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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANNY G.,

Defendant and Appellant.

B277899

Los Angeles County
Super. Ct. No. DK07637

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

Valerie N. Lankford, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Danny G. appeals from the portion of the juvenile court's exit order requiring that visits with his son, A.G., be monitored. (Welf. & Inst. Code, § 364.)¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *A.G.'s dependency and the parents' reunification plan*

The Department of Children and Family Services (the Department) filed a petition in October 2014 alleging that father struck mother² causing bruising to her eye and arm, scratched her neck, and pulled her hair, in front of then 2-year-old A.G. The petition alleged that father's violence endangered the child's physical health and safety and placed him in danger and at risk of physical harm and damage. (§ 300, subd. (b).) Father had been drinking before the incident and was " 'swerving while driving.' "

Mother took A.G. and his 12-year-old half sister A.³ to a domestic violence shelter and has kept her address from father ever since. The Department noted that the conduct was not unprecedented. Father had a criminal record from 1996 to 2012 that included charges of driving under the influence. The Department had also received multiple referrals in 2009 that father called mother derogatory names in front of A. and dangled A. over a second-floor balcony railing while father was under the influence of drugs. Mother had received services from the

¹ All statutory references are to the Welfare and Institutions Code.

² Mother, Mayra A., is not a party to this appeal.

³ A. is not a party to this appeal.

Department after a domestic violence incident in 2006 involving a previous partner but did not complete a program.

The juvenile court declared A.G. a dependent in January 2015 based on the petition, and removed him from father's custody. The court granted father monitored visits with Departmental discretion to liberalize them. The court ordered mother to participate in a domestic-violence victims' support group. Father's court-ordered case plan included an alcohol program with random or on-demand testing; a 52-week certified domestic violence program; and individual counseling to address case issues, along with conjoint counseling if the parents planned on reuniting. The Department approved paternal uncle Raul as visitation monitor.

Father never completed his case plan. Soon after the adjudication, he enrolled in substance abuse and domestic violence programs at Homeboy Industries, but was dismissed in June 2015 for excessive absences. He failed to submit to alcohol testing, even after receiving a referral to Pacific Toxicology in early July 2015. Father claimed he was testing at Homeboy Industries, but that organization confirmed that father was not enrolled in a substance abuse program and was not testing there. A year into the dependency, the Department reported that while father had re-enrolled in a domestic violence program at Homeboy Industries, he had not resumed an alcohol abuse program or tested, and he had no proof that he was in counseling.

Father's monitored visits with A.G. were consistent and positive. Father described visits as " 'great.' " Mother had no concerns about visits. She reported that the child enjoyed seeing father and was " 'happy' " when he returned home. The

Department did not liberalize visits, however, because father had not provided drug test results.

2. the supplemental petition (§ 387)⁴

In February 2016, the parents confirmed that A.G. had been staying with father on weekends and whenever mother needed a babysitter. Father admitted these visits were not monitored. The social worker advised mother that the juvenile court had not approved unsupervised contact and that the Department had not liberalized visitation. Mother agreed to stop the overnight visits.

In May 2016, the Department sought to detain A.G. from mother on an emergency basis because she posed a “high” risk of abuse or neglect. The parents had only partially complied with the case plan. Mother was not participating in the court-ordered domestic abuse counseling, denied the severity of her violent relationships, and threatened to flee the court’s jurisdiction. She violated the court’s orders and failed to protect A.G. by allowing father regular, unsupervised contact with the child every other day. The Department believed mother was unable to enforce the visitation restriction because she was afraid of father’s reaction if she prevented him from seeing A.G. Father had recently admitted to regular medical marijuana use for his nerve pain, and was “likely under the influence” of the drug while supervising A.G.

Rather than to approve an emergency detention, the court ordered the Department to file a petition.

⁴ Section 387 provides for the filing of a supplemental petition when “the previous disposition has not been effective in the rehabilitation or protection of the child” (§ 387, subd. (b).)

The ensuing supplemental petition (§ 387), filed in May 2016, alleged mother's failure to comply with court orders by allowing father to have unmonitored visits, and her failure to participate in court-ordered domestic violence counseling, all of which endangered the child's physical health and safety and placed him at risk of serious physical harm and damage. The court released A.G. to mother and allowed him monitored visits with father at least twice a week.

During the hearing, the juvenile court expressed its frustration and displeasure with the parents' failure to comply with its orders. Mother continued to flout her case plan, threatened to take the children to Mexico, and violated the visitation order. In the court's view, the underlying issue was a relatively limited, two-year-old incident of domestic violence. The case would have ended sooner had the parents cooperated. The court was pleased that father was involved with A.G. The court scheduled the adjudication for July 2016 and asked for a progress report to ensure that visitation was going smoothly and that mother remained in her domestic violence classes.

The progress report showed that mother completed a domestic violence program in June 2016. Father was in alcohol abuse treatment but was not testing. The Department had no evidence that father had completed his domestic violence program, and father refused to have contact with his social worker. Father-son visits were monitored, and the child was always sad when he returned to mother because he did not want to leave father.

3. *the July 2016 hearing to adjudicate the supplemental petition*

At the July 2016 hearing, the juvenile court again expressed its displeasure at the parents' failure to comply with the case plan. However, finding no nexus between mother's alleged conduct and harm to the child, the court dismissed the supplemental petition. It ordered father to submit to one on-demand drug test. Turning to visitation, the court stated that it "need[ed] to discuss the terms of what the visitation will be" and opined that part of the problem was its failure to establish an end-date for supervision. Finding no basis for monitored visitation, and no "shred of evidence that [A.G.] in any way, shape or form, in the last period of time has . . . been subject to risk," the court signaled it "will order unmonitored visitation." The Department and the children's attorney did not want father's visits to be unrestricted and requested a contested section 364 hearing about visitation. While the court decided to liberalize visitation, it also scheduled the section 364 hearing as a contest and ordered "a supplemental report from the Department with respect to . . . *visitation and compliance*." (Italics added.) In so doing, the court stated, "[i]n the interim we're going to have *unmonitored visitation and we'll see how that goes*." (Italics added.)

4. *the contested August 2016 section 364 hearing*

The Department's supplemental report indicated that father had tested positive for marijuana on July 15, 2016. The social worker was unable to confirm whether father had completed a domestic violence program, and father had yet to submit proof he had completed individual counseling. Mother

was resistant to the social worker's questions about visits. The Department recommended that father's visits be monitored.

At the hearing, the juvenile court allowed the Department to make a record. County Counsel argued that the fact that A.G. had not been harmed in the past two years did not mean that he was no longer at risk of harm. County Counsel recited the facts that caused the Department concern: A.G. was very young; the parents had not complied with the case plan; father had recently tested positive for marijuana; the parents ignored the court's orders knowing that eventually they would get the child back anyway; the Department had received a referral that father dangled A. over a second-floor balcony railing while father was on drugs; and father had six vehicle violations including a DUI between 1996 and 2012. The court interrupted County Counsel and stated: "you've actually changed my mind. So let's just cut to the chase. I'm going to order monitored visitation. . . . I'm closing the case." The court terminated its jurisdiction and issued a family law order that gave mother physical custody and father monitored visits.

CONTENTION

Father contends that the juvenile court abused its discretion by requiring visitation be monitored.

DISCUSSION

To maintain ties between parents and children during a dependency, the juvenile court must order visitation "as frequent as possible, consistent with the well-being of the child," but "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(A) & (B).)

When the juvenile court terminates jurisdiction in a dependency case, it may issue an order for custody of, and

visitation with, the children. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 203.)⁵ Such an order, commonly referred to as an “‘exit order,’ ” becomes part of a family law file and remains in effect until modified by the family law court. (*In re John W.* (1996) 41 Cal.App.4th 961, 970 & fn. 13 [explaining the term “exit order”].)

In making exit orders, the juvenile court’s focus is on the best interests of the child (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 201), in the context of the particular facts and circumstances of the case. (*In re John W.*, *supra*, 41 Cal.App.4th at p. 965.) The court has broad discretion to determine what best serves a child’s interests and to fashion visitation orders. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.) On appeal, we will not reverse the juvenile court’s exercise of discretion unless the record clearly shows it was abused. (*Ibid.*) “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute

⁵ Section 362.4 reads in relevant part, “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court . . . and proceedings for dissolution of marriage . . . or for legal separation . . . are pending in the superior court . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child. [¶] Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for . . . dissolution, or legal separation . . . at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.”

its decision for that of the trial court.’ ” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

Father argues that the juvenile court abused its discretion in requiring supervised visitation because the record contains no evidence that A.G. had been harmed or was at risk of being harmed while in father’s unsupervised care. Father overlooks that he failed to complete most of the elements of his case plan and ignored the court’s repeated admonishments to “follow[] the rules,” “cooperate with the Department,” and “comply with what we have in place.”

The focus of reunification plans “is on ameliorating problems that led to the dependency to accomplish the goal of family preservation and reunification. [Citation.]” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 595-596.) The problems that triggered this dependency were serious, even though the last known event occurred two years earlier. Father abused alcohol and beat mother, who remains sufficiently afraid of him that she keeps her address confidential. These problems justified removing A.G. from father’s custody. (§ 361, subd. (c).) Father did not complete an alcohol abuse program and only tested once. There is no evidence that he underwent individual counseling, or that he fulfilled his domestic violence requirement. Father even refused to speak to his social worker. There is no evidence that father completed the programs that caused A.G.’s removal from his custody and imposition of monitored visits. Given these facts and circumstances, the juvenile court did not abuse its discretion in concluding that monitored visitation was in the child’s best interest.

Focusing on the one-month period between the July and August 2016 hearings, father contends there had been no change

in circumstances such as would give the juvenile court valid grounds for “reinstating” supervision. Rather, father argues, County Counsel relied on the old, original grounds for court jurisdiction when making the Department’s record.

On the contrary, the record shows that the juvenile court had not made a final decision in July 2016 whether to liberalize father’s visits. Rather, the court recognized that the dependency had lasted longer than it should and that there was no evidence A.G. had been harmed meanwhile, and so it was inclined to try lifting the visitation restrictions. As the court stated, “[i]n the interim we’re going to have unmonitored visitation and we’ll see how that goes.” (Italics added.) Then, County Counsel made a record at the August 2016 hearing that “actually changed [the court’s] mind.” The record shows that the court was obviously persuaded by the severity of the problems causing the dependency and father’s apparent defiance of the court orders issued to ameliorate those problems. The ruling requiring that father’s visits be monitored was a proper exercise of juvenile court discretion.

Father argues that it was unnecessary for visits to be supervised because the domestic violence that led to the dependency had not recurred. Father and mother were no longer in a relationship. That there was no opportunity for such violence does not mean that father had addressed the causes of the dependency.

Finally, father contends he was prejudiced by the visitation order. He explains that to modify it he will have to demonstrate to the family law court a “significant change of circumstances,” such that it would be in A.G.’s best interest to modify the visitation order (§ 302, subd. (d)). Yet, he argues, because there

is no evidence that the child is presently at risk of harm in his care, it will be very difficult to demonstrate a change of that circumstance in the family law court. We disagree. The risk of harm to A.G. is that father has not addressed his alcohol abuse and the violence that caused this dependency. He can show the family law court a significant change of circumstance by completing his alcohol rehabilitation and domestic violence programs, and participating in therapy. But, the exit order was not an abuse of juvenile court discretion.

DISPOSITION

The order is affirmed.

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BACHNER, J.*

WE CONCUR:

EDMON, P. J.

LAVIN, J.

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