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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re E.V., a Person Coming Under  
the Juvenile Court Law.

B287839

(Los Angeles County  
Super. Ct. No. DK21182)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARGARITA V.,

Defendant and Appellant.

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

John P. McCurley, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Megan Turkat Schirn, under appointment by the Court of  
Appeal, for Minor.

\* \* \* \* \*

When a juvenile court terminates its dependency jurisdiction over a child, it may issue an “order determining the custody of, or visitation with, the child,” and that order becomes part of an ongoing or new family law case and “continue[s] until modified or terminated by” the family court. (Welf. & Inst. Code, § 362.4.)<sup>1</sup> However, such a so-called “exit order” cannot restrict the family court’s authority to modify or terminate the order. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455-1457 (*Cole Y.*); *In re John W.* (1996) 41 Cal.App.4th 961, 972-973 (*John W.*)). When a juvenile court’s oral recitation of an exit order’s terms is internally inconsistent and could be construed as impermissibly restricting the family court, but the written exit order’s terms itself clearly do not, which is controlling? In this circumstance, we hold that the written order controls. And because the written order here is valid, we affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

Margarita V. (mother) and Ernest V. (father) had E.V. in 2001, married in 2002, and separated in 2015. After they separated, mother started sending father text messages that contained threats of suicide and pictures of handguns. At one point, mother was involuntarily held for psychiatric evaluation and was diagnosed with mental illness. In November 2016, mother sat on then-15-year-old E.V.’s chest until he had difficulty breathing and, after he wrestled free, slapped him repeatedly on the shoulder with enough force to leave a bruise. E.V. also reported that mother was using illegal drugs.

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

In January 2017, the Los Angeles County Department of Children and Family Services (the Department) filed a petition asking the juvenile court to exert dependency jurisdiction over E.V. In April 2017, mother entered a plea of no contest to the juvenile court's dependency jurisdiction on the grounds that she (1) nonaccidentally and "inappropriately physically disciplined" E.V., thereby placing him at substantial risk of serious physical harm (and rendering jurisdiction appropriate under section 300, subdivisions (a) and (b)), and (2) had "mental and emotional problems . . . [that] render [her] unable to provide regular care" to E.V., thereby placing him at substantial risk of serious physical harm (and rendering jurisdiction appropriate under section 300, subdivision (b)).<sup>2</sup> Following mother's plea, the juvenile court exerted dependency jurisdiction over E.V., removed him from mother's custody, placed him in father's custody, and ordered that the Department provide mother enhancement services that included domestic violence and parenting classes, individual counseling, a psychological evaluation, and random drug testing.

After a few status hearings at which the Department reported that mother was not complying with her classes or counseling or showing up for drug testing, the juvenile court convened a hearing pursuant to section 364 to determine whether to terminate dependency jurisdiction on the ground that the conditions "justify[ing the court's] initial assumption of jurisdiction" no longer existed while E.V. was in father's custody.

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<sup>2</sup> The juvenile court dismissed the Department's further allegation that mother's constant criticism of father to E.V. was inflicting emotional damage on E.V. (which would have rendered jurisdiction appropriate under section 300, subdivision (c)).

Following a contested hearing in mid-November 2017, the court terminated its dependency jurisdiction and issued an exit order awarding father full legal and physical custody of E.V. The court's order regarding mother's visitation rights with E.V. was less clear. At the conclusion of the contested hearing, the juvenile court stated both (1) "monitored visits for mother," and (2) that "[m]other will have monitored visits *until she completes her domestic violence program, parenting [program], does parenting beyond conflict and individual [counseling], as well as have a psychological assessment and evaluation. And the visits will remain monitored until then*" (italics added). The court's minute order declared "monitored visitation for . . . mother, as detailed in the juvenile custody order." The court's juvenile custody order, which doubled as its final judgment, decreed "supervised visitation" for mother on a prescribed schedule "[u]ntil . . . further order of the superior court," and justified this order "because [mother] . . . has not completed" "[a]nger management training," "[p]arenting classes," "[i]ndividual counseling," and "[p]sychological evaluation and parents beyond conflict."

Mother timely appealed the exit order.

### **DISCUSSION**

Under section 364, a juvenile court that exerts dependency jurisdiction over a child without removing him from the physical custody of one of his parents must, within six months of its hearing assigning interim placement, terminate its jurisdiction unless the conditions that "justif[ied] the initial assumption of jurisdiction" "still exist" or "are likely to exist if [jurisdiction] is withdrawn." (§ 364, subds. (a) & (c).) If the juvenile court terminates its jurisdiction, it may issue "an order determining

the custody of, or visitation with, the child.” (§ 362.4, subd. (a); *In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1123.) This so-called “exit order” must be filed in any pending family law action for nullity, dissolution, legal separation, or paternity or, if no such action is pending, in a newly created family law action. (§ 362.4, subds. (b) & (c); *In re Chantal S.* (1996) 13 Cal.4th 196, 203 (*Chantal S.*); *In re Michelle M.* (1992) 8 Cal.App.4th 326, 328.) Critically, an exit order “remain[s] in effect after [dependency] jurisdiction is terminated” and may thereafter be modified by the family court if (1) “there has been a significant change of circumstances,” and (2) “modification . . . is in the best interests of the child.” (§§ 302, subd. (d), 362.4, subd. (b); *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163; see also *In re Marriage of Carney* (1979) 24 Cal.3d 725, 730-731 [noting general rule for modification of custody orders issued by family courts].)

Although a juvenile court enjoys broad discretion in fashioning an exit order regarding custody and visitation (e.g., *In re M.R.* (2017) 7 Cal.App.5th 886, 902), that discretion has limits. Consistent with the juvenile court’s general power to issue “reasonable orders to the parents” of a minor of which it has jurisdiction (§ 362, subd. (d)), an exit order may condition a parent’s right to visitation upon her attendance in counseling (*Chantal S.*, *supra*, 13 Cal.4th at pp. 203-204). What an exit order may not do, however, is restrict the family court’s power to modify the exit order’s custody or visitation provisions should the prerequisites for such modifications exist (that is, should the modification be in the best interests of the child and based on changed circumstances). (*Cole Y.*, *supra*, 233 Cal.App.4th at pp. 1455-1457; *John W.*, *supra*, 41 Cal.App.4th at pp. 972-973.) Thus, an exit order is invalid if it restricts a family court’s power

to modify visitation unless and until a parent completes certain programs and obtains counseling (*Cole Y.*, at pp. 1451, 1456-1457), or if it precludes any modification until a certain period of time has elapsed (*John W.*, at pp. 964-965, 972-973).

In this case, the juvenile court’s exit order was within its discretion because it prescribes “supervised visitation” for mother “[u]ntil . . . further order of the superior court,” and in no way limits the family court’s power to modify. However, the juvenile court’s oral statements during the termination hearing are internally inconsistent: In one breath, the court ordered “monitored visits for mother” without any qualification or restriction, but in another breath seemed to prohibit modification to permit unmonitored visits “until [mother] completes” programming, counseling, and psychological evaluation. The latter command, because it places limits on the family court’s power to modify, is invalid.

So which of these conflicting statements is controlling?<sup>3</sup>

Our Supreme Court has prescribed a two-step approach when trying to reconcile a trial court’s conflicting statements: (1) try to harmonize the statements, and if that is not possible; (2) after looking to “the circumstances of each particular case,” give effect to the statement “which, because of its origin and nature or otherwise, is entitled to greater credence.” (*People v. Smith* (1983) 33 Cal.3d 596, 599 (*Smith*), quoting *In re Evans* (1945) 70 Cal.App.2d 213, 216; *People v. Harrison* (2005) 35 Cal.4th 208, 226; *In re D.B.* (2018) 24 Cal.App.5th 252, 257-258.)

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<sup>3</sup> Because the parties’ initial briefs did not squarely address this issue, we solicited and considered additional briefing on this issue.

In this case, it is impossible to harmonize the juvenile court's exit order with its internally inconsistent oral pronouncements. However, when we look at the circumstances of this case, we conclude that the exit order is entitled to greater credence for the simple reason that its terms are unambiguously clear while the court's oral pronouncements are themselves conflicting and thus ambiguous. As between the two, the unambiguous exit order should control. (See *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1259-1260, fn. 9 [oral dispositional ruling controls where "the court's written orders are internally inconsistent"].)

Because the exit order does not impermissibly restrict the family court's authority to modify custody and visitation, we reject mother's challenge on that ground.

**DISPOSITION**

The juvenile court's order is affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ