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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ELLA J., et al., Persons Coming
Under the Juvenile Court Law.

B297883

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK23285)

Plaintiff and Respondent,

v.

STEVEN J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Craig S. Barnes, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Steven J. (Father) appeals from a Welfare and Institutions Code section 364.2¹ custody and visitation order, which granted Lisa J. (Mother) sole legal and physical custody of their two children, Ella J. and Dominick J., and permitted Father only monitored visitation. Father contends the court abused its discretion in denying him partial custody and/or unmonitored visitation. We conclude that the court acted within its discretion in finding the custody and visitation order was in the children's best interest. If and when the behaviors on which the court based its order change, Father may seek modification of the order in the superior court. Accordingly, we affirm.

PROCEDURAL AND FACTUAL SUMMARY²

A. Events Leading to Filing of Initial Dependency Petition

Mother and Father have two children, Ella J. (now age 14) and Dominick J. (now age 12). On April 25, 2017, the Department of Children and Family Services (DCFS) received a referral based on Father being disruptive and intoxicated at Dominick's baseball practice. DCFS ultimately closed the resulting emotional abuse referral as inconclusive. It noted " '[t]he family has had significant

¹ Unless otherwise specified, subsequent statutory references are to the Welfare and Institutions Code.

² The Procedural and Factual Summary provided in parts A-F is drawn from this court's prior unpublished opinion in a separate appeal from this case. (*In re Ella J.* (May 8, 2019, B290245).) We have included only those portions of the facts set forth in that opinion that are most relevant to the issue currently on appeal, and, on our own motion, take judicial notice of the record in case No. B290245. (See Evid. Code, § 452, subd. (d).)

stressors including [F]ather's stroke and financial problems that led to an eviction and residing with [the paternal grandmother]. Father has resorted to alcohol as a coping mechanism, and [M]other has considered divorce. Father admitted the drinking problem and accepted referrals for treatment programs Father agreed to drug test but missed two scheduled dates. He finally tested on [May 18, 2017] and tested positive for alcohol at 0.09 [percent]. Father agreed to not drive the children with any alcohol levels.' ”
(*In re Ella J.*, *supra*, B290245, at pp. 2–3.)

The following month, the police were called to the family home six times due to allegations of domestic abuse, all of which occurred after Father had been drinking. For example, in one instance, while apparently drunk, Father accused Mother of having an affair, and forcibly grabbed Mother's breasts and genitals. When she attempted to call 911, Father ripped the phone cord out of the wall. Mother acknowledged that the children were in the home during the incident, but denied that they witnessed it. Both children said they felt safe and were not afraid of anyone in the home. The only instance involving possible violence directed at either of the children occurred when Father, who had been drinking, tried to take Ella's iPad away from her. During the struggle, he scratched her arm, although Mother, Father, and Ella later denied this.

In connection with this incident, the children's social worker (the CSW) also interviewed Dr. Jennifer Ramlo, a therapist who had been providing Father and Mother with marriage counseling. She explained that Father began drinking when he had problems with his business and the family lost their house. Although they had financial problems, Father seemed “paralyzed about looking for work.” He also was obsessed with the idea that Mother was having

an affair, following her around and checking her phone rather than looking for work. Mother was considering separation for these reasons.

B. *Initial Dependency Petition*

DCFS filed a section 300 petition on June 23, 2017, alleging under subdivisions (a) and (b)(1) that the children were at risk due to the parents' domestic violence and Father's alcohol abuse. The juvenile court dismissed the counts based on domestic violence, but sustained the petition with amendments under section 300, subdivision (b), based on Father's unresolved history of alcohol abuse. It ordered DCFS to ensure that Father participated in alcohol testing weekly. Over the objection of DCFS, the juvenile court ordered the children placed in the parents' home under DCFS supervision.

C. *Events Leading to Subsequent Dependency Petition*

DCFS later reported a number of concerns, including that Father missed several drug tests; had not enrolled in anger management or individual therapy; failed to document his participation in Alcoholics Anonymous (AA); and reported that he had a relapse in October 2017. Additionally, the family had missed several family preservation appointments; Father and Mother limited the CSW's access to the home; and Father and Mother would not allow the CSW to interview the children privately. The CSW had observed Father confront Mother verbally during a home visit; Father demanded that he be present during all home visits and that the CSW obtain his permission before speaking to Mother. Further, Father and Mother were not taking the children to school, the doctor, or the dentist.

The children were frequently absent and tardy at school. The school reported that “Ella’s absences have been addressed with the parents more than once and the parents make excuses.” On one occasion, “Ella didn’t want to come into the office to be marked late and [F]ather yelled at the secretary because he felt that Ella was being singled out.” The school bookkeeper described Father’s behavior as harassing and said he made her uncomfortable. A vice principal said that if Father did not hear what he wanted to hear, he “‘flare[s] up,’ ” raising his voice. The principal of Ella’s school reported that Father’s behavior with other parents and school staff was worsening. For example, a parent called the police when Mother and Ella were at her home and Father came over; Father was drunk and “‘camped out’ ” in front of that parent’s house.

On February 16, 2018, Father’s counselor reported being “‘really, really concerned.’ ” Father used what were supposed to be parenting sessions to blame Mother for not doing things he felt she should do. The counselor stated that Father “is not the same. He is doing weird things. [Mother] says that he has obsessive behaviors, patterns, consistent behaviors that he cannot disrupt. He has to have power and control.” Father was short-tempered, even with the counselor, in their sessions; he raised his voice and became confrontational toward Mother. The counselor was uncertain whether there was domestic violence between Father and Mother, but there was emotional abuse. She believed there was “something not right” in Father’s brain.

Father and Mother reported that the children’s paternal uncles had come to the family home and assaulted Father on two separate occasions. During the first of these incidents on February 17, 2018, one of the uncles had a gun and threatened

to kill Father; he beat Father with the gun, and Father was taken to the hospital. The children hid in their bedrooms during this incident. Father and Mother did not seek a restraining order. The second assault occurred the following weekend. Ella told the CSW she did not see the assault on February 17, but she had heard a lot of arguing and loud talking. She said she felt safe in the home “sometimes.”

The CSW then went to the family’s home for an unannounced visit. She observed a rug with blood on it draped over a railing on the stairs. A pool of dried blood covered a portion of the top of the stairs and there was a trail of blood going down the stairs. There was blood on the door and doorknob. The CSW asked Mother what happened. Mother said, “ ‘I wasn’t here and you’re going to have to talk to [Father].’ ”

The CSW spoke to Dominick, who was home with a stomachache. He said he had heard a lot of arguing and locked himself in his room. When he exited his room, he saw Father bleeding; Father asked him to call 911. Dominick stated he had felt scared during the weekend, but no longer felt scared, because his uncle was in jail. Father later tried to prevent the CSW from speaking privately to Dominick.

DCFS obtained a removal warrant for the children “ ‘due to [F]ather’s ongoing substance abuse, domestic violence and failure to protect the children by [M]other and [F]ather.’ ” (*In re Ella J.*, *supra*, B290245, at p. 11.)

D. Subsequent Dependency Petition

DCFS filed a section 342 petition on March 5, 2018, which it then amended on April 28, 2018. This contained allegations that the children were at risk of serious physical harm, and the parents had failed to protect them, based on the children’s exposure to the

violent altercations between Father and the paternal uncles. The petition also contained allegations that the children were at risk of harm due to Father's continuing alcohol abuse and failure to comply with court orders regarding drug testing, participation in AA, anger management, domestic violence education, and individual counseling.

The court ultimately sustained the amended section 342 petition based on these allegations, but dismissed the other bases for jurisdiction, including those alleging domestic violence. It ordered the children on an extended visit with a family member, on the condition that Mother not reside in the family member's home. It ordered Father to stay away from the home, but permitted him six hours of monitored visitation per week, as well as unmonitored phone calls and text messages with the children.

E. *Temporary Restraining Order Against Father*

On the same day as DCFS filed its section 342 petition, Mother filed a request for a restraining order to keep Father away from her and the children. She explained that, on one occasion, Father had kept her under surveillance and harassed her with phone calls and texts. When the paternal uncle came to the house, Father did not call 911 even though the children were in his care at the time. In addition, when the CSW "was speaking with Dominick inside [the] house. [Father] verbally abused [Mother] outside regarding [CSW] should not be able to speak to our son alone. [Father] blocked [Mother] from being able to enter back into the house as he continued to verbally abuse [her]." At other times, Father was verbally abusive, yelling and using vulgar language toward her, demeaning her.

Based on these allegations, the juvenile court issued a temporary restraining order on March 5, 2018.

F. *Father's Behavior Continues Following Temporary Restraining Order*

DCFS requested an unscheduled hearing to report and address additional troubling behavior by Father. The principal of Ella's school had indicated that Father "continues to ignore all directions DCFS, the court, and the school [are] giving him. He has sent repeated emails to me, has shown up at school twice, and has called our office to check in on Ella." The principal stated that Father has "exhibited an unstable and dangerous behavior in his calls and when he was on campus."

The relative with whom the children had been placed also reported concerns about the safety of her own family due to Father's conduct. She reported that Father called and texted her "numerous times, at all hours of the night, asking to speak to [M]other and indicating that [M]other 'has his shoes' and that he needs to see [M]other to get them." Father sent her a video "where he filmed a neighbor's child asking for Ella and Dominick to come home."

The juvenile court appointed an expert to evaluate whether Father had a psychological impairment that could affect his ability to reunify with the children. The court also restricted visitation with Father to monitored visits at the DCFS office. The court admonished Father that he was not to have contact with the children outside of the ordered visitation. The court also ordered the children detained in shelter care under DCFS supervision.

G. *Permanent Restraining Order Against Father*

Mother requested the temporary restraining order be made permanent. The court granted the requested order, which also required that Father stay at least 100 yards from the children's schools pending adjudication of the section 342 subsequent petition.

Father later challenged the juvenile court's decision to issue a permanent restraining order in a prior appeal to this court. (*In re Ella J.*, *supra*, B290245, at p. 15.) We affirmed. (*Id.* at p. 20.)

H. *Father's Mental Health Evaluation*

Pursuant to the court's order that Father's mental health be evaluated, USC Institute of Psychiatry, Law, and Behavioral Sciences conducted an Evidence Code section 730 evaluation of Father in May 2018. The resulting report, dated June 1, 2018, found that Father met the criteria for unspecified bipolar disorder, occurring within the context of alcohol abuse, and recommended a trial of psychotropic medication and therapy. Father began taking antidepressants shortly after this evaluation. The evaluators opined that the likelihood Father would physically or emotionally abuse the children was "unclear," and recommended that his visits with the children initially remain monitored with a "gradual and slow increase[] [in] visitation, if he has good progress." It further recommended that, "if the court's goal is to reunify the children with [Father], there should be slow and gradual steps with re-evaluation and monitoring during the process . . . to ensure a safe environment for the minors."

I. *Difficulties Scheduling Father's Visitation*

Because of difficulties in scheduling Father's monitored visits, Father often was not afforded the minimum number of weekly visits ordered by the court. While these difficulties were partially created by DCFS, the children's or the children's caretaker's schedules, and/or the children refusing to visit, Father contributed significantly to the scheduling difficulties in various ways. For example, Father often created confusion by attempting to reschedule or make changes to a scheduled visit at the last minute. In several instances, Father refused DCFS's attempts to arrange monitored visits for Father outside the DCFS office for various reasons. Father claimed he had friends who could monitor, but did not provide their names or give DCFS consent to contact them.

In addition, Father's behavior appears to have contributed to his difficulty in enlisting professional monitors. For example, one such monitor refused to provide monitoring services because Father acted "weird and confused" and refused to provide her with the most current court status. Another professional monitor had been approached by Father at the last minute to monitor visits, but stated it appeared to her that Father was trying to skip the intake process, and so declined.

J. *Dispositional Report and Hearing*

In advance of the dispositional hearing, DCFS reported Mother appeared to be making progress towards the goals of the case plan and following court orders, although with assistance from the nonrelative extended family member with whom the children had been placed. On this basis, DCFS concluded there was no longer a current safety risk for the children if returned to

Mother's custody, and recommended they be released to her, on the condition that they reside in the home of the nonrelated extended family member where the children had already been placed.

With respect to Father, DCFS reported that he was making progress towards his case plan goals. He appeared to understand his alcoholism, was attending AA, had obtained a sponsor, been sober for 256 days, and was attending anger management. His individual therapist stated Father had demonstrated some insight into case-related issues and his relationship with his family.

At the July 18, 2018 dispositional hearing, the court ordered the children be placed with Mother with the restrictions DCFS recommended, and granted Father six hours of visits per week, monitored in a neutral setting, and unmonitored telephone and text communications with the children.

K. *Father Violates The Restraining Order*

In September 2018, Father violated the court's orders by appearing at Dominick's baseball game without a monitor. Later in September 2018, Father again violated the orders by appearing at the baseball field prior to Dominick's warm-ups and the game. Father told the CSW he did not believe he was violating the court's orders, and the CSW repeatedly clarified that he was.

Dominick told Dr. Ramlo, who had begun seeing the children as part of the family case plan, that Dominick did not want Father at his games or practices. Dr. Ramlo was concerned that Father had an agenda by insisting on attending the games, noting he was overly concerned about Mother's whereabouts and to whom she was talking.

On November 17, 2018, Father again violated the restraining order by showing up at Dominick's baseball game, and was arrested. Father blamed Mother for his arrest and told

law enforcement that the restraining order had expired, though it would not expire for several more months. Father's therapist "confronted [Father] regarding the violation of the restraining order, but [Father] [was] unable to see his responsibility, or appreciate the gravity of this matter."

L. *Court Limits Father's Phone Contact with Children*

As authorized by the court at the dispositional hearing, Father frequently contacted the children through Ella's cellular phone. Screenshots of Father's text messages to the children were included as attachments to DCFS reports. These reflect that Father was tracking Dominick's location, asked the children about Mother's whereabouts and who was home with them, asked Ella not to talk with Mother about certain things, discussed court matters with the children, made comments designed to make Ella feel guilty about the family's circumstances, encouraged the children to violate court orders, and spoke negatively with the children about DCFS and Mother.

Dr. Ramlo expressed concern about Ella shutting down in therapy after the juvenile court allowed unmonitored phone contact with Father. When asked about her phone communications with Father, Ella became suddenly quiet, but said they were fine. She also denied Father ever talked about Mother or the case. Dominick told the CSW his phone conversations with Father were going well.

When the CSW confronted Father about the text messages, Father stated he did not intend to send inappropriate messages to Ella, and claimed he "[c]ould [h]onestly not see what [the CSW is] referring to." Father argued Mother was trying to alienate the children from him, and defended the appropriateness of his text messages. He defended a text in which he told the children:

“ ‘Please don’t listen to anything your mother tells you, she is a liar and she’s been [l]ying to you Dom and I since the first time she left us for that Mexican low life,’ ” by noting that the person he was speaking about was a “low life” and that Ella was already aware Mother was having an affair with him.

DCFS filed a section 388 petition asking that the juvenile court order monitored telephone contact between Father and the children with no text messaging. At the hearing on the request, the court also considered additional information provided by DCFS regarding Father’s behavior and refusal to follow court orders. Specifically, DCFS reported that Father cancelled Ella’s overdue November 2018 orthodontist appointment to attend Dominick’s baseball camp. Dominick told the CSW he did not like it when Father broke the rules and he did not want Father to visit him at his baseball camp.

Father also continued to have inappropriate interactions with the monitors. On December 1, 2018, a professional monitor texted the CSW stating she would not be monitoring a scheduled visit for Father, explaining that “[h]e was horrible with me today on the phone. I will send you his text to me by email. Steven was telling me what to do on the visit and I refused.”

Based on this and other information and evidence presented at a December 10, 2018 hearing, the court ordered monitored telephone visits for Father, with DCFS arranging one call per week, and further ordered Father not to send text messages to the children.

**M. *Information in Final Status Review Report
and Last Minute Informations to the Court***

On December 28, 2018, DCFS filed a status review report, and in January 2019, DCFS filed three last minute informations to the court as well. These documents provided the following information to the court, in anticipation of the section 364 status hearing.

Both children reported being happy where they were living and liked living with Mother. Their attendance at school had improved since being returned to Mother's care, and their medical and dental needs were being met. Still, Dr. Ramlo reported that "as a result of the trauma that the [children] endured," they "have a difficult time trusting others and they struggle with an overall general anxiety that seems to pervade much of their lives." Dr. Ramlo further reported that she was working with the children to "re-establish[] a trusting relationship with their father" and that, to this end, "[i]t has been helpful that [Father] is able to spend time with the children doing fun things together as opposed to sitting in a small room."

As to Mother, the report noted she had not provided proof of attendance of Al-Anon meetings, but was otherwise in compliance with the case plan. She had completed an online parenting education course and was receiving individualized parenting education from Dr. Ramlo, the children's therapist, in weekly counseling sessions. The report noted Mother demonstrated understanding and insight into the case dynamics and her family's needs, "skills consistent with the family case plan objectives," and the ability to protect her family, including by following the restraining order. DCFS reported, "it is noted that as Father has continued to attempt to use . . . power and control techniques over

Mother, Mother has held firm and maintained her boundaries, continued to strengthen her own beliefs and ability to maintain her resolve to protect herself and the children from any future harm.” Mother reported the domestic violence support groups that she attended helped her identify Father’s abusive behaviors and made her aware of how to handle his abusive communications. Mother filed for divorce and did not anticipate reuniting with Father.

As to Father, the report likewise noted Father was in compliance with his case plan, having consistently tested negative for drugs and alcohol, completed a 12-week parenting program and a 12-week anger management program, and engaged in individual therapy. His therapist reported that, “Father has made limited progress with . . . anger management, . . . appropriate communication, and . . . compliance with boundaries,” but noted that Father “ha[d] not availed himself of the opportunity to integrate communications coaching into his individual therapy,” and that “the issue of inappropriate communications” should be “the first response to the escalating dysfunction in this family system.” Overall, Father’s therapist concluded that although “Father continue[d] to work toward his treatment goals,” he “isn’t there yet.”

DCFS further reported that Father had had 24 monitored visits with the children during the reported period, despite the difficulties in scheduling the visits, and “it appears visits went overall well.” He often brought food or gifts for the children, and often was able to redirect them when they became disengaged.

Father continued to have difficulties with monitors and respecting court-ordered limitations on his communications with the children. He repeatedly attempted to discuss the case with the children and “tr[ied] to get information [from Ella] and talk business” during visits. In terms of his interactions with the monitors, one professional monitor reported that, when Father repeatedly told Ella that he would not pay for her cellular phone as long as he was not able to call her on it, causing Ella to become upset, the monitor told him to stop, and Father responded by “demeaning” the monitor. The monitor stated that Father “does not understand or see the signs of when he is upsetting his own children. He will stop at nothing to get his own way and not even listen to his daughter.” The monitor further reported that she had received threatening texts from Father, in which he accused her of ruining his visits with the children and being in cahoots with Mother. Visitation logs reflect that Father often became argumentative with monitors in front of the children, and that after visits, he often threatened them and accused them of lying.

Father continued to attend Dominick’s try-outs, practices, and games in violation of the restraining order and visitation order. Dr. Ramlo noted that “Dominick’s teammates were frightened and spooked by Steven’s strange behavior and Dominick was left feeling deeply embarrassed and ashamed.”

Father’s communications with Mother continued to reflect that he blamed her for DCFS’s involvement in their lives and was controlling and abusive. Specifically, in communications via Talking Parents, a website designed to facilitate co-parenting communications, he accused Mother of having an affair as well as “slander and alienation,” used money as leverage, demanded she respond to messages within a specified period of time, accused her

of intentionally hurting the children by not “allowing” them to go to visits, and pressuring Mother to violate the restraining order. Father’s therapist informed Father that such communication was “inappropriate” and “urged [Father] to review communications[,] but he fail[ed] to comply.” Father also would not pay child support directly to Mother, and instead put money on the children’s reloadable credit cards.

The report assessed the children to be at high risk if returned to Father’s care, and recommended that his visits continue to be monitored. This recommendation was based on DCFS’s view that, despite completing various court-ordered programs designed to address the issues of alcoholism and anger management that led to juvenile court jurisdiction initially, “Father does not demonstrate new skills and behaviors that are consistent with the [c]ourt ordered case plan,” and “lacks insight into his own behavior, does not exhibit that he takes responsibility for his actions, nor does he demonstrate an understanding as to what brought the matter to the attention of the [c]ourt.” For example, although he completed anger management courses, he “continues to act abusive towards Mother as demonstrated by his communication with Mother.”

DCFS concluded that Father “continuously demonstrates behaviors that are associated with tactics identified on the Domestic Violence Power and Control Wheel,” and thus had not resolved the issues that brought the case to the juvenile court’s attention initially. In addition, Father continued to not “take[] responsibility for his actions . . . as to what brought the matter to the attention of the [c]ourt.”

DCFS recommended termination of jurisdiction with a custody order granting Mother sole legal and physical custody of the children, and monitored visits for Father to be supervised by

a DCFS-approved monitor or a professional monitor paid for by Father. As to the recommendation regarding visits, the report acknowledged that Father's visits with children went well, but noted that continued monitoring was still necessary, given Father's efforts "to control and manipulate the situation" and "get around having monitored visits," as well as his having "abused [the] privilege" of unmonitored telephone contact.

N. *Status Review Hearing and Contested Custody and Visitation Order*

The status review hearing commenced February 27, 2019, and continued on March 4, 2019. Both children and Father testified. Ella testified that she liked visiting Father and did not like having the monitor present, because she liked being by herself with Father. Dominick testified that he felt good about his visits with Father, and did not want to have monitored visits because this limited what they could do during the visits, and prevented Father from attending Dominick's baseball games. He denied ever feeling unsafe or afraid around Father, or ever feeling uncomfortable when Father attended his games.

Father testified that he recognized he created a home environment in which the children were insecure and confused. He acknowledged his anger issues and alcoholism. He stated he had stopped drinking, was on the ninth step in AA and was attending meetings every day. He further testified that he had learned how to deal with things that were upsetting, and, through individual therapy, learned to communicate without anger. He regretted the inappropriate texts that he sent to the children. He testified he was seeing a psychiatrist and had been taking antidepressants since July 2018.

The juvenile court announced its decision at the hearing. It ordered termination of jurisdiction, sole legal and physical custody for Mother, and monitored visits for Father. This ruling was reflected in a written order filed on March 7, 2019. The order required Father's visits to be a minimum of six hours per week or as often as could be arranged. It prohibited Mother from being the monitor, but authorized as monitors Father's friend, Kevin, other agreed-upon individuals, or professional monitors paid for by Father.

Father filed a timely notice of appeal.

DISCUSSION

Welfare and Institutions Code generally authorizes juvenile courts to issue any orders "concern[ing] the care, supervision, custody, conduct, maintenance, and support of the minor" that "the court deems necessary and proper for the best interests of . . . the minor." (§ 245.5.) The code also more specifically grants juvenile courts the authority to determine custody and visitation in final orders terminating juvenile court jurisdiction, sometimes referred to as exit orders. (§ 362.4, subd. (a) ["If the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and . . . an order has been entered with regard to the custody of that minor," the court may, on its own motion, issue "an order determining the custody of, or visitation with, the child."].)

In fashioning a custody or visitation order, the juvenile court is not bound by the Family Code presumption in favor of joint custody for both parents, because " '[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases.' " (*In re Chantal S.* (1996)

13 Cal.4th 196, 201 (*Chantal S.*), quoting *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712 (*Jennifer R.*); see *In re John W.* (1996) 41 Cal.App.4th 961, 973–974 (*John W.*.) Instead, the juvenile court “is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions,” based on the totality of the circumstances. (*Chantal S.*, *supra*, 13 Cal.4th at p. 206, quoting *Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712; *In re J.T.* (2014) 228 Cal.App.4th 953, 964 [a juvenile court has “a special responsibility in issuing its last orders in the role of *parens patriae* to look at the totality of [the child’s] circumstances”].)

We review custody orders issued by the juvenile court upon termination of jurisdiction for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) In so doing, we must “consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court’s ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child. [Citation.] We are required to uphold the ruling if it is correct on any basis, regardless of whether it is the ground relied upon by the trial judge. [Citation.]” (*In re Marriage of Carlson* (1991) 229 Cal.App.3d 1330, 1337 (*Carlson*), disapproved of on other grounds by *In re Marriage of Burgess* (1996) 13 Cal.4th 25.)

Father first argues the juvenile court’s custody and visitation order reflects an abuse of discretion, because a juvenile court “may not intervene absent substantial evidence of at least a risk of physical injury or serious emotional harm to a minor,” which he contends is lacking here. This is not the correct standard. Such a showing is required to establish juvenile court *jurisdiction* over a

minor—not to justify a particular award of custody or visitation. (See § 300, subd. (b); § 245.5 [authorizing juvenile court to make custody and visitation orders based on the best interests of the child].) To support his argument, Father cites *In re Jesus M.* (2015) 235 Cal.App.4th 104. But that case reversed a custody and visitation order *based on a lack of jurisdiction*: “In the absence of jurisdiction, the court had no authority to issue a dispositional order or the family law custody order.” (*Id.* at p. 114 [reversing custody order made at dispositional hearing].) Father has not appealed the court’s jurisdictional order, nor does he contest that the juvenile court had jurisdiction over the children. His argument that the custody and visitation order was not necessary to prevent a substantial risk of serious emotional or physical harm is thus unavailing.

Father next argues the court abused its discretion in awarding custody solely to Mother, because she was “financially unable to provide for the children,” “making her susceptible to future codependent and abusive relationships,” and because she was not in full compliance with her case plan. Specifically, he noted she had failed to attend Al-Anon meetings, participate in “approved” parenting classes, and saw the same therapist as the children. But there is no support in the record for Father’s criticisms of Mother’s parenting classes or choice of therapist, and a trier of fact could rationally conclude—as the juvenile court here expressly did—that she had achieved in other ways the goals such participation was designed to serve. Father’s argument that Mother’s financial situation will cause her to undo this progress by seeking out unhealthy relationships is pure speculation. (Cf. *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1068 [abuse of discretion to deny placement with the grandparents based on “court’s concern”

about “the possibility the grandparents might obstruct reunification,” because such concern was “wholly speculative and . . . lacking any reasonable basis”].) Moreover, even if Father’s claims about Mother had merit, alleged inadequacies of one parent do not equate to qualifications of the other. (See *John W.*, *supra*, 41 Cal.App.4th at p. 971 [juvenile court’s role is “determining the best interests of the child,” not, as in family court, “determining the best interests of the child as between two parents” (italics omitted)].)

Finally, Father points to various evidence in the record he argues prevents the court from rationally concluding that denying him partial custody and/or unmonitored visitation was in the children’s best interests. Specifically, Father notes that the children testified to wanting unmonitored visits with Father, that Father had loving and nurturing interactions with the children during visits, that Father has complied with his case plan, and that, in his testimony, Father expressed remorse regarding his inappropriate communications with the children.

Neither these, nor any other aspects of the record, support a conclusion that *no* rational trier of fact could have found that the custody and visitation order “advanced the best interests of the child[ren].” (*Carlson*, *supra*, 229 Cal.App.3d at p. 1337.) First, while we applaud Father for complying with the case plan, he also repeatedly demonstrated an inability to follow the court’s orders, including specifically with respect to appropriate conduct during visits and communications with the children. The court thus had a rational basis to conclude, as it did, that Father’s compliance with the case plan, while laudable, had not accomplished the larger goal of ending his harmful and abusive behavior. (See *In re Maya L.* (2014) 232 Cal.App.4th 81, 104 (*Maya L.*) [“Given the extensive

evidence of [the] mother’s recent erratic conduct during monitored visits and her ongoing refusal to accept responsibility for any wrongdoing, the court was entirely justified in concluding that [the] mother has not yet developed the ability to co[-]parent effectively and that a joint custody order would not currently be in [the child’s] best interests.”].)

The court also concluded that a similar disconnect existed between Father’s expressions of remorse at the hearing and his inability to curb his inappropriate behavior—even after being arrested and repeatedly admonished. On this basis, the court gave Father’s testimony limited credibility.

In assessing the credibility of the children’s testimony, the court considered that Father, who had shown himself to be manipulative with the children in the past, was present in the courtroom when they testified, and that the children had made statements to their therapist that were inconsistent with their testimony. We must defer to the juvenile court regarding these credibility determinations; “[a]s a reviewing court, we have no power to revisit the credibility of [a] witness or reweigh the evidence.” (See *Maya L.*, *supra*, 232 Cal.App.4th at p. 104, fn. 6; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

Overall, given the deferential nature of our review, as well as the special deference we must show to a fact finder’s assessment of credibility, we cannot say the court lacked a rational basis for its conclusion that Father’s unabated pattern of defying or attempting to circumvent court orders caused “emotional strain” on the children. This, combined with the assessment of both the court-appointed psychiatrist and Father’s individual therapist that Father was not yet ready to have unmonitored visits with

the children, renders the court's custody and visitation order well within the court's discretion.

We reach this conclusion cognizant of the fact that it need not be the final word with respect to Father's custody and visitation rights. What is in the children's best interest may change, especially if, as will hopefully occur, Father continues to progress. If and when this happens, Father is "free to seek joint legal custody in the family law court." (*Jennifer R.*, *supra*, 14 Cal.App.4th at pp. 713–714; § 362.4, subd. (b) ["Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court."].) The record reflects, and the juvenile court acknowledged, that Father is deeply attached to his children and clearly wants to be a part of their lives. At present, however, Father's behavior provides a sufficient basis for the juvenile court's order, such that we cannot say it exceeded the bounds of the court's discretion.

We therefore affirm.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

WEINGART, J.*

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