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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re H.F., a Person Coming  
Under the Juvenile Court Law.

B283337

(Los Angeles County  
Super. C. No. DK18002)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

DANIEL F.,

Defendant and Appellant.

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

Law Offices of Vincent W. Davis & Associates and Stephanie M. Davis, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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The juvenile court terminated its dependency jurisdiction over ten-year-old Harrison F. with an exit order granting the child's mother, Diana F., sole physical and legal custody, and the child's father, Daniel F., monitored visitation. On appeal, Daniel F. argues the court erred in denying him joint custody, and requiring his visitation to be monitored. We affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### ***A. Referral and Detention from Father***

#### *1. Events preceding the filing of the section 300 petition*

Daniel F. (Father) and Diana F. (Mother) are the parents of Harrison F., born in 2006, and Harrison's adult sibling, born in 1998.

On May 16, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging general neglect against Mother. The caller stated that Mother had taken her adult son's car keys, and then locked both her children inside the house. The caller expressed concern about Mother's mental health, and alleged she did not properly feed or bathe Harrison. The caller further asserted that Father normally took care of Harrison, but Mother had recently "blindsided" him with a restraining order that compelled him to leave the home.

On May 18, 2016, DCFS spoke with Harrison's paternal grandmother about the allegations in the referral. The grandmother stated that she was worried about Harrison because Father was "the one who oversees the care of [the child] . . . and now . . . he is not in the home." She also stated that the family court had held a hearing "to ensure [M]other follows up on

[Harrison's] medical care regarding his liver enzymes level." Although the grandmother expressed concerned about Mother's ability to care for Harrison, she had difficulty articulating why she felt that way.

Later that day, DCFS spoke with Harrison, then nine-years old, at his school. Harrison acknowledged his liver enzyme levels were being monitored, but denied that Mother had ever failed to take him to a medical appointment. Harrison also denied that Mother had locked him or his adult brother in the house. Harrison stated that he was currently angry at Mother for "taking away his dad." According to Harrison, Mother was a "liar" because she had told Father she was going to look for a job, when she was actually going to court for a restraining order. Harrison also alleged Mother had falsely accused Father of punching walls and throwing things at her. He admitted, however, that Father sometimes insulted Mother in his presence, calling her words like "fat" and "lazy." Harrison believed Father was a good dad, and denied witnessing any abuse in the home. The principal of Harrison's school told DCFS the child was getting good grades, and did not exhibit any behavioral issues.

DCFS interviewed Mother at the family home. She stated that she had recently obtained a temporary restraining order that required Father to leave the house. Mother explained that there was a family court hearing scheduled on June 3, 2016 to address whether the restraining order should be made permanent.

Mother stated that Father regularly called her insults and derogatory names, including "stupid," "lazy," "fat," "bitch," "dumb fuck," "cow," "moron," "trash," and "a piece of dirt." Mother also stated that Father had begun monitoring where she

went, possibly through the GPS in her phone or car. On one recent occasion, Mother had been meeting with a domestic abuse counselor in a park when Father suddenly approached them, and asked Mother whether she was lost. Father had also traveled to the domestic violence center on the day Mother sought the restraining order.

Mother stated that she had decided to seek a restraining order because Father's conduct was becoming more physical and violent. One month earlier, Father had pushed her to the ground during an altercation. In March of 2016, he had kicked a hole in Harrison's bedroom door, and then pushed Mother against it. Father then tried to hide what had occurred by removing Harrison's door. On another occasion in March, Father took Mother's cell phone from her, and smashed it on the ground. Earlier in the year, Father had thrown a box of Kleenex and a ruler at Mother's face. Father had also punched holes in the wall of their bedroom, and thrown Harrison's watch against the wall.

Mother reported that during an altercation in December of 2015, the police had come to the home, and directed Father and Mother to stay away from each other. After the police left the premises, Father began yelling at Mother, and pounding on the door of her bedroom. Mother exited the house, got into her car and called a friend. Father followed her outside, and screamed at her to get out of the car while striking the vehicle with his fists. Mother's friend could hear Father screaming, and called the police. The police were then forced to return to the home for the second time that day.

Mother stated that the "final straw" had occurred several days earlier, when Father became upset because she wanted to take a shower. Mother explained that Father was trying to go to

sleep, and did not want her to take a shower. When Mother insisted, Father refused to let her turn on the lights, and took away all the towels. Earlier that same day, Father had sent Mother an email threatening to restrict her access to the family bank account, and criticizing her for gaining weight. The email also stated that Mother was “greasy,” had “terrible hygiene” and warned her that she needed to start respecting Father if she wanted to remain his wife.

When asked about the paternal grandmother’s comments regarding Harrison’s enzyme levels, Mother explained that a physician had prescribed the child antibiotics for a sinus infection. According to Mother, the child had a bad reaction to the medicine, which may have caused his enzymes to rise. Mother stated that Harrison was scheduled to have a blood test and an ultrasound on his liver. Mother believed Father was trying to make her look bad by claiming she was not adequately addressing the child’s health issues. Mother denied that she had locked her children in the home, and denied experiencing any mental health issues.

Mother described Father as “a really good” parent to Harrison. Mother clarified that her issue with Father was that he treated her very badly, frequently in Harrison’s presence. Mother did not believe Father had any mental illness, but asserted that he was “very controlling and abusive.”

On June 6, 2016, DCFS spoke with Father, who had moved back into the family home three days earlier. Father stated that Mother had recently asked the court to vacate the restraining order. Father asserted that Mother was “naïve,” and that the “women at the [Santa Clarita] Domestic Violence Center” had

“pushed [her] into pursuing” the order. Father stated that he did not have any concerns with Mother’s parenting abilities.

When asked about the allegations Mother had made against him in the application for the restraining order, Father explained that the “two weeks [he had spent] away from his family showed him [that he needed to change] how he expresses his anger and . . . frustration with [M]other.” Father said he had not understood his conduct was upsetting to Mother, and now realized that “being angry is not the way to go.” Father clarified that he did “not think he [had done] anything wrong,” but “needed to take ownership” because his conduct “made [Mother] feel bad.”

Father admitted he had committed many of the acts Mother had described to DCFS. Father acknowledged he had kicked Harrison’s door, but contended the door broke because it was “made of inexpensive material.” Father also admitted he had gotten “in [Mother’s] face” that night, but denied pushing her. Father admitted he had thrown Kleenex and a ruler, but denied throwing the items at Mother. According to Father, he had thrown those items “at the wall or down the stairs because it was his way of telling [Mother] to get out of his home office.” Father also admitted breaking Mother’s cell phone, punching holes in the wall and throwing his son’s watch.

Father denied that he had ever followed Mother, asserting that it was a “fluke” he had run into Mother and the domestic abuse counselor at the park. Father admitted he had called Mother a series of offensive names, but claimed that she called him names too. Father could not remember any specific name Mother had called him in the past.

Father stated that the police had come to the home five or six times in the past two years, but he had never been arrested. Father did not believe any of his behavior qualified as domestic violence, and did not believe his conduct had any effect on Harrison. Father claimed “the domestic violence center and the mother’s lawyer were railroading them toward divorce.”

Later that day, DCFS interviewed Mother again. She confirmed she had withdrawn the restraining order, and stated that she was no longer interested in obtaining a divorce. Mother acknowledged that she had previously told DCFS she was afraid of Father, but asserted that she had been upset when she made that statement. Mother also claimed DCFS had misunderstood her prior comments about Father’s use of force against her. According to Mother, Father had not pushed her to the ground; he had “bumped her by accident and she fell.”

DCFS advised Mother and Father that although the restraining order had been withdrawn, the department still intended to pursue a dependency petition. The parents stated that they were addressing their marital issues through voluntary counseling, and that DCFS did not need to be involved in their personal affairs.

On June 14, 2016, the sheriff’s department informed DCFS that officers had responded to six calls from the family’s home in the past nine months. That same day, Krista Wakefield, a domestic violence counselor who had aided Mother in obtaining the restraining order, told DCFS that her colleague had been sitting with Mother at the park when Father approached them. Father asked Mother whether she was lost or had forgotten where she lived. Wakefield described the conduct as “typical intimidating behavior of a batterer.” Wakefield stated that

Mother had previously expressed fear about what Father might do to her. Wakefield also reported that on the day Mother had gone to court to obtain the restraining order, Father had directed Harrison to text her and ask her where she was.

## *2. Section 300 petition and detention*

On July 20, 2016, DCFS filed a petition alleging Harrison fell within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> The petition alleged Harrison’s parents had a “history of engaging in violent altercations” that had resulted in “multiple law enforcement responses to the child’s home. The father’s violent conduct and the mother’s failure to protect the child endanger the child’s physical health and safety. . . .”<sup>2</sup>

DCFS filed a detention report in support of the petition that contained a summary of its initial interviews with family members and other persons involved in the case. DCFS concluded that Harrison was a “victim of [e]motional [a]buse due to the ongoing domestic violence that exists between his parents.” DCFS explained that Father degraded Mother in Harrison’s presence, and involved the child in his disputes with Mother. According to DCFS, Father’s conduct was consistent with an abusive “cycle of violence which usually begins with controlling, stalking, verbal abuse and . . . escalates to physical violence.”

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<sup>1</sup> Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

<sup>2</sup> The petition included an identical allegation under section 300, subdivision (a). DCFS, however, voluntarily dismissed that allegation.



DCFS further concluded that Father had “shown little insight into how his abusive behavior is negatively affecting their son.”

DCFS expressed concern that Mother had dropped the restraining order despite her “reported and documented fear of the father[,] and [then] allowed [him] to move back into the family home without ensuring that he is properly addressing his anger issues.” DCFS believed that filing a non-detention petition was in Harrison’s best interests because it would “ensure the parents address the ongoing domestic violence concerns.”

Shortly before the detention hearing, DCFS filed an addendum report stating that Father had told the department he did not understand why it was pursuing the petition now that Mother had withdrawn the restraining order. Father asserted he and Mother had “resolved their problems,” and that he was now able to “control[] . . . his temperament.” Father also stated that he believed he was being “targeted” by DCFS. In a last-minute information, DCFS modified its recommendation from non-detention to detention from Father, and placement with Mother. DCFS explained that it had changed its recommendation “after reassessing the parents’ domestic violence history, father’s denial of the seriousness of the domestic violence and father’s ability to intimidate the mother.”

On June 22, 2016, the juvenile court found DCFS had made a prima facie showing that Harrison was a person described under section 300, subdivision (b). The court ordered the child to be placed with Mother, and detained from Father, who was provided monitored visitation. The court scheduled a jurisdiction and disposition hearing on July 12, 2016.

## ***B. Jurisdiction and Disposition***

### *1. Jurisdiction and disposition report*

On July 5, 2016, DCFS filed a “Jurisdiction/Disposition Report” that included a summary of Father’s prior child welfare history. According to the report, DCFS received a referral in 2014 alleging that Harrison had said Father was “throwing and hitting his mother with bottles,” and “bang[ing] her head against the ground.” The referral further asserted that Harrison said he was “very afraid during the incidents,” and had cried when describing what he witnessed. However, when DCFS interviewed Harrison and his brother about the referral allegations, they “denied that they ha[d] ever observed the parents engage in a physical altercation.” Harrison recalled seeing his Father throw an object at Mother, but could not remember what he had thrown. The parents admitted having verbal altercations in Harrison’s presence, but denied the bottle-throwing incident. DCFS ultimately deemed the referral to be unsubstantiated.

The jurisdiction report also summarized additional interviews DCFS had conducted with family members. On June 29, 2016, Mother told DCFS that when Father had cracked Harrison’s door during a dispute in April, he got in Mother’s face, “bumped [her] with his chest . . . and grabbed [her] with both arms on [her] shoulders.” Mother stated that she “knew that if he was like this, I need to get away, so I did.” Mother also recalled the incident when Father broke her phone, explaining that he became angry because she had bought herself a phone. Father took the phone from her, removed the protective cover, and threw it on the floor repeatedly until it broke.

DCFS interviewed Father the same day. He admitted bumping Mother on one occasion, but asserted that was the only

time he had ever made physical contact with her. Father admitted he had “lost control a little bit in the past,” and acknowledged having cracked a door, breaking Mother’s cell phone and punching holes in the wall. Father explained that before Mother had obtained the restraining order, “anger” was his only coping mechanism.

Harrison told DCFS he had never witnessed any physical violence between his parents, and had never seen his Father damage any property. Harrison admitted he had heard Father call Mother names, but had never heard Mother call Father names. Harrison stated that he did not believe his father had done anything wrong, and wanted him to move back into the home.

In its assessment and evaluation, DCFS concluded that Father had been “the primary aggressor in the relationship,” while Mother had “enabled [his] abusive tendencies through silence and omission.” DCFS believed Harrison was protective of Father, and appeared to minimize his knowledge of what was occurring. DCFS also believed that while Father had been compliant and cooperative, he was still behaving in an “impulsive manner,” and exhibited “unresolved anger issues.” DCFS recommended the court sustain the petition, leave Harrison placed with Mother and continue to provide Father monitored visitation.

Father requested an adjudication of the petition, which was scheduled for September 1, 2016.

### ***C. Interim Report***

On September 1, 2016, DCFS submitted an interim report summarizing additional developments in the case. During an interview on August 24, 2016, Mother told DCFS she did not believe Father was “ready to move back in” to the family home. Mother explained that although Father had made some improvements, she thought he needed more counseling to insure “what happened in the past does not happen again.”

DCFS reported that Father’s domestic violence and anger management counselors had stated that he was taking responsibility for his past actions, and working hard “to improve how to respond to his wife and improve his marriage.”

On August 26, 2016, Father submitted a letter to DCFS requesting that the department terminate the case, and allow him to return to the home. Father asserted that he had made “great strides” in addressing his anger before DCFS became involved in the case. According to father, he had succeeded in “let[ting] go of the mass of [his] anger,” and should be permitted to take care of his family.

DCFS spoke with Karen Weil, who monitored Harrison’s visits with Father and had previously counseled the family. Weil stated that during a recent visit, Father told Harrison he needed to tell his therapist and the court that he wanted Father to move back into the house, and that Father was a good dad. Weil stated that the paternal grandmother, who was present at the visit, had directed Father to stop saying those things to the child. Father, however, continued to tell Harrison to talk to the court. Weil said Father’s comments made her uncomfortable, and that Harrison “looked scared” and confused as to how he should respond.

Weil also reported that Harrison told her he was “happier in school and at home [because] [t]here has been no conflict . . . with the father out.” Weil explained that before DCFS became involved, Harrison was “a different child, he was not happy at school and . . . didn’t know what to do.” Although Harrison was now happier, he felt “guilty” and “torn” because he knew Father was not in “a happy situation.”

Weil also reported that Father was continuing to behave improperly toward Mother. During recent meetings, Father had called Mother a “bitch,” and described her clothing as “slutty.” Weil stated that when Mother went out to dinner with Father, she would come back “upset and crying.” The prior evening, Father told Mother she did not deserve him as a husband, and yelled at her in front of a waiter. Weil stated that Father had been “doing this to his wife for years,” and did not “see that [his conduct was] very destructive.” Weil believed the parents needed more time to work on their issues, and did not believe Father was ready to return to the home. Weil also believed Father was instructing Harrison to say he was a good parent.

During an interview on August 29, 2016, Mother told DCFS Father had become angry after learning that she told the department she did not believe he was ready to move back into the home. After learning of her statement, Father refused to visit with Harrison, and refused to give Mother any money for groceries, telling her she should go get a job. When Mother responded that she needed food for Harrison, Father told her she could drop the child off at his house because he had food. When Mother became upset, Father told her “grow up little girl.”

In its assessment and evaluation, DCFS concluded that although Father had been complying with his case plan, he had

still not resolved his anger issues, and was not ready to return to the home.

On September 1, 2016, the court held an adjudication and ordered Harrison placed with Mother under the supervision of DCFS; Father was provided monitored visitation. The court gave DCFS discretion to liberalize visitation, and scheduled a status review hearing on February 24, 2017.

#### ***D. Father's Petition for Change in Custody***

##### *1. Disagreements regarding medical care and visitation*

In the first week of October, DCFS liberalized Father's visits with Harrison to unmonitored. Shortly after the unmonitored visits began, the parents became involved in a dispute regarding Harrison's medical care. On October 13, Father sent Mother an email expressing concern that Harrison's enzyme levels had become elevated again, and recommended Mother take him to see Dr. Manual, the physician who had initially diagnosed the child's liver issue. A DCFS social worker whom Father had included on the email directed Mother to take Harrison to see his regular pediatrician, and obtain a letter explaining whether the child needed to see a liver specialist and a nutritionist. In response, Mother informed the social worker that Harrison's regular pediatrician, Dr. Vashista, had ordered blood testing, and would provide a recommendation once he had received the results. Later that same day, Father sent Mother another email informing her that he had scheduled an appointment for Harrison with Dr. Manual. Mother immediately sent Father a follow-up email stating that she did not want Harrison to see Dr. Manuel, and that she had a scheduled a meeting with Dr. Vashista. Mother's email also stated that she

would not allow Father to have unmonitored visits with Harrison that week because Father had “broken the Court Order by speaking poorly to Harrison about [her] during all of [the] unmonitored visits.”

*2. Father’s petitions regarding medical care and visitation*

On October 25, 2016, Father filed a “walk on request” seeking an order requiring mother to comply with DCFS’s unmonitored visitation schedule. A hearing was scheduled for November 2, 2016. Several days later, Father filed a section 388 petition requesting that the court change its disposition order to provide him joint custody of Harrison, or to liberalize his visits to include overnight stays. Father also sought an order permitting him to take the child to see Dr. Manual for treatment of his liver condition.

The petition asserted that Father had complied with all aspects of his case plan, and was making significant progress in controlling and understanding his anger. The petition further asserted that the change in custody and visitation was necessary to protect the child’s well-being. According to the petition, Harrison had developed a fatty liver while residing with Mother, which had caused his enzymes levels to rise. The petition further alleged that the condition could “potentially [cause] irreparable liver damage at a young age,” and that Mother had not allowed Father to seek treatment.

On November 2, 2016, DCFS filed a last-minute information notifying the court that Father, acting without permission or notice, had taken Harrison to see Dr. Manual during unmonitored visits on October 19th and 28th. Mother learned Father had taken Harrison to the physician after the child came home with prescription antibiotics. DCFS explained

that Father preferred Dr. Manuel because he was the first physician who had identified the potential liver problem. Mother, however, believed Dr. Manuel may have caused or exacerbated the liver problem by prescribing an incorrect dosage of a drug, and preferred the child's current pediatrician. DCFS expressed concern that the parents were putting Harrison in the middle of their dispute. In a second last-minute information, DCFS reported that Harrison's therapist had informed the department that the child was "stressed out about what was happening" at home.

### *3. Trial court's resolution of Father's petitions*

On November 2, 2016, the trial court heard Father's walk on petition and his section 388 petition. The court ordered DCFS to schedule a child and family team meeting to resolve visitation issues, and to reassess whether Father's visitation should continue to be liberalized. The court denied the portion of Father's section 388 petition requesting a change in custody or visitation. The court scheduled a hearing on the portion of the petition regarding Harrison's medical condition, and ordered DCFS to prepare a report.

On November 22, 2016, DCFS submitted a report stating that Mother had recently taken Harrison to a specialist at UCLA who had found Harrison's enzyme levels to be at or near normal. The specialist had scheduled a follow-up meeting to discuss Harrison's diet. DCFS also reported that Mother had provided the department a detailed history of Harrison's liver problems, and concluded that Mother had handled the issue appropriately. Mother claimed Father was now in agreement that Harrison was receiving proper medical care, and that he should not see Dr.



Manuel. Mother also said Father told her he regretted filing the section 388 petition.

Mother informed DCFS she had a series of altercations with Father in September and October. On October 16, Father had exited his vehicle while dropping off Harrison, and called Mother a bitch. Mother claimed that she then “took the liberty of cancel[ling] the [unmonitored] visits [because she] was scared of meeting [Father].” Several days later, she apologized to Father, resumed the visits and promised not to violate the court’s orders again.

Mother explained that everything with Father was about “power and control,” and noted that he had recently “cut her off financially” by removing her name from bank and utility accounts. Mother described a series of additional disputes she had with Father around the time he filed the section 388 petition, and listed numerous disparaging remarks he had made to her in September and October. Although Mother believed Father’s conduct was causing Harrison to act “stressed and angry,” she stated that Harrison would be “devastated” if the court barred Father from having unmonitored visits.

On November 14, 2016, Father informed DCFS he was withdrawing his section 388 petition. When asked why, Father stated he and Mother had some “miscommunication issues that led to a misunderstanding.” Father also confirmed Mother was now complying with the visitation schedule.

Harrison told DCFS he enjoyed his unmonitored visits with Father, and always felt safe in his presence. Harrison also reported that he was doing “amazingly” with his Mother, and was hopeful that Father would be permitted to move back into the home soon.

In its assessment and evaluation, DCFS concluded that Mother had properly addressed Harrison’s medical needs, and done “everything the court asked her to do.” DCFS also concluded that Father’s recent behavior suggested he was still trying “to manipulate and control the mother.”

### ***E. Termination of Jurisdiction***

#### ***1. Six-month review report***

On February 24, 2017, DCFS filed a six-month status review report stating that both parents had been participating in services, and that all of their counselors’ letters had been positive. DCFS reported that Father had begun unmonitored overnight visits with Harrison in December, and that the visits had been positive for both of them.

Mother informed DCFS she intended to file for divorce because she believed her relationship with Father would be healthier if they separated. Mother emphasized, however, that Father was “great” with Harrison, and that she supported the overnight visits.

In its assessment and evaluation, DCFS concluded that Father appeared to have “come to terms that the mother no longer wants him to return back to the family home.” In DCFS’s view, both parents had made an effort “to change their lifestyle,” and had “proved . . . that they are safe, stable and appropriate to their son.” DCFS recommended the court terminate jurisdiction with an exit order providing the parents joint physical and legal custody of Harrison.

## *2. Court's order terminating jurisdiction*

At the six-month review hearing, Mother's counsel requested that the court retain the current visitation schedule, and refer the matter to the family court. Counsel explained that under the current schedule, Harrison resided with Father from Wednesday afternoon until Friday morning, and Saturday afternoon through Sunday morning. Counsel also notified the court that when Mother had arrived at the hearing that morning, Father had not allowed her to "assume custody or talk with Harrison."

Father's counsel informed the court that Father was requesting "sole physical and joint legal" custody of Harrison. Counsel asserted that Father believed "Mother discusses the case with Harrison, and that is potentially traumatic [for] the minor . . ." In response, the court stated that it did not appear either party wanted to close the case: "[Mother is] complaining that today outside, [Father is] not abiding by visitation and exerting power and control and dominan[ce]. [Father is] sitting here saying he [is] not in agreement with joint physical, and he wants sole physical custody, even though the mother has had custody since the case came into the system in June. So . . . neither of them . . . wants the case closed. [¶]. . . [¶] And we [are] back were we [have] been the entire time."

The court further explained that the case plan had required Father to address domestic violence issues, and yet he was still "exerting dynamics of power and control" by prohibiting Mother from seeing Harrison, and requesting sole physical custody. The court concluded Father's request indicated he was "still not being reasonable."

Father's counsel disagreed, arguing that Father wanted "sole physical" custody because the child had some "medical issues that need to be taken care of pretty consistently." Counsel argued that Father had been addressing Harrison's health issues by "helping the child lose weight," while Mother had been exacerbating his medical situation by taking the child to get fast food.

Harrison's counsel informed the court "that the issue has never been Father's compliance with services nor Harrison's relationship with Father. The issue has always been Father's lack of insight as to how his behavior exerts control and dominance over both the Mother and on Harrison." The court agreed, and announced that it intended to "clos[e] the case with sole legal and physical to the mother, and father's visits monitored weekly by a paid professional, paid for by the father." When asked to assess this proposal, Harrison's counsel stated that the child enjoyed his time with Father, and that problems only arose when Father was in Mother's presence. The child's counsel asserted that while "the court's recommendation was not inappropriate," he suggested that "mediation might be appropriate to resolve the . . . custody order between the parents."

Father's counsel objected to the court's proposal, and disputed Mother's version of what had occurred outside the courtroom that morning. Father's counsel asserted that Father said Mother never actually asked him whether she could sit with or speak to Harrison.

The court then terminated jurisdiction with an exit order granting Mother sole legal and physical custody, and monitored visitation for Father. The court explained that the basis for its

ruling was that Father had “not made substantial progress in individual counseling and a domestic violence program.”

## **DISCUSSION**

Father does not challenge the juvenile court’s termination order, but argues that the court erred in granting Mother sole physical and legal custody of Harrison, and reducing his visitation to monitored.

### ***A. Summary of Applicable Law and Standard of Review***

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make “exit orders” regarding custody and visitation. [Citations.] Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court.’ [Citations.]” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799; see also § 362.4.) “When the juvenile court makes custody or visitation orders as it terminates dependency jurisdiction, it does so as a court with ‘a special responsibility to the child as *parens patriae* and [it] must look to the totality of a child’s circumstances when making decisions regarding the child.’ [Citation.]” (*In re J.T.* (2014) 228 Cal.App.4th 953, 963; see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 (*Nicholas H.*) [when making a custody determination under section 362.4, “the court’s focus and primary consideration must always be the best interests of the child”]; accord, *In re Chantal S.* (1996) 13 Cal.4th 196, 206.) This determination is made without reference to any preferences or presumptions ordinarily applicable in the family court. (See *In re John W.* (1996) 41 Cal.App.4th 961, 972 [ordinary “presumption of parental fitness ‘that underlies custody

law in the family court just does not apply to dependency cases”].)

We review a “custody . . . order [issued] pursuant to section 362.4 for abuse of discretion [citation] and may not disturb the order unless the court ““exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].”” [Citation.]” (*In re M.R.* (2017) 7 Cal.App.5th 886, 902 [citing and quoting *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300]; see also *Nicholas H.*, *supra*, 112 Cal.App.4th at p. 265 [“the juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case”].)

***B. The Trial Court’s Custody Order Was Not an Abuse of Discretion***

Father argues the record contains “no evidence . . . supporting the trial court’s decision to give the mother sole legal and physical custody, revert [his] visitation to monitored and drastically reduce the frequency and duration of those visits.” Rather, according to Father, the evidence demonstrates he “completely eliminated the factors bringing him before the juvenile court,” and was therefore entitled to joint custody or, alternatively, unmonitored visitation. In support of these assertions, Father cites evidence showing that he complied with his case plan requirements, and that all of his counselors believed he had made significant progress in addressing his anger issues. In addition, Harrison’s therapist reported that the child wanted to spend more time with Father, and DCFS recommended joint custody.

Father, however, fails to address other evidence in the record that supports the juvenile court's finding that he had not resolved the issues that caused DCFS to initiate the dependency proceedings. As the juvenile court noted at the status review hearing, DCFS filed its petition after learning of Father's abusive and controlling behavior toward Mother. The detention and jurisdiction reports contain extensive evidence that Father frequently insulted Mother and called her degrading names, often in the presence of Harrison. In addition, Father had engaged in a series of aggressive, sometimes violent, acts toward Mother, which included punching holes in the wall, cracking a door to his son's bedroom, destroying Mother's personal property, monitoring Mother's location, throwing items at her and pushing her to the ground. When DCFS initially questioned Father about this conduct in June of 2016, he stated that he did not believe his behavior qualified as domestic abuse, and denied that it was having any effect on Harrison. He also described Mother's decision to seek a restraining order as "naïve," asserting that her domestic abuse counselors had convinced her to do it.

Father's abusive and controlling behavior continued after DCFS filed the dependency petition. In August of 2016, more than two months after DCFS had become involved in the case, a monitor reported that Father was still using offensive and inflammatory language with Mother, and had recently directed Harrison to tell the court he wanted Father to move back into the home. When Father learned that Mother had told DCFS she did not feel he was ready to move back into the house, he threatened to cut off her financial resources and refused to visit with Harrison. A family counselor noted that Father had been

treating Mother this way “for years,” and still failed to understand that his conduct was “destructive.”

The record indicates that Father continued to make financial threats and disparaging remarks toward Mother throughout September and October of 2016. Moreover, when DCFS liberalized Father’s visits to unmonitored in early October, he ignored Mother’s directions about Harrison’s medical care, and transported the child to a physician whom he favored. In late October, five months after DCFS had become involved, Father filed a section 388 petition accusing Mother of having placed the child’s health at risk by failing to address his medical needs. DCFS found these allegations to be false, and Father eventually withdrew the petition. In a report filed at the end of November, a full six months after the case had been initiated, DCFS concluded that Father was still attempting to control and manipulate Mother.

Finally, at the status review hearing in February of 2017, Father requested sole physical custody of Harrison despite the fact that the child had been living happily with Mother for the duration of the case. In support of his request, Father asserted that he believed Mother was talking to Harrison about the case, and had placed the child’s health at risk by allowing him to eat unhealthy foods. The record, however, contains no evidence supporting either of these allegations.<sup>3</sup> Moreover, not a single social worker or therapist who was involved in the case ever recommended removing Harrison from Mother’s custody. DCFS’s reports do not allege that Mother engaged in any form of

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<sup>3</sup> The record does, however, contain evidence that Father had made improper comments to Harrison about the case, and spoke negatively of Mother in the child’s presence.



misconduct apart from being too accommodative of Father's abusive behavior. The reports consistently state that Harrison was happy living with Mother (particularly after Father had moved out), and that she had met all of the child's needs, including his medical needs. There is also no evidence that Harrison ever requested to live only with his Father.

The juvenile court could rationally infer that Father's request for sole custody was unreasonable, and showed that he was still attempting to exert power and control over Mother, and continued to lack insight into how his conduct affected the family. We find no abuse of discretion in the court's finding that Harrison should remain in Mother's custody, and that his visits with Father should remain monitored, until Father made more progress in addressing the issues that had led to the dependency proceedings.<sup>4</sup>

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<sup>4</sup> Father also argues the trial court violated his due process rights by relying on Mother's allegation that he prevented Harrison from speaking with her immediately prior to the status review hearing. More specifically, Father asserts the court prohibited him from "present[ing] any evidence" as to what actually occurred outside the courtroom, thus denying him a fair hearing on that issue. The hearing transcript shows, however, that Father never requested to introduce any such evidence. Although Father's counsel asserted that Mother's representations as to what had occurred outside the courtroom were inaccurate, Father did not ask to present testimony or any other evidence on the issue. In any event, the record shows the court's decision to award Mother sole physical custody was supported by evidence separate and apart from Mother's description of what occurred outside the courtroom, including Father's recent case history and his baseless request for sole custody of Harrison.

**DISPOSITION**

The court's order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.