother had not fully complied with the case plan and had not taken full responsibility for her parental role in the events which lead to the dependency proceedings. The court observed that Mother's conduct of continually seeking to include Stepfather in monitored visits, notwithstanding the children's wishes against it, demonstrated that Mother's loyalties remained divided between Stepfather and the children; the court was not convinced that the children came first with Mother. The court was also persuaded that Father needed the flexibility to act on his own concerning the children because they were receiving services in California and that Mother was out of state and not in a position to participate in joint legal custody. The court's concerns and observations find support in the record, and in our view, are within the bounds of reason, and accordingly, the court did not abuse its discretion in awarding Father sole legal custody of the children.

DISPOSITION

The orders of the dependency court are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.