

Filed 12/12/17 In re J.C. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.C., a Person Coming Under
the Juvenile Court Law.

B282978
(Los Angeles County
Super. Ct. No. CK94869)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los
Angeles County, Marguerite Downing, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

H.C. (father) appeals from the dependency court's order terminating jurisdiction and granting sole legal custody of J.C. to L.G. (mother) under Welfare and Institutions Code section 362.4.¹ He contends the order was an abuse of discretion because the court mistakenly believed it could not grant joint legal custody to an incarcerated parent. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

J.C., the infant daughter of mother and father, was born in January 2016. The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) after mother called the police when father threw a plate of hot food at her in July 2016.

Mother has three older daughters who are J.C.'s half-siblings. The three older daughters have been subject to dependency proceedings based on mother's history of drug abuse. The oldest daughter's case was terminated in April

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

2016 with a family law order placing the child with her presumed father. Maternal grandmother was granted legal guardianship of mother's twin daughters in April 2015. Mother successfully regained custody of the twin girls in the fall of 2016 after she participated in programs for anger management, substance abuse, domestic violence and parenting education, and filed a section 388 petition, which the court granted.

Father has been involved with gangs since he was 13 years old. He has a lengthy criminal history, beginning with a juvenile wardship in 2009 for felony street gang activity. He was convicted of second degree burglary, participating in a criminal street gang, and vehicular hit and run in 2012. His more recent convictions include trespassing, possession of a controlled substance, vandalism, and driving with a suspended license.

The incident that triggered a referral to the Department took place on July 12, 2016. Father came home, and mother and father began to argue. During the argument, father threw a plate of hot food at mother, burning her arms and back. Mother called the police, but no police report was filed. Mother claimed the police told them it was best to work out their conflicts and to only call the police if it was serious. In an interview with a social worker, mother said this was the first time father had assaulted her. She said the food was hot, but denied it had burned her. J.C. was not hit by the food. Mother did not feel comfortable telling the social worker what the argument was about. She

admitted having a drug abuse history for smoking crystal meth, and that she had lost custody of three of her children. She also said she was trying to get her children back and had completed numerous programs. Mother agreed to drug test, and her test results were negative.

A social worker interviewed father by phone on August 15, 2016. He initially refused to answer any questions about the incident, but he did say, “we are a young couple and young couples have problems sometimes.” Father was 23 at the time of the events in question. He acknowledged past gang membership, claimed he was not living that life anymore, and he hoped to marry mother one day.

Father was arrested on unrelated charges on August 25, 2016. Shortly thereafter, the Department filed a dependency petition alleging J.C. was at risk of harm based on the parents’ history of domestic violence and mother’s drug use history. The court ordered J.C. detained from father and released to mother.

A social worker interviewed mother, father, and maternal grandmother on September 21, 2016. Maternal grandmother said she did not like father, and had seen the couple arguing. On one occasion, she saw father pull mother’s hair. Mother admitted she and father argued, and that neighbors had called the police to complain about arguments in the past. However, she denied that any of their previous arguments had been violent, or that father had ever pulled her hair. Father admitted arguing with mother, but denied that the argument ever got physical.

“She wanted me to eat some food and the plate somehow got thrown. I swung the plate. I was mad. I didn’t intend to hurt her.” Both mother and father hoped to reunite after father was released.

The Department filed a jurisdiction and disposition report on September 28, 2016, summarizing mother and father’s family backgrounds and recommending that J.C. remain in mother’s custody with family maintenance services in place, and father was not to reside in the home. The jurisdictional hearing was continued twice because father was not present, even though the court had ordered transportation from the jail. At a hearing on December 20, 2016, counsel for mother and father argued the court should dismiss the petition based on the lack of evidence that J.C. was at risk of harm. They argued that without any evidence of domestic violence other than the single incident, jurisdictional findings were not warranted. Father’s counsel emphasized that mother had not been harmed, father had not been arrested or charged with domestic violence, and the Department was not asking for father to complete a domestic violence program. The court amended the allegations involving domestic violence to state that “[o]n or about July 12th, 2016, the father, [H.C.], threw hot food on the child [J.C.]’s mother, [L.G.], in the presence of the child.” It ordered family maintenance services for mother and granted father monitored visits. Acknowledging that father was in

custody for an uncertain period of time,² the court ordered father to participate in parenting classes and individual counseling, with conjoint counseling if parents decided to reconcile.

The Department's March 28, 2017 status review report stated that mother was doing well, receiving assistance from J.C.'s grandparents and great-grandparents, and had moved to a larger apartment. A social worker attempted to visit father at his place of incarceration on January 8, 2017, and January 26, 2017, but on both occasions, "father was unavailable due to behavior concerns." The Department reported that "[a]s of 3/14/2017, father is currently on lock down due to disciplinary actions and cannot make calls or receive visits." The Department recommended terminating jurisdiction and family maintenance services, granting sole physical and legal custody to mother, with monitored visits for father.

At an April 3, 2017 review hearing under section 364, the court terminated jurisdiction, finding that the conditions warranting jurisdiction no longer existed. Over father's

² When the court asked when father's counsel about the status of father's criminal case, his attorney stated father did not have a release date. The court asked father directly, "You don't know what stage you are?" Father responded, "At this point I'm looking at -- it's a life sentence case so it's going to be some time." The record contains no information about the nature of the pending charges against father, other than that they are unrelated to the dependency case.

objection, the court granted mother “sole legal, sole physical custody. Monitored visitation for . . . father.” Explaining its decision to give mother sole legal custody of J.C., the court noted that father had monitored visitation, so joint legal custody would not be appropriate. “And I note [father] is currently incarcerated; so it would not be appropriate for him to have joint legal custody because [mother] would not be able to make decisions and [father] would not be available to make any orders that needed to happen.”

DISCUSSION

Father’s only contention on appeal is that the court’s decision to grant mother sole legal custody of J.C. was an abuse of discretion. He argues the court did not properly exercise its discretion in making the custody orders because it was under the mistaken belief father’s incarceration and limited visitation prevented him from sharing legal custody. We disagree.

When the dependency court terminates jurisdiction, it has authority to make orders addressing custody and visitation. (§ 362.4; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1122–1123.) We review those orders for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) Custody determinations are not disturbed in a dependency proceeding in the absence of an arbitrary, capricious, or patently absurd exercise of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *In re Maya L.*

(2014) 232 Cal.App.4th 81, 102.) Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) “It is not our function to weigh the credibility of the witnesses or resolve conflicts in the evidence. [Citation.] Rather we must indulge in all reasonable inferences to support the findings of the juvenile court and must review the record in the light most favorable to the juvenile court’s orders.” (*Ibid.*)

The dependency court’s custody and visitation orders focus on the child’s best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) While family law has a presumption favoring joint custody, the California Supreme Court has held that “application of a family-law-based joint custody presumption would be inconsistent with the purpose of juvenile court law.” (*In re Chantal S., supra*, at p. 206.) Instead, the dependency court, “which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.’ [Citation.]” (*Ibid.*)

The mere fact that a parent is incarcerated is insufficient to support dependency jurisdiction without any evidence of risk to the child, so long as the incarcerated parent makes arrangements for the child to be cared for during the parent’s period of incarceration. (See § 300, subd. (g); *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 672–673.) Similarly, the fact that a parent is incarcerated

cannot serve as the sole basis denying a request for custody under section 361.2. (*In re V.F.* (2007) 157 Cal.App.4th 962, 969–970; but see *In re A.A.* (2012) 203 Cal.App.4th 597, 606–609 [limiting *In re V.F.*’s holding to cases where a child has not been removed from the incarcerated parent under section 361, subdivision (c)].)

Father attempts to take these principles one step further by arguing that if incarceration alone is an insufficient basis for dependency jurisdiction or denying a noncustodial parent’s request for custody under section 361.2, it also cannot be the deciding factor when a court exercises its discretion at a review hearing to grant sole custody to the remaining, non-incarcerated parent. Rejecting this argument, we conclude that father’s incarceration can properly serve as a factor in the court’s decision to terminate legal custody. Here, father’s role in the domestic violence and his incarcerated status gave the court a sufficient basis for deciding that it would be in J.C.’s best interest for mother to have sole legal custody of J.C. The court’s order maintained monitored visitation for father and the law provides him with the ability to seek a change of the custody order based on changed circumstances and J.C.’s best interests. (§ 302, subd. (d).)

DISPOSITION

The orders terminating jurisdiction and granting mother sole legal custody are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

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