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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

B287642

(Los Angeles County
Super. Ct. No. CK85729B)

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and William D. Thetford,
Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father contends the juvenile court erred when it terminated jurisdiction and gave mother full custody of their child at a Welfare and Institutions Code section 364 review hearing.¹ We affirm because the record shows no abuse of discretion.

FACTS AND PROCEDURAL BACKGROUND

Mother has a total of four children fathered by two men. Only the second-oldest child (“daughter”) and her father (“father”) are at issue in this appeal. The three other children were fathered by M.M. who lives in Mexico and who was deported from the United States for felony sexual abuse of mother when she was 13 years old. That sexual abuse resulted in the birth of mother’s oldest child.

1. Dependency Proceedings Commenced in 2010

When dependency proceedings commenced in December 2010, mother had two children: daughter (born July 2010) and her older half-sister (born June 2006). From June to November 2010, the Department of Family and Children Services (DCFS) had been providing voluntary family maintenance services to mother and the children based on physical abuse by father toward the older child. In relation to the family maintenance case, in June 2010, Mother had admitted that she had known father for a year and that he had hit her numerous times. The older child (only four years old at the time) stated that father had hit, slapped, and pulled her hair. Because of the abuse, mother obtained a permanent restraining order against father. Nonetheless mother continued to contact father and appeared to

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

have been living with him when he again abused the older sibling, precipitating the present dependency case in late 2010.

The present juvenile dependency proceedings were commenced by DCFS in response to a referral alleging that father was physically abusive toward mother's oldest child on November 29, 2010. DCFS's investigation revealed that father had hit the sibling, bruising her face. DCFS found that father had a history of abuse toward the child and domestic violence toward mother. Father was uncooperative throughout that investigation.

Just prior to the detention hearing, mother left the country with then-four-month-old daughter and her four-year-old half-sibling without leave of the court. Father drove her and the children to the border so they could live with the maternal great-grandparents in Mexico.

On December 13, 2010, the court ordered the children detained and issued an arrest warrant for mother. That same day, DCFS filed a section 300 petition alleging that on November 29, 2010, father physically abused the older sibling by repeatedly striking the child's face and inflicting multiple bruises, striking the child with a belt, throwing the child onto a couch, and pulling the child's hair. DCFS alleged that father struck the child in mother's presence and on prior occasions had struck mother with his fists while she was pregnant, pushed mother, and pulled her hair. The petition further alleged that mother placed the children in a detrimental and endangering situation by taking them to Mexico and exposing them to M.M., who had a criminal history for lewd and lascivious acts and sex with mother when she was under 14 years old.

Mother remained in Mexico and the juvenile court continued the protective custody and arrest warrants for the next five years. Father initially sent money to help care for daughter in Mexico, but later stopped making payments. While in Mexico, mother reunited with M.M., and had two additional children with him. Mother maintained a relationship with M.M. following her 2016 return to the United States.

2. Mother and Daughter's Return to the United States

In 2016, mother returned to the United States with daughter and her oldest child (the two younger children remained in Mexico with M.M.). They first lived in Washington with the maternal grandmother for a couple of months before moving back to Wilmington, California in the fall of 2016. In Wilmington, mother and the two children resided with the maternal great aunt.

In September 2016, father sent mother sexually explicit and harassing text messages. On November 28, 2016, father appeared at the aunt's home and harassed mother. Despite father's conduct, on December 2, 2016, mother permitted father to have a visit with daughter and to take her to Chuck E. Cheese. Also in early December 2016, father and mother had a verbal disagreement. During which, father pulled mother's hand and tried to strike her. Mother's cousin was present for the altercation and was forced to intervene to prevent father from hitting mother.

Because mother still feared father, mother requested a restraining order in the Long Beach Superior Court on December 2, 2016, based on father's threats of sexual abuse made

in text messages² and on the allegation that father pointed a gun at mother in 2010.

On December 5, 2016, mother contacted and informed DCFS of their return to the United States. A DCFS social worker went to the aunt's home, and observed the home to be appropriate and the children to be well cared for. The children told the social worker that they loved mother and felt safe with her. Mother told the social worker that she fled to Mexico because she feared father, and that she returned to address the outstanding dependency case. DCFS placed the children with the maternal aunt and informed mother that she had to find another place to live but could have monitored visitation. Mother moved in with a friend in the area.

DCFS also interviewed father, who stated he wanted a relationship with daughter and was concerned mother would return to Mexico with the child.

3. Second Detention Hearing

On January 5, 2017, the juvenile court found a prima facie case of abuse, detained the children from their respective fathers, and released them to mother. The court ordered monitored visitation for father and M.M. The court issued a temporary restraining order protecting mother and the children from father.

4. Post-Detention Investigation

DCFS interviewed mother about the 2010 allegations of father's physical abuse toward the oldest child. Mother confirmed that the allegations were true. She also described father's history of domestic violence. Father began hitting mother two to three months after they started residing together.

² In one of the text messages, father propositioned mother for sex in exchange for letting her keep daughter.

He once pointed a gun at mother. Mother explained that she could not figure out how to escape father and did not call the police until November 29, 2010. Mother told the social worker that she was not aware of the pending dependency proceedings when father took her to Mexico in December 2010. Mother expressed her intention to return to Mexico as soon as this dependency case concluded as she had two young children there who needed her.

When interviewed, father denied physically abusing the older child or mother. He asserted that the 2010 allegations were based on false statements from a vengeful ex-girlfriend.

5. Jurisdiction Findings

On March 20, 2017, DCFS filed a first amended petition. The amended petition included the allegation that father had grabbed mother's hand and attempted to strike her in December 2017. On April 3, 2017, the juvenile court reissued the temporary restraining order protecting mother and the children from father.

On May 17, 2017, the juvenile court sustained two section 300 counts pursuant to subdivisions (a) and (b) based on father's domestic violence and mother's failure to protect the children from him. The court dismissed the remainder of the first amended petition. As amended, the sustained counts stated that father and mother had a history of violent altercations, father grabbed mother's hand and attempted to strike her in December 2016, and on prior occasions, threatened her with a gun, struck her inflicting bruises, pushed her, and pulled her hair. The sustained counts alleged that father committed some of these acts in the oldest child's presence and mother did not protect the children from father.

The court found by clear and convincing evidence that there was a substantial danger to the physical health, safety, or physical or emotional wellbeing of daughter if not removed from father's custody. The court declared daughter a dependent of the court and ordered family maintenance services for mother and enhancement services for father. The court ordered father to participate in individual counseling, and to complete a 52-week domestic violence program, an anger management program, and a parenting program. The court also ordered father monitored visitation with daughter, and gave DCFS discretion to liberalize. The court ordered mother to complete a parenting program and participate in individual counseling to address case issues. The court issued a restraining order protecting mother and the children from father, effective until May 17, 2020. The court set a section 364 review hearing for November 15, 2017.

6. Termination of Jurisdiction and Sole Custody Order

At the time of the November 2017 section 364 review hearing, mother was in compliance with the case plan and had been properly providing for the children. She had been cooperative with DCFS and with the visitation order. Father had enrolled in a domestic violence program and completed 9 of the mandated 52 sessions. In June 2017, father had enrolled in a 24-session parenting program and begun individual counseling. Father regularly visited daughter and the visits went well. The visits were liberalized to six hours on Saturdays with father's girlfriend as the monitor. In accordance with the restraining order, the parents had no contact.

In its status report to the court, DCFS concluded mother addressed the problems that required daughter to be declared a dependent. DCFS recommended the juvenile court terminate

jurisdiction and issue a family law order, granting mother sole physical custody of daughter and the parents joint legal custody of daughter, with monitored visits for father.

At the section 364 hearing, the juvenile court admitted into evidence DCFS's November 2017 status report, and father's exhibits showing his involvement in court-ordered programs. Father's attorney asked the juvenile court to order joint physical and legal custody. Counsel acknowledged that Family Code section 3044 applied and created a rebuttable presumption that such an order would be detrimental to daughter's best interests.³ Counsel argued that father had made substantial progress with his anger management and domestic violence issues through the programs and counseling he attended. Counsel asserted that there had been no problems with the monitored visitation. Father's attorney asserted that despite the restraining order, there were other means for father to be able to make decisions about his child with mother, but did not specify how.

Mother's attorney agreed with DCFS's recommendation, but argued mother should have sole legal and physical custody. Counsel argued that because of the restraining order, mother had absolutely no contact with father and had been making all of the educational, medical, and legal decisions. Mother's attorney requested father's visits remain monitored under the current schedule, and that father confirm the visits 24 hours in advance.

Father's attorney indicated father was agreeable to the current visitation schedule if the court was not inclined to order

³ Family Code section 3044 "establishes a rebuttable presumption that joint or sole custody for a parent who has perpetrated domestic violence is not in a child's best interests." (*Ellis v. Lyons* (2016) 2 Cal.App.5th 404, 414.)

joint physical custody. Father expressed concern that mother was going to move to Mexico with daughter.

Daughter's counsel asked the juvenile court to order the child into mother's sole legal and physical custody. Counsel noted that father's exhibits did not show he made progress and that it did not appear father could make joint decisions about the child with mother.

DCFS's counsel acknowledged that its report recommended joint legal custody and sole physical custody to mother. However, before submitting, counsel for DCFS noted that the trial on jurisdiction and the present section 364 hearing were both acrimonious. Counsel acknowledged that it was clear "the parents did not get along."

The juvenile court noted that the restraining order permitted no contact between the parents and that the parents had not been making any decisions together about daughter. By the terms of the restraining order, the parents could not make joint decisions about the child in the future. The court found that the presumption provided by Family Code section 3044 had not been rebutted and there was no basis for joint legal custody. The court observed there was no basis to even liberalize father's visits to unmonitored at that juncture. The court granted mother sole legal and physical custody of daughter. The court ordered father's visitation to be monitored by father's wife or another monitor approved by mother. The court then terminated jurisdiction.

DISCUSSION

Father asserts the court abused its discretion in terminating jurisdiction and awarding mother sole custody.

1. Applicable Law

In terminating jurisdiction over a dependent child, the juvenile court is empowered to make “exit orders” regarding custody and visitation. (§§ 304; 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) “[I]n making exit orders, the juvenile court must look at the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) The court must be guided by the totality of the circumstances and issue orders that are in the child’s best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30–31.) Section 362.4 also provides that any juvenile court order issued pursuant to that statute shall continue until modified or terminated by a subsequent order of the superior court. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

We review a juvenile court’s custody determination in a dependency proceeding for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) We will not disturb the juvenile court’s determination unless it is arbitrary, capricious, or patently absurd. (*Ibid.*)

2. Father Forfeited His Challenge to Termination of Jurisdiction

DCFS argues and we agree father forfeited his challenge to the court’s order terminating jurisdiction because he failed to object to termination. “[A] parent’s failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.) “A party on appeal cannot successfully complain because the trial court failed to do

something which it was not asked to do.” (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603.)

Going into the section 364 hearing, DCFS requested termination of jurisdiction and for mother to have sole physical custody. It is apparent from the transcript, the parties understood the hearing was about termination of jurisdiction and custody exit orders. Yet, father’s counsel solely advocated for father to have joint physical and legal custody. Counsel did not contest the decision to terminate jurisdiction, which father argues on appeal was error. To this extent, father has forfeited his argument that the court erred in terminating jurisdiction.

Even if we were to address termination of jurisdiction, we would find the court did not abuse its discretion. Section 364 states that the juvenile court “*shall* terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” Here, the only evidence in the record was that mother had complied with the case plan and addressed all of the issues what had required the court’s jurisdiction. The children were happy and well cared-for. Father proffered no evidence to the contrary. As no party had proven that conditions still existed that had initially justified jurisdiction or that such conditions would likely exist without supervision, the court was required to terminate jurisdiction under section 364.

3. The Court Did Not Abuse its Discretion in Awarding Mother Sole Custody

Father argues that the juvenile court abused its discretion in awarding mother full custody. The juvenile court must look at

the best interests of the child in issuing an exit order. (*In re John W.*, *supra*, 41 Cal.App.4th at p. 973.)

Here, it was undisputed that mother had resolved the domestic violence underlying the jurisdictional findings. Mother had a restraining order in place against father and was no longer in contact with him. Daughter was well cared for and happy in mother's home. Mother had been the sole caretaker of the child since birth. Father only recently developed a relationship with daughter through weekly visitation.

Although father argues that mother deprived him of a relationship with the child by moving to Mexico, the record paints a different picture when reviewed in the light most favorable to the court's order. Father was the one who drove mother and the children to the Mexican border when the dependency and criminal child abuse investigation commenced. As DCFS noted in its report to the court, sending mother and the children to Mexico worked to father's advantage as he could not be criminally prosecuted without evidence of the abuse. Father's child abuse and domestic violence also prompted mother to stay in Mexico as a means of escaping his violence.

Although father was compliant with his case plan and provided evidence of participation in services, he did not provide affirmative evidence that he had actually made progress with his physical abuse issues. Father had not even progressed beyond monitored visitation and there was no evidence in the record that he was ready for unmonitored visitation at the time of the section 364 hearing.

As to legal custody, mother had always been the child's sole legal, medical, and educational decision maker. Outside of counsel's argument, there was no indication that father sought a

greater decision-making role in the child's life. As the parties and the court recognized, the existing restraining orders, which prevented the parents from having any contact, made joint legal custody impractical.

In addition, Family Code section 3044 created a presumption that because father had committed domestic violence against mother in the last five years, he should not receive custody. This rebuttable presumption "is mandatory and the trial court has no discretion in deciding whether to apply it." (*Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 661 (*Celia S.*)) "[T]he court must apply the presumption in any situation in which a finding of domestic violence has been made." (*In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1498.) "The legal effect of the presumption is to shift the burden of persuasion on the best interest question to the parent who the court found committed domestic violence." (*Celia S.*, at p. 662.)

We observe that the domestic violence was based on the sustained section 300 allegation (never appealed) that on December 4, 2016, father "grabbed mother's hand and attempted to strike her." Although Father contends the trial court improperly applied Family Code section 3044 presumption, he did not make this argument before the trial court. On the contrary, father's counsel asserted to the trial court that "Family Code section 3044 applies here." Thus, father's argument is forfeited.⁴ (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 ["a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court"];

⁴ Even ignoring the Family Code section 3044 presumption, substantial evidence supports the trial court's sole custody order and there is no evidence of abuse of discretion in the record.

see *In re G.P.* (2014) 227 Cal.App.4th 1180, 1193 [“Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error.”].)

In view of the facts described above, we conclude that the juvenile court did not abuse its discretion by granting mother sole legal and physical custody of the child.

Father lastly asserts that the juvenile court was the wrong forum for addressing the custody dispute and that mother’s request for a restraining order in the family law court limited her to that forum. However, section 304 makes clear that “[w]hile the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court.” (§ 304.) Section 304 “gives juvenile courts exclusive jurisdiction over minors who are their dependents, and expressly precludes family courts and probate courts from issuing orders regarding the custody or guardianship of such minors. The obvious intent of this provision is to eliminate the possibility that different courts claiming jurisdiction over the minor could issue inconsistent orders regarding the minor’s custody.” (*A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1390.) The juvenile court’s jurisdiction is paramount to the family law court’s jurisdiction even when the juvenile court acquires jurisdiction later in time. (*In re William T.* (1985) 172 Cal.App.3d 790, 797.) Accordingly, the juvenile court was the only court with jurisdiction to issue custody orders at the time of the section 364 hearing.

4. We Disregard Father’s Challenges to Earlier Orders

We observe that father spends some of his brief arguing about the factual basis for the jurisdictional findings and the

restraining order. Father did not appeal the jurisdictional findings, the dispositional order, or the restraining order. These orders were appealable at the time they were issued. (§ 395 [“A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.”].) It is well established that where the earlier orders are appealable, “it is impermissible to challenge [the] earlier finding by way of an appeal from a subsequent order.” (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1156.) We therefore disregard these arguments, as this appeal is limited to the court’s order terminating jurisdiction and giving mother full custody.

DISPOSITION

The orders are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.