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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

B254795

(Los Angeles County
Super. Ct. No. DK01848)

APPEAL from orders of the Superior Court of Los Angeles County, Carlos Vasquez, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Appellant K.W. (Mother) appeals the juvenile court's dispositional order terminating jurisdiction after transferring custody of Leila J., Mother's teenage daughter, to the girl's noncustodial and non-offending father, D. J., under Welfare and Institutions Code section 361.2.¹ Mother contends the court erred in placing Leila with Father because Father had not been actively involved in her life in recent years and because he apparently intended to place the girl in the care of his parents. Mother further contends that the court abused its discretion in refusing to retain jurisdiction and provide her and Leila conjoint therapy in order to sustain their relationship. Finally, Mother contends the court's exit order was inadequate because it failed to secure specific visitation dates and times for her or to include a provision for conjoint therapy. We conclude Mother forfeited her objections to the custody and visitation orders, and that the court did not abuse its discretion when it terminated jurisdiction. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Department of Children and Family Services (DCFS) in October 2013. Leila, then 15, was living with Mother and visiting her paternal grandparents when DCFS received a referral alleging Mother had been physically and emotionally abusive, and that Leila had threatened suicide. Interviewed by the caseworker, Leila reported that she had been abused by Mother "for a very long time" and that she would kill herself if forced to return to Mother's home. Leila reported she had called police herself a few days earlier, informing the officers who responded that she would prefer to be in a foster home to living with Mother.²

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² At that time, Mother had persuaded her to stay by promising to improve her behavior.

The caseworker interviewed Mother, who admitted she and Leila had recently gotten into an argument, and that she “took it a step too high.” Mother stated a preference that Leila be detained with the maternal grandmother. However, Leila said the maternal grandmother would not protect her from Mother, and that she preferred to stay with her paternal grandparents, who treated her with “respect and love.”

The paternal grandparents reported that Leila had investigated methods of committing suicide. A Department of Mental Health evaluator had come to the grandparents’ home to examine Leila and concluded she was not in danger of suicide as long as she was not forced to return to Mother.

At the time of the initial interviews, the grandparents did not know Father’s whereabouts. Mother said Father had been actively involved in Leila’s life when the girl was between three and four years old and again when she was between seven and nine, but not since. The court detained Leila with the paternal grandparents and ordered monitored visitation for Mother.³

Prior to the jurisdictional/dispositional hearing, DCFS located Father, who admitted not having been an active parent in the recent past. He claimed that Mother had interfered with his efforts to stay in contact with his daughter. Father had lived outside the country from 2009 to 2012. When he returned, he lived with his parents for a brief period, and had contact with Leila when she visited her grandparents’ home -- approximately four or five times. Father said he wanted to have his daughter in his care and be the primary care provider, but expressed concern about his ability to parent a teenager. In addition, he was then living in a

³ In November 2013, Leila was assigned a therapist. That same month her grandparents obtained an individualized education program from the school she began attending after the detention in order to identify her areas of need. Her grandparents also obtained a math tutor for her.

rented room, and did not believe he was financially secure enough to afford a residence where he could live with Leila. He said his parents were willing to provide a home for Leila and be a support system for him, and that he was agreeable to Leila's remaining in his parents' home if required to maintain her stability and safety.

Leila reported that Mother had been verbally abusive for several years, calling her "ugly" and "fat," yelling at her, and making her cry. Mother told her that nobody, including school counselors, police officers, or Father, cared for her, leading Leila to believe she could not trust anyone or ask anyone for help. Mother's behavior caused Leila to become anxious and nervous and feel that she was choking or suffocating. In addition, she had trouble sleeping and eating and would sometimes sit in her room, crying and staring at the wall. When Leila tried to discuss her feelings with Mother, Mother argued with her. When she threatened to hurt herself, Mother "just laugh[ed]." Since the detention, Leila had had one visit with Mother, during which Mother violated the court order not to talk about the case. Leila said that hearing Mother's voice made her nervous and that she did not want to see or talk to Mother for a while. Leila described herself as "so happy" to be living with her grandparents and expressed the desire to remain living with her grandparents or be placed with Father.

Mother denied that she had emotionally abused Leila, that Leila had ever expressed the feelings she had described to the caseworker, or that Leila had threatened to hurt herself. She claimed she and Leila encountered no problems until the recent visit to the paternal grandparents' house, and expressed the suspicion that Leila was being coached.

In December 2013, the court continued the jurisdictional/dispositional hearing for two months, gave Father unmonitored visits, and gave DCFS discretion to permit overnight visits for Father. In a last minute information for the court

filed February 10, 2014, DCFS recommended releasing Leila to the home of her Father and terminating jurisdiction. Father expressed the desire to have Leila released to his care. DCFS found “no factors . . . present for the child to continue to be removed from [Father’s] care.” Mother had not had a visit with Leila since December 16, because Leila had not wanted to see her.⁴

At the combined jurisdictional/dispositional hearing on February 11, 2014, the parties announced they had settled the jurisdictional issues.⁵ Turning to disposition, the court stated: “The court has received a last minute information for the court which the court has reviewed which recommends that Leila be released to the care of [Father] with a family law order giving him sole physical custody and joint legal custody to [Mother] and Father. [¶] Does anybody wish to be heard?” Mother’s counsel responded: “Yes. Mother is contesting that. She is prepared to go forward today.” Counsel further clarified: “This only goes to the dispositional

⁴ A multi-disciplinary assessment team (MAT) met with the family in February 2014 and prepared a report. Leila reported that she was able to talk to her paternal relatives when she was feeling down, and that they were supportive of her participation in therapy. She said she was happy living with her grandparents, was acclimated to her new school, and wanted to “start fresh” and finish high school in her grandparents’ location. The MAT report stated that Leila “struggles to communicate with [Mother] and threatens to harm herself if she is returned to [M]other’s care.” It recommended that Leila “attend weekly individual therapy sessions with [a] mental health clinician in [an] effort[] to work through her past trauma” and participate in family therapy “if and when she is ready to communicate with [Mother] and build a healthier relationship.” It recommended that Mother “attend her own individual therapy” and “participate in family and collateral sessions if and when determined necessary by [a] mental health clinician.”

⁵ In accordance with the parties’ agreement, the court found true that “[o]n numerous prior occasions in 2013, [Mother] emotionally abused [Leila] by . . . making disparaging remarks about the child to the child, . . . resulting in the child having suicidal ideations, [and] threatening to kill herself . . . if forced to return to [Mother’s] home and care.” The court further found that Leila had demonstrated “depression, withdrawal and low self esteem” due to the emotional abuse by Mother, and was at “substantial risk of suffering serious emotional damage as evidenced by severe anxiety, depression and aggressive behavior toward self or others.”

issue of keeping the case open.” Mother was called and testified that she had completed an eight-week parenting class where she had learned she was “on the right track [in her] parenting” She had started a counseling program and completed one session. She expressed the desire to participate in conjoint counseling to work out her problems with her daughter.

Leila’s counsel advised the court that Leila was not interested in conjoint counseling with Mother, and wished to live with Father and to be in his physical custody. Leila’s counsel agreed with the recommendation of DCFS that jurisdiction be terminated. Father’s counsel also argued in favor DCFS’s recommendation, observing that Father was non-offending, and that there had been no risk identified with releasing Leila to Father’s custody. Mother’s counsel voiced no objection to DCFS’s recommendation that Leila be released to Father’s care, but stated that Mother was requesting that the matter remain open so that she and Leila could participate in conjoint counseling under the supervision of the court. She also argued Mother should be provided monitored visits. The court ordered sole physical and joint legal custody placed with Father. Finding that supervision would no longer be necessary, it announced it would terminate dependency jurisdiction.

After the court announced its disposition, Mother’s counsel asked if Mother would be provided monitored visits. Leila’s counsel interjected that the girl did not feel the need for a monitor. The court ordered unmonitored visits for Mother, but did not specify the number or duration. The court subsequently prepared and filed an exit order which reiterated that Father had physical custody and joint legal custody and further stated: “The mother may visit the minor [child] as follows: [¶]. . . Unmonitored Visitation [¶] As arranged by the parents.” Mother noticed an appeal.

DISCUSSION

Mother contends the juvenile court erred in placing Leila in Father's care and asserts that Father's willingness to allow the girl to remain living with his parents rendered the order "fictitious." She further contends the court abused its discretion in refusing to retain jurisdiction and provide Mother reunification services, particularly conjoint therapy. Finally, she contends the exit order was inadequate because it did not provide for specific visitation or therapy. For the reasons discussed, we conclude the court did not abuse its discretion and that Mother forfeited her remaining objections to the court's orders.

A. Dispositional Order

When a child is removed from a parent's custody, the juvenile court is generally required to include in its dispositional order a provision directing DCFS to provide reunification services to the parent. (See § 361.5, subd. (a).) Section 361.2 provides an exception to the general rule, when "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." (§ 361.2, subd. (a).) If the noncustodial 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." (*Ibid.*; see *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) Once the court places the child with the (former) noncustodial parent, it may "[o]rder that the parent assume custody subject to the jurisdiction of the juvenile court" and "order that reunification services be provided to the parent . . . from whom the child is being removed" (§§ 361.2, subds. (b)(2), (b)(3).) Or it may simply "terminate its jurisdiction over the child." (*Id.*, subd. (b)(1).) When a juvenile court terminates jurisdiction over a dependent

child, it generally also issues a custody and visitation order -- known as a “family law” or “exit” order -- that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203; *In re John W.* (1996) 41 Cal.App.4th 961, 970.) The juvenile court’s decision to terminate dependency jurisdiction and to issue an exit order is reviewed for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Initially, Mother suggests that the court erred in ordering Leila placed with Father, whom she describes as “derelict,” “neglect[ful]” and “uninvolved.” A court may deny placement to a parent who desires custody under section 361.2, subdivision (a) only if it finds by clear and convincing evidence that the placement will create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a); *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.) The party opposing the placement -- whether DCFS or another parent -- “has the burden to show by clear and convincing evidence that the child will be harmed if the noncustodial parent is given custody.” (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1243; accord, *In re Z.K.* (2011) 201 Cal.App.4th 51, 69.) The noncustodial parent’s lack of recent involvement in the child’s life does not in and of itself mandate a finding of detriment. (See *In re Z.K.*, *supra*, 201 Cal.App.4th at pp. 70-72 [mother who had not seen her young son for five years due to abduction by father entitled to custody absent a specific showing of detriment].) Here, Father was not a stranger to his daughter. He had been an active parent during two prior periods of Leila’s life, and had been visiting her in his parents’ home in the year prior to the detention. The court allowed him unmonitored visitation during the two-month period prior to the jurisdictional/dispositional hearing to enhance his relationship with the girl. Leila, who at 15 was old enough to express a preference, felt comfortable enough with

him to request that he be granted custody. (See *In re John M.* (2006) 141 Cal.App.4th 1564, 1570 [older children entitled to have their placement preferences considered].) As neither DCFS nor Mother presented evidence that placement with Father would be detrimental to Leila, the court did not err in ordering such placement.

Alternatively Mother contends for the first time on appeal that the placement with Father was a ruse, intended to circumvent Mother's right to reunification services by creating a pretense of compliance with section 361.2, while actually placing the children with extended family members. Assuming, without deciding, that a noncustodial parent's plan to place his or her child in the care of other responsible adults would support a court's denial of a request for custody under section 361.2, Mother forfeited her right to have this issue addressed on appeal by failing to raise it below.⁶

When the court announced that DCFS was recommending placing Leila with Father and terminating jurisdiction, Mother's counsel stated that she objected. At the hearing, however, she voiced no objection to the proposed placement with Father, only to the termination of jurisdiction. The evidence Mother presented addressed only her progress in therapy and her desire to participate in conjoint therapy with Leila to improve their relationship. She offered neither evidence nor argument objecting to placing Leila with Father or to the current arrangements, under which Leila was living with her grandparents. By failing to object to the

⁶ As respondent points out, incarcerated parents are permitted to attain "custody" of a dependent child, although their intention may be to temporarily leave the child in the care of others while they serve the remainder of their sentences. (See, e.g., *In re Isayah C.* (2004) 118 Cal.App.4th 684, 700 [parent may have custody of child in a legal sense even while delegating day-to-day care of child to third party for limited period of time]; *In re V.F.* (2007) 157 Cal.App.4th 962, 970-972 [same].)

placement with Father -- fully aware of the arrangements he had made -- Mother forfeited her right to challenge such placement on appeal.⁷ (See *In re Abram L.* (2013) 219 Cal.App.4th 452, 462.) That Mother's efforts to persuade the court to retain jurisdiction failed, does not justify her attempt to raise a new issue on appeal that she did not present to the juvenile court.

Mother also claims that the court abused its discretion in refusing to retain jurisdiction and provide her an opportunity to repair her relationship with her daughter by compelling Leila to participate in conjoint therapy with her under court supervision. When proceeding under section 361.2, a juvenile court may, but is not compelled to, order reunification services. A reviewing court has no authority to substitute its decision for that of the juvenile court unless the juvenile court's decision "exceeded the bounds of reason." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Here, the record reflects that despite Leila's threats to commit suicide and her efforts to determine methods of accomplishing this task, Mother was in denial that her daughter had any emotional problems or that she in any way contributed to them. Mother went so far as to deny that Leila had ever expressed such feelings, despite the fact that a few days prior to the detention, Leila had called police officers to Mother's home, asking to be placed in foster care. Leila repeatedly stated that she felt uncomfortable in Mother's presence and was not ready to join Mother in therapy. On the other hand, Leila felt happy and safe with Father and her paternal relatives, and was adjusting well to her life with them. The court could reasonably conclude that allowing Leila to settle into her new environment and new school in the few years that remained before her 18th

⁷ To the extent Mother now objects to the placement as a "misnomer[.]" she has also forfeited that argument. She was well aware that Leila had been living with her grandparents and did not claim that placing the girl in Father's care would be "fictitious." That claim was raised only after she failed to persuade the court to continue jurisdiction.

birthday was paramount, and would not be aided by forcing a reluctant Leila to engage in conjoint counseling with Mother.⁸ We perceive no abuse of discretion in denying Mother's request to retain jurisdiction.

B. *Exit Order*

Mother contends the court erred in failing to specify in its exit order the duration and frequency of her visitation and in failing to include a provision for conjoint therapy. The governing statute states that in terminating jurisdiction and fashioning an exit order, the juvenile court "may issue" an order "determining the custody of, or visitation with, the child." (§ 362.4.) While a court may not issue an exit order delegating discretion to deny visitation to a third party, including the child (see *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123), there is no prohibition on leaving the details of visitation, such as time, place and manner, in the hands of others. (*Ibid.*; see *In re A.B.* (2014) 230 Cal.App.4th 1420, 1432 [upholding exit order that gave mother supervised visitation two times per month for two hours on schedule to be determined by father and mother and subject to modification by agreement of father and mother].) After the dependency court terminates its jurisdiction, "the noncustodial parent's interest in custody and visitation can be heard in the family law court." (*In re A.B.*, *supra*, 230 Cal.App.4th at p. 1439.)

Here, Mother requested monitored visitation. The court ordered unmonitored visitation, but did not specify any number of visits or their duration. The court's exit order stated that visitation should be worked out by agreement between the parents. Having been given more liberal visitation than requested, Mother's counsel understandably did not object. Nor did she request further

⁸ Contrary to Mother's assertion that Leila wanted to participate in conjoint therapy, Leila's counsel reported at the February 2014 hearing that she had no interest in conjoint counseling with Mother at that time.

specification. Accordingly, the contention that the exit order should have been more specific with respect to visitation has been forfeited. With respect to Mother's contention that the exit order should have included provisions for conjoint therapy, assuming that a statute giving the juvenile court the power to determine "custody and visitation" empowers the court to insist that a nondependent child participate with a parent in conjoint therapy, that contention too was forfeited. Mother did not seek to have any such provision included in the exit order.

DISPOSITION

The court's dispositional and exit orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.