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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re NICHOLAS E., et al., Persons  
Coming Under the Juvenile Court  
Law.

B276084

(Los Angeles County  
Super. Ct. No. DK02119)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SUSAN S.,

Defendant and Appellant.

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

Rich Pfeiffer under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

\* \* \* \* \*

The juvenile court exerted dependency jurisdiction over the four children of Susan S. (mother) and Brian E. (father) after finding that mother had repeatedly engaged in conduct that emotionally and physically traumatized the children. However, because the court's orders removing the children from mother, awarding father sole legal and physical custody of the children, and restricting mother's visits with the children to a therapeutic setting with a professional intermediary eliminated mother's opportunities to further traumatize the children as well as the need for further dependency court supervision, the juvenile court terminated dependency jurisdiction with an "exit order" that would become part of the still-pending family court case between mother and father. In this appeal, mother attacks the juvenile court's order terminating jurisdiction. We conclude that mother's attacks on the order and her Indian Child Welfare Act (ICWA)-based challenge are without merit, and affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Facts**

Mother and father had four children while married—Nicholas (born 2001), twins Lauren and Sarah (born 2004), and Zachary (born 2007). Mother and father separated in March 2012. Over the next year, mother and others acting at her behest made dozens of referrals to the authorities accusing father of sexually molesting and physically assaulting the children; all of the accusations were determined to be unfounded. However, as a

result of the referrals, the children were repeatedly interviewed by law enforcement and social services. During these interviews, the children lied about father's conduct; mother induced them to lie by telling them that father was not their biological father and by promising to buy them things if they lied for her. The interviews and constant pressure to lie took a toll on the children: All four children expressed anxiety and dysfunctional or depressive behaviors; Zachary at age six made suicidal threats and was placed on an involuntary mental health hold; and all four children repeatedly missed school at mother's encouragement so father could not pick them up from school for his court-ordered visits.

## **II. Procedural Background**

In November 2013, the Department filed a petition asking the juvenile court to exert dependency jurisdiction over all four children based on mother's conduct. By that time, the family court overseeing mother and father's dissolution proceeding had awarded father legal custody of all four children and physical custody of the youngest three (Lauren, Sarah, and Zachary). Mother still had physical custody of Nicholas and, when she learned of the dependency petition, enlisted the help of her then-boyfriend to hide Nicholas from the Department for six weeks. The juvenile court ordered all four children detained from mother; and after Nicholas was eventually located, he was placed with father.

Mother then moved to dismiss the dependency proceeding, arguing that the pending family court proceeding—and, in particular, the family court's order awarding father legal custody of all four children and physical custody of the youngest three—eliminated any risk of harm to the children and thereby obviated

the need for dependency court oversight. Father joined mother's motion as to the youngest three children, but urged the juvenile court not to dismiss the case involving Nicholas until and unless the family court granted father physical custody of Nicholas.

The juvenile court granted the motion to dismiss on the ground that the family court's award of custody to the nonoffending parent precluded the assertion of dependency jurisdiction. The Department appealed, and we reversed. (*In re Nicholas E.* (2015) 236 Cal.App.4th 458.) We held that the family court's custody orders did not mandate the juvenile court's abstention and reinstated the dependency proceedings. (*Id.* at pp. 461-466.)

On remand, the Department filed an amended petition that the Department and mother subsequently narrowed to the following three allegations: (1) mother's conduct in "encourag[ing] the children to give false . . . information to Law Enforcement and Child Protective Agency employees" regarding father placed the children "at risk of emotional harm"; (2) mother's conduct in willingly "fail[ing] to disclose" Nicholas's "whereabouts, or to return [him] for a period of approximately three weeks" placed the children at risk of physical harm; and (3) mother's conduct "depressed" Zachary, caused him to consider suicide, and resulted in his involuntary commitment in a psychiatric facility, thereby placing him "at risk of emotional damage." These allegations invoked the juvenile court's jurisdiction under Welfare and Institutions Code section 300,

subdivisions (b), (c), and (j).<sup>1</sup> The petition alleged no misconduct by father.

The juvenile court conducted a contested jurisdictional hearing. After nine days of evidence and argument, the court issued an 11-page written ruling that sustained all three allegations and, in conforming the pleading to proof, also sustained allegations that (1) mother's conduct in encouraging the children to give false information placed them at risk of physical harm, and (2) mother's concealment of Nicholas's whereabouts placed the children at risk of emotional harm.

A week later, the court conducted its dispositional hearing. At the hearing, the court formally ordered all four children removed from mother's custody and placed with father, finding by clear and convincing evidence that the Department had made reasonable efforts to prevent removal but that mother still posed a risk of harm to the children because she had yet to "gain . . . [any] insight[] into [her] abuse." The court also indicated its inclination to terminate dependency jurisdiction. Although mother had previously sought dismissal of the dependency proceedings, mother now opposed termination of those proceedings. The attorney for the three youngest children joined mother's opposition, expressing concern that mother would try to re-litigate these issues anew before the family court. The juvenile court overruled these objections, finding that the children were "safe, "well-cared for" and "doing well in father's care" and that, with an "exit order" granting father sole legal and physical custody of all four children and limiting mother's

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

interaction with the children to visits in a therapeutic setting and to conjoint counseling sessions, “the conditions that justified the initial assumption of [dependency] jurisdiction . . . are not likely to exist” because the children no longer face a “substantial risk of physical or emotional harm.” The court acknowledged the possibility that mother might try to re-adjudicate issues before the family court, but found that it was in the children’s best interest to terminate dependency jurisdiction to avoid “repeated visits from social workers” and the “uncertainty” attendant to leaving the dependency case open.

The juvenile court stayed its order terminating jurisdiction and its exit order to give the parties the opportunity to make arrangements for conjoint counseling and for visitation in a therapeutic setting. Although mother rejected one court-approved therapist and tried to set up sessions with a non-approved therapist, the court ultimately ordered mother to cooperate with the intake process for a second court-approved therapist and lifted its stay once the intake process was underway and the initial appointments scheduled. The court also denied five pending motions that mother or her friends had filed seeking to allow mother greater access to the children.

Mother filed this timely appeal. While this appeal was in the process of being briefed, mother filed a petition for writ of habeas corpus and a petition for writ of mandate, both of which we denied and are not before us now.

## **DISCUSSION**

### **I. Termination of Dependency Jurisdiction**

Mother does not challenge the juvenile court’s jurisdictional findings or its exit order awarding father sole legal and physical custody of the children. Instead, she assails the court’s order

terminating dependency jurisdiction. We review this order for substantial evidence. (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1156 [reviewing termination under section 364 for substantial evidence]; *In re K.B.* (2015) 239 Cal.App.4th 972, 979 [reviewing termination under section 361.2 for substantial evidence].) Under the substantial evidence standard, we must affirm as long as there is enough evidence in the record that is reasonable, credible, and of solid value that a reasonable trier of fact could reach the same conclusion as the juvenile court. (*In re K.B.*, at pp. 979-980.)

**A. Analysis**

A juvenile court that has exerted dependency jurisdiction may terminate that jurisdiction under a number of different statutes. Two are pertinent here. When the juvenile court has removed a child from an offending parent and placed that child with the parent “with whom the child was not residing at the time [of] the events or conditions” giving rise to dependency jurisdiction, the court “may” “[o]rder that the parent [with whom the child is placed] become [the] legal and physical custodian of the child” and “terminate its jurisdiction over the child.” (§ 361.2, subds. (a) & (b)(1).) Under this statute, the court’s decision to terminate jurisdiction turns on “whether there is a need for continued supervision” of the dependency court. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451 (*Janee W.*).) When the juvenile court has not removed a child from the parent having physical custody over the child, the court “shall terminate its jurisdiction unless” the Department or a parent “establishes . . . that the conditions still exist which would justify initial assumption of [dependency] jurisdiction” or are “likely to exist if [juvenile court] supervision is withdrawn.” (§ 364, subds.

(a) & (c); *In re J.F.* (2014) 228 Cal.App.4th 202, 210 [“conditions” warranting continued jurisdiction need not be the exact same conditions underlying the juvenile court’s invocation of jurisdiction].) A juvenile court terminating jurisdiction under either statute may also enter an “exit order” fixing custody and visitation if there is a pending family court case. (§ 362.4.)

In this case, the “events” giving rise to the juvenile court’s jurisdiction—that is, mother’s acts in cajoling the children to lie about father—occurred in part while all four children physically resided with her, and in part while the youngest three children resided with father. Thus, both section 364 and section 361.2 are ostensibly applicable. However, we need not parse which statute applies to which incidents of mother’s continuous course of conduct because substantial evidence supports the termination of dependency jurisdiction under each statute. Under section 361.2, the juvenile court’s order awarding sole legal and physical custody to father and limiting mother’s access to the children obviated any need for further supervision because the children were “safe” and “doing well” with father and were entirely precluded from being alone with mother and her poisonous influence. Under section 364, those same findings mean that the conditions that “justif[ied] [the] initial assumption” of dependency jurisdiction no longer (and are not likely to) exist, such that the presumption in favor of termination remains un rebutted.

### ***B. Mother’s Arguments***

Mother levels three challenges at the juvenile court’s order terminating dependency jurisdiction.

First, she argues that the juvenile court relied upon section 364’s standard for terminating jurisdiction when it should have



relied upon section 361.2's standard. A juvenile court's error in making "findings . . . phrased in the language of section 364, [rather than] section 361.2" is harmless "if the evidence on the appropriate issue was undisputed and supports a finding that there is no need for continued supervision." (*Janee W.*, *supra*, 140 Cal.App.4th at p. 1452.) The juvenile court's finding that there is no need for continued supervision once mother is cordoned off from unsupervised access to the children is not only supported by substantial evidence (as discussed above), it is supported by overwhelming evidence.

Second, mother asserts that certain facts undermine the juvenile court's finding. To begin, she asserts that juvenile court supervision is necessary because mother and father do not get along. Apart from the fact that we are reluctant to create a rule that would mandate dependency jurisdiction as a "reward" for a parent's acrimonious behavior, the juvenile court's exit order renders the continuing strife between mother and father irrelevant: The order grants father sole legal and physical custody over the children, which means he and he alone makes all of the decisions regarding the children (Fam. Code, § 3006), and limits mother's physical access to the children to conjoint counseling and visitation in a therapeutic setting.

Next, mother seems to suggest that the juvenile court erred in removing the children from her because (1) the Department appointed a therapist for the children during the pendency of the dependency case, (2) the juvenile court, at the dispositional hearing, opined that that particular therapist should not be used for the future post-exit order visitations in a therapeutic setting, and (3) the court's order somehow reflects a retroactive finding that the therapist was ineffective in counseling the children, such

that the Department did not make “reasonable efforts” to avoid removal. The third step of this argument does not flow from the first two steps, and we reject it.

Further, mother posits that continued jurisdiction is necessary to ensure that the court’s visitation and conjoint counseling orders occur. This position ignores that the juvenile court stayed its order terminating jurisdiction until—and only lifted its stay once—the intake for visitation and counseling was completed and the first appointments scheduled. Given the harm inflicted upon the children from continued dependency jurisdiction, the court acted reasonably in not extending jurisdiction just to ensure that the parents followed through with the implementation of the court’s orders.

Third, mother argues that the juvenile court’s termination of jurisdiction is nothing more than an attempt to “punt” the hard issues of custody and visitation to the family court, which is at a disadvantage because it will not have access to the sealed records of the juvenile dependency court. Mother is wrong that the family court has no access to the juvenile court’s file; by statute, it does. (§ 827, subd. (a)(1)(L).) More broadly, the juvenile court did not punt these issues; it held an evidentiary hearing regarding the assertion of dependency jurisdiction, exerted that jurisdiction, removed the children from mother, held a hearing regarding disposition of the case, and ultimately terminated jurisdiction with an exit order that specifically addresses the issues of custody and visitation to be followed in the family court proceedings. (Cf. *In re Armando L.* (2016) 1 Cal.App.5th 606, 621 [juvenile court erred in terminating jurisdiction without a hearing].) If we adopted mother’s argument in this context, then termination of dependency jurisdiction would *always* be

considered an inappropriate punt; this would effectively repeal the statutes allowing for termination of jurisdiction and for the issuance of exit order. We will not—and, indeed, cannot—take such a position. (*People v. White* (2017) 2 Cal.5th 349, 371 [“It is not our role to rewrite statutes”].)

## **II. Indian Child Welfare Act (ICWA)**

ICWA addresses “the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement.” (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.) To that end, ICWA—as well as the statutes our Legislature enacted to implement ICWA—requires courts and social workers to investigate and notify any Indian tribes whenever an “Indian child” is at risk of such separation—that is, at risk of “foster care placement” or the “termination of parental rights” over that child. (25 U.S.C. §§ 1903(1) & 1912(a); §§ 224.1, subd. (d) & 224.2, subd. (a).) Because we are affirming the juvenile court’s order dismissing jurisdiction and granting legal and physical custody of the children to father, ICWA and its state counterpart are not implicated by this proceeding. ICWA notice is not required.

### **DISPOSITION**

The order is affirmed.

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

We concur:

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

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