Filed 9/19/18 In re R.E. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.E., a Person Coming Under the Juvenile Court Law.	B284841
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.E., Defendant and Appellant.	Los Angeles County Super. Ct. No. DK09456

APPEAL from judgment of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Affirmed.

Cristina Gabrielidis, 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.

INTRODUCTION

R.E. (father) appeals from the juvenile court's final judgment granting sole legal and sole physical custody of the child R.E. (R.E.)[1] to his mother T.M. (mother) and monitored visitation to father under Welfare and Institutions Code section 362.4.[2] He contends the court abused its discretion by not granting him joint custody with mother and unmonitored visitation. Mother is not a party to this appeal. Finding no abuse of discretion, we affirm.

BACKGROUND

1. *Initial detention and section 300 petition*

On February 9, 2015, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition on behalf of then three-year-old R.E. The petition alleged that under section 300, subdivision (b), the child was at substantial risk of suffering serious physical harm based on (1) his mother having left heroin, methamphetamine, and drug paraphernalia in the child's home within his access, and (2) mother's history of drug use and recent drug use.

A few days before DCFS filed the petition, police had arrested mother after finding her with R.E. in a hotel. Police had observed methamphetamine, heroin, and drug paraphernalia in the room, and noted mother appeared to be under the influence. Mother told police she was a homeless recovering addict. Before staying at that hotel, she had stayed at different hotels or had

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[1] All further references to "R.E." are to the child, not appellant. Appellant is referred to as "father."

[2] All statutory references are to the Welfare and Institutions Code.

been homeless. Mother was taken into custody on child endangerment and drug possession charges.

DCFS interviewed mother the day she was arrested while she was in custody. Mother admitted she began using heroin and methamphetamine following a painful surgery. She reported that father was incarcerated. A criminal history search revealed mother had been arrested and convicted on a variety of prior drug-related charges. She also had a dependency case from 10 years earlier involving another child. In that case, mother's parental rights ultimately were terminated and the child adopted.

At the February 9, 2015 detention hearing, the juvenile court detained R.E. from both parents, placed him in shelter care, and granted the parents monitored visitation. Neither parent was present—mother remained in local custody and father was incarcerated in state prison.

Mother was arraigned a week later. The court found father was R.E.'s presumed father and ordered R.E. remain detained. The court also ordered DCFS to refer mother to a substance abuse program and allow mother monitored visits with R.E.

2. *Jurisdiction and disposition*

In its March 10, 2015 jurisdiction/disposition report, DCFS recommended the court declare R.E. a dependent of the court and not provide mother or father with family reunification services. DCFS had not been able to make contact with either parent yet. At the related March 10, 2015 hearing, the juvenile court continued the jurisdiction hearing and ordered R.E. remain detained.

Also in March 2015, father wrote to the social worker and DCFS trial counsel from prison. He stated he had received the

notice of hearing on DCFS's petition and expressed he did not want to lose his son due to mother's actions. He asked to be present for R.E.'s court dates and for information to help him so that his son would "be with" him after he was released from prison. He also asked if R.E. could be placed in his niece's custody and gave her name and address, but not her phone number. The niece did not make contact with DCFS.[3]

R.E. was placed in his fourth foster home on March 23, 2015. Mental health services were recommended for R.E. due to stress caused by his placement with and separation from multiple caregivers over a short period. Previous caretakers had reported difficulty addressing R.E.'s behaviors, such as excessive crying and tantrums, hyperactivity, not listening, elimination issues, and delayed language. R.E. was removed from one foster placement after mother suspected abuse.

A social worker interviewed mother in April 2015 at a residential drug treatment facility. During that interview, mother explained she had undergone painful back surgery in November 2014. Her doctor advised her to enter a long-term nursing facility, but she returned home against medical advice because she did not want to be separated from R.E. She began using drugs again to help with the pain and to have energy to care for R.E. She admitted to having started using drugs when she was 14. Mother said she had been sober during the past three years, except for one relapse just before father was arrested. She told the social worker she was committed to completing her treatment program to " 'get [her] son back.' "

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[3] At a later hearing in April 2015, the juvenile court ordered DCFS to assess father's niece as a possible placement resource.

During the interview, mother told the social worker father was present at R.E.'s birth. The parents and child were living together when father was arrested. In his May 21, 2015 statement regarding parentage, father requested the court enter a judgment of parentage. He stated R.E. had lived with him from R.E.'s birth until he was just over two years old. He stated he participated in R.E.'s daily care and was the primary financial provider during that time; he gave mother $300 per month to support R.E. after the couple separated. The juvenile court found father was R.E.'s presumed father.

On June 29, 2015, DCFS reported mother was making progress at her residential drug treatment program. DCFS also reported on some of father's criminal history. Father was convicted in February 2014 on a felony charge for possession of narcotics for sale and was sentenced to serve four years in state prison. DCFS recommended father not be provided reunification services based on his incarceration under section 361.5, subdivision (e)(1).[4]

On June 29, 2015, the juvenile court held a jurisdiction hearing at which mother and father were present, father in

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[4] Section 361.5, subdivision (e)(1) provides, "If the parent . . . is incarcerated . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . the degree of detriment to the child if services are not offered . . . the likelihood of the parent's discharge from incarceration . . . within the reunification time limitations . . . and any other appropriate factors."

custody. The court sustained count b-1 of the petition, as amended, and dismissed count b-2 without prejudice.[5] The court ordered R.E. remain detained and DCFS to investigate fully father's niece as a potential caregiver.

The court held a disposition hearing on July 15, 2015. Both parents appeared, father in custody. The court declared R.E. a dependent of the court and removed R.E. from parents' custody. The court denied father family reunification services under section 361.5, subdivision (e). The court ordered DCFS to provide updated photos of R.E. to father at his place of incarceration. The court ordered family reunification services for mother and ordered DCFS to provide her with housing assistance. Mother's court-ordered case plan consisted of a full drug and alcohol program, weekly random or on-demand drug and alcohol testing, individual counseling, and monitored visitation that DCFS could liberalize or restrict at its discretion.

3. *Postdisposition progress and review hearings*

In October 2015, DCFS recommended continuing family reunification services for mother based on her progress. Mother had completed her inpatient drug treatment program and entered a sober living home. She also had tested negative on random drug and alcohol tests and was attending a 12-step program, parenting sessions, and individual counseling. DCFS

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[5] Count b-1 alleged mother placed R.E. "in a detrimental and endangering home environment" based on the February 4, 2015 incident that resulted in her arrest. The juvenile court amended the count by striking reference to mother's arrest and inserting, "The mother has a history of drug use and is a recent user of drugs." Count b-2 alleged mother endangered R.E. based on her current drug use and history of drug use.

continued to assess paternal relatives for placement for R.E. At the October 2015 progress hearing, the juvenile court granted mother's request for unmonitored day visits and gave DCFS discretion to liberalize visitation,.

The juvenile court held a six-month review hearing on January 13, 2016. In its related status review report, DCFS reported mother continued to make progress with her case plan. She continued to test negative for drugs and alcohol, but had missed five tests between July and September 2015. DCFS exercised its discretion to liberalize visitation, and mother had a five-hour unmonitored visit with R.E. in December 2015. DCFS recommended continued family reunification services. The court found continued jurisdiction over R.E. was necessary, but noted mother's substantial progress with her case plan. The court ordered R.E. remain in his current placement and ordered continued family reunification services for mother. The court also ordered DCFS to provide father with all reports and updates on R.E., as well as updated photos.

In its April 26, 2016 progress report, DCFS reported mother had moved into her grandfather's home in February 2016. She continued to participate in therapy and NA/AA meetings and to test negative for drugs and alcohol. Mother also had continued to have five-hour unmonitored visits with R.E., which had just been liberalized to weekend visits. DCFS again recommended continued family reunification services for mother.

DCFS also reported having received letters from father in January 2016. Father thanked the social worker for sending the notice of review hearing and asked to be present. Father also expressed his concern about his son. He said he "just want[ed] him to be safe [and] happy." In a second letter, father thanked

the social worker for sending him the status review report. He again expressed his concern for R.E.'s health and safety. He reiterated that he wanted his son to be placed with his niece and asked the social worker to respond. The social worker wrote to father and explained DCFS had contacted his cousin (whom father refers to as his niece), but her boyfriend had not submitted to the required fingerprinting.

In its next status report filed in connection with a review hearing on July 13, 2016, DCFS reported that R.E. had been placed in temporary shelter care, Boys Town, in early July after his foster mother requested his removal. A caller had reported R.E. said that his foster mother "hits him with a belt."

DCFS also reported that mother had completed her parenting education program and continued to participate in therapy and NA/AA classes. Mother had missed six drug tests and had one diluted test, however. As a result, DCFS suspended her overnight weekend visits with R.E. Concerned mother's substance abuse issues continued to pose a risk to R.E., DCFS recommended the court terminate mother's family reunification services. At the July 2016 hearing, the juvenile court granted mother's request to set the 12-month review hearing for contest. The matter was continued to September.

4. *Twelve-month review and judicial review hearings*

In July 2016, mother requested more time with her son and had monitored visits. At an August visit, mother acted appropriately with R.E. and did not appear to be under the influence; R.E. was happy to see her. Mother's drug and alcohol test results were negative for seven tests taken in July and August 2016.

In early September, mother again tested negative for drugs and alcohol, and DCFS allowed mother to have an unmonitored weekend visit with R.E. DCFS reported a social worker had "observed a positive, loving relationship between mother . . . and [R.E., and that] [m]other . . . is now putting [forth] great . . . efforts to have her child returned to her care."

The juvenile court held the contested 12-month status review hearing on September 20, 2016. The court found mother was in compliance with her case plan, ordered R.E. be placed in mother's home under DCFS supervision, including unannounced visits, and set a judicial review hearing for March 2017.

In its March 21, 2017 status review report, DCFS reported mother was consistently testing negative for drugs and alcohol and that R.E. was "thriving in mother's care." DCFS also reported on a search of father's criminal history. The search revealed a number of arrests and convictions since 1986, including a 1993 felony conviction for assault with a firearm, a 1996 felony conviction for assault with a deadly weapon, various drug-related arrests, and his 2014 conviction for possession for sale of a narcotic or controlled substance that resulted in his current four-year prison sentence. DCFS noted R.E. had had "no visits with father in the past few years, as father had been incarcerated." Based on the case history, DCFS recommended that the court terminate dependency jurisdiction and grant mother sole legal and physical custody of R.E. with monitored visits for father.

At the March 21, 2017 judicial review hearing, the juvenile court announced DCFS's recommendation to close the case. Counsel for the child and mother agreed with the recommendation. Father's trial counsel asked for joint legal and

physical custody and unmonitored visitation for father if the court terminated jurisdiction. The court noted its earlier denial of family reunification services for father based on his incarceration and its finding reunification services would be detrimental to the child. The court then found the circumstances that initially justified the court's assumption of jurisdiction over R.E. no longer existed and were not likely to exist if supervision were withdrawn. The court stated it would terminate jurisdiction upon receipt of a final custody order.

On March 27, 2017, the court terminated jurisdiction and entered its custody order and final judgment. The order awarded mother sole legal and physical custody of R.E. and father monitored monthly visits upon his release from prison. The order identified the basis for father's monitored visitation as his current incarceration.

Father filed a timely pro se notice of appeal on May 19, 2017. He described his appeal as from an order dated March 24, 2017 [*sic*], ordering him "to have monitored contact due to my in-custody status." He also asked the court to appoint an attorney for him on appeal.

DISCUSSION

Father contends the juvenile court erred when it granted mother sole custody of R.E. rather than granting both parents joint custody. Father contends he should have been granted joint custody despite his incarceration because he was a nonoffending, noncustodial parent at the time of the petition, did not pose a threat to R.E., and could have arranged care for R.E. while he was in custody. Father also contends no rational reason existed to require his visits with R.E. be monitored because he was nonoffending in the dependency petition and posed no risk to R.E.

We conclude the juvenile court's custody and visitation orders were not an abuse of its discretion.

1. *Father's appeal encompasses the court's final custody order*

As an initial matter, DCFS contends that father's notice of appeal "only challenged the visitation order contained in the final custody order," and thus this court lacks jurisdiction to review the custody order. We reject this contention.

We recognize father handwrote on his notice of appeal that his appeal was from the court's March 24, 2017 order, which he described as ordering him to have monitored visitation. The notice of appeal does not mention "custody" and mistakenly identifies the date of the order as March 24 rather than March 27.

As both parties have recognized, however, we must "liberally construe[ ]" a notice of appeal. (Cal. Rules of Court, rule 8.100(a)(2).) "The notice is sufficient if it identifies the particular judgment or order being appealed." (*Ibid.*) As the California Supreme Court has explained, " 'notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.' " (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) We conclude DCFS reasonably could determine father intended to appeal from the juvenile court's March 27, 2017 custody order/final judgment and could not have been misled or prejudiced by father's mistake as to the date of the order or his failure to describe the order's finding with respect to custody.

First, the mistake on the date of the order could not have misled DCFS. At the March 21, 2017 hearing, the juvenile court

awarded mother sole legal and physical custody with monitored visitation for father. The court stayed termination of jurisdiction pending mother's counsel providing that custody order for the court on March 24, 2017. The only order dated March 24, 2017, in the record is the juvenile court's minute order continuing the matter to March 27, 2017, for receipt of the juvenile custody order. DCFS therefore clearly understood father, who handwrote the notice of appeal pro se, to be appealing from the juvenile court's "Custody Order – Juvenile – Final Judgment" filed March 27, 2017, not March 24, 2017, as originally anticipated. (See, e.g., *Collins v. San Francisco* (1952) 112 Cal.App.2d 719, 722-723 [treating notice of appeal that incorrectly described the judgment as a minute order and gave the date of the minute order rather than the judgment as appeal from the judgment].)

Second, we do not find our review of the March 24, 2017 custody order/final judgment is limited by father's handwritten description of that order. At the March 21, 2017 judicial review hearing, father's counsel requested joint custody on father's behalf. And, as DCFS concedes, the visitation order is *"contained in* the final custody order." (Italics added.) The visitation order is an attachment to the "Custody Order – Juvenile – Final Judgment" filed March 27, 2017; it is not a separately filed order. Further, the custody order/final judgment itself orders visitation of two hours, once a month for father and refers to the attached visitation order.[6] Thus, father is not launching a late challenge

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[6] The juvenile court's March 27, 2017 minute order also states the court is "awarding mother sole legal custody, sole physical custody, with monitored visitation for father, one time a month for 2 hours each visit, upon release from custody, as detailed in the juvenile custody order." (Block capitals omitted.)

to an earlier filed order by arguing on appeal that the trial court erred in granting sole custody to mother as the appellant did in *In re Daniel D.* (1994) 24 Cal.App.4th 1823, relied on by DCFS. (*Id.* at pp. 1831-1832 [mother could not challenge previous, independently appealable orders continuing child's foster care as part of her appeal from order terminating her parental rights].) Nor has DCFS articulated it was misled or prejudiced by the notice of appeal's description of the order. (See *In re Joshua S., supra*, 41 Cal.4th at p. 272 [finding notice of appeal from order " 'terminating jurisdiction . . . without first resolving whether the children will continue to receive funding' " sufficient to place in issue court's additional findings as to eligibility for funding because notice clearly identified the termination order and any ambiguity caused by the qualifying phrase had not been shown to mislead or prejudice respondent (italics omitted)].)

Accordingly, we conclude the notice of appeal is sufficient to give this court jurisdiction to review *the entirety* of the juvenile court's March 27, 2017 custody order/final judgment—the court's order of sole legal and physical custody to mother *and* the court's order of monitored visitation for father.

2. *Applicable law and standard of review*

When a juvenile court terminates its jurisdiction over a dependent child, it may enter family law orders governing custody or visitation, commonly referred to as "exit orders." (§ 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) These exit orders are transferred to the family court to become part of the relevant family law file, or, if no proceedings are pending in family court, "may be used as the sole basis for opening a file in the superior court of the county in which the

parent, who has been granted custody, resides." (§ 362.4, subd. (c); *In re John W.* (1996) 41 Cal.App.4th 961, 970.)

When crafting "exit orders" under section 362.4, the juvenile court "must look at the best interests of the child." (*In re John W., supra*, 41 Cal.App.4th at pp. 973-974 [explaining that under the best interests of the child standard "just because custody with neither parent was held to pose any danger to the child does not mean that both parents are equally entitled to half custody"].) "The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) Thus, " '[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases' decided in the juvenile court." (*Ibid.*) 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 presumption.' " (*Id.* at p. 206.)

We review a juvenile court's order issued under section 362.4 for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) We " ' "will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Where substantial evidence supports the trial court's order, there is no abuse of discretion. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839.) We do not "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.*)

3. *The juvenile court did not abuse its discretion in awarding sole legal and physical custody to mother*

Father contends the trial court abused its discretion when it declined to grant joint legal and physical custody to father because father's incarceration did not justify terminating his custody rights and joint custody was in R.E.'s best interests. Father correctly states there is no " 'Go to jail, lose your child' rule in California." (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.) The mere fact a parent is incarcerated is insufficient to support dependency jurisdiction if the parent makes arrangements for the child's care and there is no risk to the child. (§ 300, subd. (g); *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 672.) Similarly, if the juvenile court removes a child from a custodial parent, a noncustodial parent's incarceration alone does not prevent placement of the child with that parent under section 361.2.[7] (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700 [incarcerated noncustodial parent who requests custody may

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[7] Section 361.2 provides, in part, that "[w]hen a court orders removal of a child . . . the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

obtain custody of child under section 361.2 if suitable arrangements for child's care are made and not detrimental to child].)

Relying on *In re Isayah C.* and *In re S.D.*, father argues his incarceration should not have resulted in termination of his custody rights. As respondent notes, however, those cases involved an incarcerated parent's request for custody under section 361.2 following the *removal* of the child from the custodial parent. Here, at the time the custody order was made, R.E. had been living with mother and the juvenile court was *granting* mother legal and physical custody, not removing him from her custody. Nevertheless, father's contention that joint custody was feasible because he "could have delegated the care of [R.E.] to a suitable relative" while he was in custody is unavailing. DCFS attempted to assess father's niece/cousin for R.E.'s placement, but her boyfriend never completed the required fingerprinting. Moreover, even if R.E. could have been placed with a paternal relative, the juvenile court reasonably could determine that sole custody with mother was in R.E.'s best interests.

In any event, as DCFS asserts, the trial court never stated it was basing its custody determination *solely* on father's incarcerated status. And, father has cited no authority precluding the juvenile court from considering father's incarceration as a factor in deciding to grant sole custody to mother at the review hearing. In light of the record before the juvenile court, we reasonably can infer it considered factors in addition to father's incarceration when it awarded sole custody to mother.

At the time of the March 21, 2017 hearing, mother had substantially complied with her reunification case plan—she had

remained sober, had completed parenting classes, was attending school, was acting appropriately with R.E. and had "done everything necessary in order to meet [the] child's needs." DCFS reported R.E. was "thriving in mother's care." Before announcing its orders, the trial court acknowledged "the work that mother did in this case." The court spoke directly to R.E.: "And Mommy's worked so hard to get you back. Wow." When it explained the custody order to mother at the end of the hearing, the court further stated, "The child is being released to you because you've shown the court that you have the ability to make good decisions for your son and safe decisions for him, and that includes time with his dad."

Before making its decision, the court also noted it previously had "found by clear and convincing evidence that services to reunify [father] would be detrimental to the child." The court continued, "The court is in receipt of the information that was provided to the court at that time regarding the incarceration, the basis for the incarceration, and the length of incarceration."

We reasonably can infer, therefore, that the trial court previously denied family reunification services for father based on its implied finding those services would be detrimental to R.E. in light of father's incarceration, R.E.'s young age, the nature of father's crime, and the fact father would remain incarcerated until after the reunification time period had expired. (§ 361.5, subd. (e).)[8] Those implied findings, which look at the effect of

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[8] Father implies the juvenile court erred in denying him family reunification services. As DCFS argues, father may not now attack that decision, which was part of the July 15, 2015 disposition order, because he never appealed it. The juvenile

father's incarceration on the child rather than the fact of his incarceration alone, also provide support for the court's decision. In addition, although father was a nonoffending parent in the petition and had lived with R.E. and mother until R.E. was two, he had been absent from R.E.'s life after his arrest and subsequent incarceration. At the time of the March 2017 review hearing, R.E. was five years old and had not seen father in more than three years as father remained in custody. Father was essentially a stranger to R.E.

On this record, we cannot say the juvenile court acted arbitrarily in awarding mother custody. The court reasonably could determine R.E.'s best interests would not be served by awarding father joint legal and physical custody. "In any custody determination, a primary consideration in determining the child's best interests is the goal of assuring stability and continuity." (*In re Stephanie M., supra,* 7 Cal.4th at p. 317.) Father had had no contact with R.E. during his formative years and could not reconnect with R.E. until he was released from prison.[9] The

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court's disposition order was appealable under section 395. Because father did not file a timely appeal from that order, he has waived any argument it was entered in error. (See *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018 [" 'A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on appeal from a later appealable order.' "].)

[9] Our description of father and R.E.'s relationship is not intended to imply father did not want to be involved in R.E.'s life. We recognize father acknowledged paternity and supported R.E. after his birth, participated in the dependency proceedings to the extent he was able, and requested joint custody.

court reasonably could infer that a joint custody arrangement with father or unrestricted visitation by father would disrupt the stable environment R.E. now enjoyed with mother. Father argues he had not been found a safety threat to R.E. We presume the trial court took that into account when awarding mother custody, but as we have said, the juvenile court makes no presumption of parental fitness when making its custody orders. (See *In re Chantal S., supra*, 13 Cal.4th at p. 206 [agreeing "application of a family-law-based joint custody presumption would be inconsistent with the purpose of juvenile court law"].)

Nor did mother's prior criminal and dependency history require the juvenile court to grant father joint custody so as to create a "safety net" should mother relapse, as father argues. At the time of the judicial review hearing, the court was aware that mother's prior drug use had resulted in the loss of her parental rights over her older child. It also was privy to mother's criminal history. We do not reweigh the evidence, and we must assume the court considered these facts when making its orders. Viewing the record in the light most favorable to the custody and visitation orders, the court reasonably could conclude mother had overcome the issues leading to both the earlier dependency case and the court's jurisdiction over R.E. Indeed, as we have said, the court acknowledged mother's significant progress at the review hearing. Based on the totality of the circumstances, including mother's completion of her drug treatment program, negative drug tests, and sustained positive progress in caring for R.E. and father's absence due to his incarceration, substantial evidence supports the court's decision to award mother sole custody. We cannot find the decision was arbitrary or capricious based on this record.

4. *The trial court did not abuse its discretion in requiring father's visits be monitored*

Father contends the juvenile court had no rational basis for limiting father's visitation given no evidence indicated he was a threat to R.E., and he was a nonoffending parent. We disagree. The evidence we discuss above also substantially supports the court's order requiring monitored visitation.

As father notes, the March 27, 2017 order states "Father is currently in prison" as the reason for monitored visitation. But, as we have said, father was essentially a stranger to R.E., having had no visits with R.E. in the past few years before the March 2017 hearing due to father's incarceration. The court reasonably could conclude that unmonitored visitation with his father, whom R.E. likely did not remember, would not be in R.E.'s best interests and could disrupt the progress R.E. had made to date, regardless of father's earlier involvement or lack of safety threat to R.E.

Neither father's visitation nor custody rights are permanently restricted, however. Juvenile court exit orders "are in the nature of pendente lite orders in family law." (*In re John W., supra*, 41 Cal.App.4th at p. 973 [holding juvenile court erred in attempting to preclude parents from seeking modification of custody exit order in family court until 11 months had passed].) The trial court here anticipated father would seek to modify visitation after his release from prison when it explained to mother that when father "is released from custody he can take the order and go to family law court and ask the judge to revisit the visitation schedule." Thus, after father has reestablished a relationship with his son through monitored visitation, he may seek a change in the visitation order in family

court based on changed circumstances—his release from prison—and a showing the change would be in R.E.'s best interests. (§ 362.4, subd. (c); § 302, subd. (d) [custody or visitation order issued under section 362.4 "shall not be modified . . . unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child"].)

Father's contention he has been prejudiced because the monitored visitation restriction "will be extremely difficult to change in family court" is not a basis to reverse the juvenile court's order. We appreciate father's concern for his son and desire to visit his son without supervision. When making a custody determination (which naturally includes visitation) in a dependency case, however, "the court's focus and primary consideration must always be the best interests of the child," not prejudice to the parent. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) Here, the court's custody and visitation orders considered the best interests of R.E. at that time; they did not exceed the court's limits of its discretion and were supported by substantial evidence.

DISPOSITION

The juvenile court's March 27, 2017 Custody Order – Juvenile – Final Judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.