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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ALEXANDER V. et al., Persons
Coming Under the Juvenile Court
Law.

B282078
(Los Angeles County
Super. Ct. No. DK20255)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

TIMOTHY V.,

Respondent;

v.

BRANDY V.,

Defendant and Appellant.

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

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

Karen B. Stalter, under appointment by the Court of Appeal, for Respondent.

Mary C. Wickham, County Counsel and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Brandy V. (mother) contends the juvenile court abused its discretion in issuing a custody order upon termination of jurisdiction that denied her visitation with twins A.V. and Alexander V. (Alexander) (born Dec. 2004). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Knife Incident

The Los Angeles County Department of Children and Family Services (DCFS) most recently became involved with this family after the twins had a weekend visit with mother in September 2016 that did not go well. A.V. reported that she saw the 15-year-old family dog cowering and looking scared. She went to see what was wrong and saw mother standing over the dog, holding a kitchen knife, and yelling at the dog. A.V. yelled

at mother to stop, and mother told A.V. to “get back.” A.V. left the room crying. Sheriff’s deputies investigated.

Interviews

When interviewed by the social worker, A.V. reported that she had started receiving therapy in October 2016. She had refused to see mother since the knife incident. A.V. knew mother was “crazy,” and believed mother had deliberately cut herself on her arm or leg. A.V. stated that mother drinks vodka.

Alexander told the social worker that he and the stepfather were at the store during the incident. When they arrived home, A.V. was hyperventilating, but the dog seemed fine. Just prior to the incident, mother was looking at an album cover, asked him if he saw the “cuckoo bird there,” and started backing away from everyone in the room. His stepfather will give him a heads’ up if mother is acting out or having a bad day. Alexander stated that mother and the twins’ father, Timothy V. (father), had divorced when he was around three years old, and mother had not been there for most of his life. Both children denied any physical or sexual abuse by mother or anyone else.

Father told the social worker that A.V. seemed less sad after starting therapy and was starting to open back up. The twins did not want to call mother on her birthday in October 2016. Father reported that both children had expressed to him that they did not want to visit mother. He denied telling the twins anything negative about mother, but he did not feel comfortable with them spending time with her. Father reported that each time A.V. spoke to mother, A.V. would become upset and emotional. Many years earlier when the twins were about three years old, mother started acting “crazy,” became physical

with father, the police were called, and father obtained a three-year restraining order against mother.

Mother reported that she and father had been given joint custody of the twins through the family law court. Mother had been recently evicted from her apartment and was living in a motel with the stepfather. She had given the dog to a shelter. Regarding the knife incident, mother stated that the dog was not supposed to be in the kitchen and had gotten between her legs when she was cooking and chopping food. She was shooing the dog away while she held a knife and A.V. became hysterical. Mother denied ever hurting the dog. Mother was upset that A.V. did not want to speak to her. Mother believed father was trying to control the visits and was coaching the twins to stay away from her. Mother stated she was under stress at the time of the knife incident because the maternal grandmother was dying, mother had lost her job and she had just received an eviction notice.

Detention Report

DCFS reported that it had received five prior referrals from 2007 through 2011 regarding general neglect by mother, that were either unfounded or evaluated out. These referrals included mother hearing voices in 2008; mother appearing at an emergency room feeling manic, having a positive drug test for amphetamines in 2009, and her family reporting that she had a “history of drug seeking behaviors”; and mother accidentally leaving the twins on a train to smoke a cigarette in 2011. Mother’s criminal history showed three prior arrests for burglary and a conviction for using another’s identity to obtain credit. Father had no criminal history.

Mother drug tested in October 2016, and the results were positive for methamphetamines and amphetamines. Mother

insisted that her weight loss medication had caused the positive results. The social worker followed up with the lab, which confirmed that mother's medication could not have caused the positive results.

Mother stated that she had once been diagnosed with bipolar disorder, but that another doctor said she was not bipolar. Mother had taken Lithium for bipolar disorder, but stopped after a week and a half because she did not like how it made her feel. Mother stated that she had enrolled in a drug treatment program in the past.

The Petition

On November 8, 2016, DCFS filed a petition on behalf of the twins under section 300, subdivision (b) of the Welfare and Institutions Code.¹ As amended, the petition alleged that mother has a history of substance abuse, has untreated mental and emotional problems including bipolar disorder, and she brandished a knife in the presence of A.V. and the family dog.

Detention Hearing

Mother and father appeared at the detention hearing. The juvenile court ordered the twins to remain with father and ordered DCFS to arrange for mother's monitored visitation and weekly drug testing.

The Jurisdiction/Disposition Reports

For the jurisdiction and disposition hearing, DCFS reported that the social worker conducted further interviews. A.V. said mother seemed to be a different person during the knife incident. A.V. denied that mother was cutting food at the time. Mother hit the dog with her hand earlier on the day of the knife incident.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

A.V. used to see mother drinking “gallons” of vodka, and stated that she used to cry at mother to stop drinking or would slap the drink out of mother’s hand. A.V. found eight small vodka bottles in the maternal grandmother’s room while the grandmother was hospitalized in May or June 2016. A.V. thought mother’s house smelled like beer on the day of the knife incident. A.V. recounted the cuckoo bird story and said there was no bird in the picture.

Alexander saw four mini bottles of vodka with mother about two weeks prior to the knife incident, and stated that he always sees stashes of alcohol in mother’s closet. He has seen alcohol in mother’s purse and he stated that she would take a black bottle to the park or backyard and start drinking. The twins each reported that mother had a medicine box that she told them not to touch or they would die. Alexander believed mother was taking the maternal grandmother’s medications. He stated that mother was acting “really crazy” but not drunk on the evening of the knife incident.

The twins did not feel that mother had changed and had refused to visit with her, even at DCFS’s offices.

Mother was a no show for drug tests on November 22, December 2 and 9, 2016.

According to the stepfather, mother refused to answer or return the social workers’ phone calls. The social worker made an unannounced visit to mother’s motel room on December 19, 2016, and observed “some tremor in her hands.” Mother continued to deny any substance or alcohol abuse. She said she had not drug tested since her positive drug test because she had limited money, only one bus pass (provided by the social worker), and had to visit her dying mother. Mother denied ever being diagnosed with bipolar or anxiety disorder. She stated that she

once asked for Lithium but stopped taking it after one pill because she did not like it, and that Effexor for depression did not work either. Regarding the knife incident, mother denied threatening the family dog and stated that she was cutting vegetables. She did not know why A.V. reacted the way she did.

DCFS recommended that mother be allowed monitored visitation under DCFS's supervision.

In a last minute information report, DCFS reported that mother called to talk with the twins on Christmas Eve, but they refused to speak to her. When father so informed mother, she started "cussing him out," and subsequently called about 35 times and left nine voicemails until his voicemail was full. A.V. became upset and Alexander was frustrated. In January 2017, father told the social worker that mother had continued to call him and had sent a disturbing photo of the dying maternal grandmother, who had since passed away. Mother did not provide any funeral information for the twins. Mother did not return the social worker's repeated calls.

The Jurisdiction/Disposition Hearing and Custody Order

The combined jurisdiction and disposition hearing was continued from December 22, 2016, to January 24, 2017. Mother was not present and the juvenile court denied her attorney's request for a continuance. The court sustained the petition as amended, declared the twins dependents of the juvenile court, terminated jurisdiction, and closed the case with an exit order granting father sole legal and physical custody of the twins. Mother's attorney asked for visitation. The court denied the request, finding that visitation would be detrimental to the twins. The court stayed its order until February 21, 2017, at which time the stay was lifted. The court's written custody order states that

visitation was being denied because mother “has severe mental [and] emotional problems that remain untreated [and] unresolved.” Mother’s appeal followed.²

DISCUSSION

Section 362.4, subdivision (a) provides that “[i]f 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.” Such an order shall be filed in the existing family law proceeding and “shall continue until modified or terminated by a subsequent order of the superior court.” (§§ 362.4, subd. (b), 302, subd. (d).) The juvenile court’s primary consideration in making a custody or visitation order is the best interests of the child. (*In re Chantal S.* (1996) 13 Cal.4th 196, 206.) “We review an order setting visitation for abuse of discretion.” (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

Mother acknowledges that a juvenile court has broad discretion in making visitation orders when dependency jurisdiction ends. She nevertheless argues that the evidence does not support the finding that the no-visit exit order was in the best interests of the twins. We disagree.

The evidence shows that A.V. became hysterical during the knife incident, and started therapy sessions afterward. While mother claimed she was chopping vegetables at the time, A.V. said mother was not doing so when she brandished the knife at the dog, yelled at it, and scared both the dog and A.V. Mother did not understand why A.V. reacted the way she did. Whenever

² DCFS filed a letter stating that it was taking no position on appeal. Father filed a respondent’s brief.

A.V. spoke to mother on the phone, A.V. became upset and emotional. Both children, who turned 12 years old during this dependency case, refused to visit mother. Both children also described mother as “crazy.” Mother claimed to see an imaginary cuckoo bird on a record album, suggesting she was somewhat disconnected from reality. Mother reported that at least one doctor had diagnosed her with bipolar disorder and that she had started taking Lithium for it, but she had stopped treatment on her own accord. Mother then later denied to the social worker ever being diagnosed with bipolar disorder. Both children had seen mother drinking vodka, to the point A.V. would try to slap it out of mother’s hand and Alexander saw stashes of it in mother’s closet. Mother’s prior history with DCFS showed that she tested positive for amphetamines in 2009. She also tested positive for amphetamines and methamphetamines in 2016. Yet, mother repeatedly denied having any substance abuse history. Mother failed to drug test on three occasions in November and December 2016, suggesting she was unwilling to acknowledge any drug or alcohol problem and was resistant to treatment.

To the extent mother relies on cases for the proposition that visitation should not be denied during the reunification period, they are of no assistance. Mother was not offered reunification services. And the no-visit order was made at the termination of the case, not during any reunification period.

Under the circumstances here, we find the juvenile court’s denial of visitation was not an abuse of discretion.

DISPOSITION

The juvenile court’s custody order denying mother visitation is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT