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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B294194
(Los Angeles County
Super. Ct. No. CK79290)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

D.E.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Jeanette Cauble, Principal
Deputy County Counsel, for Plaintiff and Respondent.

D.E. (Mother) appeals from a juvenile court order terminating jurisdiction and awarding I.J. (Father) sole legal and physical custody of their daughter (J.J.), with Mother having visitation three days a week. We conclude the order was not an abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Dependency Court Cases

Mother had three children by three different fathers.¹ J.J., the middle child, is currently almost nine years old. In December 2009, the juvenile court exercised dependency jurisdiction over Mother's son D., the oldest child, and again in October 2011 over both D. and J.J., based on Mother's substance abuse. In each of these prior cases, the court ultimately terminated jurisdiction and awarded custody to Mother.

In April 2017, Mother gave birth to her third child, son A. Mother and son tested positive for amphetamines. Mother denied any drug use.

¹ Neither of J.J.'s two half-siblings nor their fathers are parties to this appeal. They are mentioned only when necessary to an understanding of the facts.

B. Dependency Petition and Jurisdiction Hearing

On April 24, 2017, the Los Angeles County Department of Children and Family Services (Department) filed a dependency petition, alleging Mother had a history of drug abuse, was a current abuser of amphetamine and methamphetamine, her drug abuse was interfering with her ability to care for her three children, and her child A. tested positive for illicit drugs at the time of his birth. (Welf. & Inst. Code, § 300, subd. (b).)² The petition further alleged that two of her children were prior dependents of the juvenile court based on Mother's drug abuse. (§ 300, subd. (j).)

The juvenile court ordered J.J. and the other two children detained from Mother, and granted Mother monitored visitation. Mother told the Department that Father had been deported to Mexico. A dependency investigator for the Department was able to contact Father, who was undocumented and indicated he had come back to the United States for J.J. after looking for her for a long time.

On May 31, 2017, the juvenile court accepted Mother's no contest plea and sustained the allegations in the amended petition. Father was present at the jurisdiction hearing. He requested presumed father status and custody of J.J. Mother objected. The court deferred the paternity issue to the disposition hearing.

² Further statutory references are to the Welfare and Institutions Code.

C. Disposition Hearing

The juvenile court found Father to be the presumed father, based on his name being on J.J.'s birth certificate and information that he had seen J.J. twice a week before Mother refused to allow contact and Father was deported.

The court declared J.J. and her half-siblings dependent children of the court and ordered suitable placement for D. and J.J.³ For Mother, the court ordered reunification services, monitored visitation, parenting classes, individual counseling, a drug treatment program, drug testing and monitored visits. For Father, the court ordered reunification services, conjoint counseling with J.J., drug testing and monitored visitation.

D. Six-Month Review Hearing and Contested At-Home Placement

By January 2018, J.J. and D. had been placed with their maternal grandmother and maternal great aunt (caretakers). At the January 12, 2018 six-month review hearing, Mother and Father made competing requests for J.J.'s at home placement. The Department advised the juvenile court against releasing J.J. to Mother, but had no concerns about releasing her to Father. The Department's recommendation was due to Mother's persistent anger and emotional instability; her hostility toward Father and the paternal grandmother, intimidation of J.J. and her caretakers, and verbal and physical abuse of D. and J.J. Mother denied any physical abuse of J.J. She acknowledged having pulled D.'s hair, but stated it "was not illegal."

³ A. was released to his father. D.'s father could not be located.

As for Father, the Department noted his relationship with J.J. was good to date; their visits, now unmonitored, were positive and consistent.

In March 2018, the juvenile court ordered J.J. placed in Father's home.

At a July 2018 section 364 status review hearing, the Department reported that J.J. remained with her Father, and had developed a close bond with him. Father and his partner (Stepmother) lived with their daughter B., and B. and J.J. had developed a close bond. Father provided for J.J.'s needs and made her available to meet with the Department social worker. The maternal great aunt confirmed that Mother was living in the back house at the maternal grandmother's home, and that the maternal great aunt and her family had moved out because they could not deal with Mother's conduct. J.J. stated that Mother asked her not to tell anyone that Mother was living in the back house, and that Mother picked her up along with a man named Mr. L. Other information established that Mr. L. had a criminal history that included convictions for assault with a deadly weapon and possession of a controlled substance.

In evaluating Mother's progress, the Department expressed concern that Mother had only recently started taking her case plan seriously, and noted issues with regard to her parenting of D. The Department recommended termination of jurisdiction over J.J. with sole legal and physical custody to Father and monitored visits for Mother. Mother opposed the recommendation and asked for a contested hearing.

E. Contested Section 364 Hearing

On August 27, 2018, the juvenile court commenced the contested hearing on the section 364 status review. The Department continued to request the juvenile court terminate its jurisdiction over J.J. with an order for sole physical and legal custody for Father and monitored visitation for Mother. The Department's recommendation was based on Mother's belated attendance and minimal participation in anger management classes, failure to disclose her change of residence and pressure on J.J. to lie about it, threats to harm the caretakers, and verbal abuse of D. and J.J. The Department also asserted that Mother had allowed Mr. L., the friend with the criminal record, to join her during visitation.

Mother testified she was doing well in individual counseling, had learned to communicate better with Father in her anger management classes, and was never told about claims she had pressured J.J. to lie about their conversations. Mother explained she did not have a "relationship" with Mr. L.; he was a family friend. Mother acknowledged she had moved into the back house of the maternal grandmother's home. She introduced into evidence a packet, which contained her counseling progress reports, co-parenting class attendance and letters of support, including a letter from D. stating he wanted to live with Mother.

Following Mother's testimony, her counsel did not object to closure of the case with a custody order, but urged the juvenile court to grant joint legal custody and shared physical custody—"something close to what is already being [sic] in place. It seems to be working" Father submitted on the Department's recommendation to terminate jurisdiction and award him sole

legal and physical custody with monitored visits for Mother. J.J.'s counsel supported "closing the case with a custody order to Father with sole physical and joint legal custody."

The juvenile court terminated its jurisdiction over J.J., then stayed the order to October 5, 2018, pending receipt of a custody order that granted sole physical and legal custody to Father. The court ordered Mother to continue with unmonitored visitation, restricted to days only.

F. Ex Parte Application and Guardianship Agreement

On September 17, 2018, the Department filed an ex parte application to change Mother's visitation from unmonitored to monitored, because she had violated the day-only court-ordered visitation. The Department reported Mother had kept J.J. overnight, and created a scene at the police station where the custody exchange was to take place on September 11, 2018 by refusing to return J.J. at the end of Mother's visitation. Mother was met by Stepmother rather than Father at the custody exchange because federal immigration authorities had arrested Father the previous day.⁴

Around the time of his arrest, Father had drafted a notarized "guardianship agreement," which authorized the paternal grandmother to act as J.J.'s primary legal guardian in his absence, with Stepmother as a secondary guardian, commencing September 11, 2018. The agreement contained a notarized signature from Father, but was not signed by any other individual. The Mother was shown the agreement, but she

⁴ Father and his relatives suspected Mother had reported him to the immigration authorities.

claimed not to know Stepmother and insisted she could only return J.J. to Father.

At the conclusion of the September 28, 2018 hearing at which Mother testified, the juvenile court denied the ex parte application. The minute order shows the court advanced and vacated the October 5, 2018 custody order hearing and, instead, set a progress hearing on that date concerning Father's proposed plan for J.J. in his absence.⁵ J.J. remained a dependent of the court and the at-home-placement order with Father remained in full force and effect.

G. Last Minute Information for October 5, 2018 Hearing

On October 4, 2018, the Department filed a last-minute information report stating Father had confirmed by telephone he had "granted guardianship of [J.J.] to [the paternal grandmother] as primary caretaker and [Stepmother] as secondary caretaker." Attached to the report was copy of the guardianship agreement. In the report, the Department concluded Father had made an appropriate plan for J.J.'s care in his absence and continued to recommend termination of jurisdiction over J.J. with sole legal and physical custody granted to Father.

H. The October 5, 2018 Hearing

At the October 5, 2018 hearing, J.J.'s lawyer informed the court she had spoken with the paternal grandmother about how things were going in Father's absence and expressed no concerns to the court about those arrangements. Mother did not seek to

⁵ The record does not contain a reporter's transcript of this hearing.

revisit the juvenile court's legal or physical custody order, but did request an increase from her current two days of visitation a week to three days, with pick up and drop off at the Mission Hills Police Department. Mother's counsel made no mention of the guardianship agreement or Father's proposed plan for J.J.'s care in his absence during the October 5, 2018 hearing, nor is there any reference to either topic in the October 5, 2018 minute order.

The juvenile court finalized Mother's visitation schedule, ordering visitation three days a week, with the exchange at the requested police station, and structuring how the parties were to communicate concerning custody issues. The court set October 10, 2018 as the deadline for receipt of the final custody order. The final judgment and exit order was filed October 10, 2018. Mother filed a timely notice of appeal.

DISCUSSION

A. The Juvenile Court's Termination of Jurisdiction Was Not Erroneous

Mother did not object to termination of jurisdiction over J.J. before the juvenile court, and it is unclear whether she disputes the propriety of terminating jurisdiction under section 364 on appeal. To the extent she does claim termination of jurisdiction was erroneous, we disagree.

First, Mother forfeited any such claim by not objecting below to termination of jurisdiction. While Mother did contest the custody decision made in the exit order, she did not contest termination of jurisdiction. "An appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been but was not made in the trial court. [Citation.] Dependency cases are not exempt

from this forfeiture doctrine. [Citations.] The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected.” (*In Re Wilford J.* (2005) 131 Cal.App.4th 742, 754.) As Mother failed to assert any error in the termination of jurisdiction before the juvenile court, she may not do so now.

Even if the claim was not forfeited, it is meritless. Section 364, subdivision (c) requires that jurisdiction “shall terminate . . . 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.” To the extent Mother contends jurisdiction should not have terminated, she was required to establish by a preponderance of the evidence that conditions justifying retention of jurisdiction existed, or were likely to exist if supervision was withdrawn. (*In Re N.O.* (2019) 31 Cal.App.5th 899, 924–925.) That means, in turn, that the question on appeal “is ‘whether the evidence compels a finding in favor of the appellant as a matter of law[,]’ ” meaning whether Mother’s evidence “ ‘was “uncontradicted and unimpeached” and . . . “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [that jurisdiction be terminated].” [Citation]’ ” (*In Re Aurora P.* (2015) 341 Cal.App.4th 1142, 1163–1164.)

No such evidence exists here. Father’s arrest was not a sufficient condition, as juvenile court jurisdiction is not warranted under section 300 if an incarcerated parent is able to arrange care for his or her child. (§ 300, subd. (g); *In Re Andrew S.* (2016) 2 Cal.App.5th 536, 543 [“neither incarceration alone nor

the failure to make an appropriate advance plan for the child's ongoing care and supervision is sufficient to permit the exercise of jurisdiction under subdivision (g)"].) Nor does Mother point to any other uncontradicted and unimpeached evidence of such a character and weight as to compel the conclusion that the evidence was insufficient to support termination of jurisdiction.

C. The Juvenile Court Did Not Abuse its Discretion in Making Its Final Custody Order

Mother's primary focus on appeal appears to be an objection to the custody terms included in the exit order. Section 362.4 authorizes the juvenile court, when terminating its jurisdiction over a dependent child, to issue a custody and visitation order that will remain in effect until it is modified or terminated by a subsequent order of the superior court. When making a final custody determination, "the court's focus and primary consideration must always be the best interests of the child." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review custody orders for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 398.) Under that standard, we will not disturb a juvenile court's exit order unless the court exceeded the limits of its broad discretion by making an arbitrary, capricious, or patently absurd determination. (*Ibid.*)

The juvenile court did not abuse its discretion in making its final custody order. The evidence showed Mother had only recently begun to acknowledge her anger issues and to participate in anger management classes. She exhibited increasingly manipulative behavior toward J.J. and disregard for J.J.'s safety. Although Mother claimed to love her children, she showed no remorse for her behavior. In light of Mother's failure

to make any substantial progress toward addressing the issues that had led to the dependency proceedings (the minimal progress she had made was simply too recent to credit with any confidence), the court found it was in J.J.'s best interests that she not be placed in Mother's primary custody. The juvenile court did, however, grant Mother unmonitored visitation three days a week. That order was well within the court's broad discretion.

Mother contends the custody order nevertheless should have been in her favor because Father did not adequately provide for J.J. through the guardianship agreement (which she claims is flawed for various reasons). However, the record on this issue is incomplete. There is no record evidence the guardianship agreement was in fact inadequate to provide for J.J.'s health, education, and welfare. Mother did not raise the issue at all during the October 5, 2018 hearing, including when the court inquired how things were going with J.J. and the paternal grandmother. Instead, Mother asked only to increase her visitation from two to three days a week.

If Mother raised any objections to the guardianship agreement, she did so at the September 28, 2018 hearing. But the record does not contain any reporter's transcript from the September 28, 2018 hearing. Were we now to consider Mother's argument, we would necessarily be speculating on how the court viewed the agreement and responded to any objections Mother raised. To the extent Mother raised concerns at the September 28, 2018 hearing, the record is inadequate to permit meaningful appellate review of the court's exercise of discretion concerning the agreement and its effect, if any, on the custody order. That claim is therefore abandoned for purposes of this appeal. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002.)

The record is similarly inadequate to evaluate Mother's appellate claims, which appear speculative at this time, that different cultural conditions and practices might affect J.J.'s well-being, or that J.J. may move to Mexico making her visitation difficult. Mother provides no indication she raised these concerns with the juvenile court, much less any factual basis for her assertions. In any event, the current order provides that the parties are to exchange custody at the Mission Hills Police Station. We thus fail to see how any relocation of Father (if and when it occurs) will impact Mother's court-ordered visitation absent a change in the exit order.

DISPOSITION

The order terminating jurisdiction and awarding sole legal and physical custody to Father I.J., with unmonitored visitation to Mother, is affirmed.

WEINGART, J.*

We concur:

JOHNSON, Acting P. J.

BENDIX, J.

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