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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

J.J. and C.M.,

Petitioners,

v.

SUPERIOR COURT OF THE  
COUNTY OF LOS ANGELES,

Respondent;

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES et al.,

Real Parties in Interest.

B289479

(Los Angeles County  
Super. Ct. No. DK23248)

ORIGINAL PROCEEDING in mandate, Superior Court of  
Los Angeles County, Emma Castro, Commissioner. Denied.

Law Office of Rachel Ewing, Dayana Suazo and Frank Ahn  
for Petitioner J.J.

Law Office of Jolene Metzger, Steven Shenfeld and Michael Petty for Petitioner C.M.

Children's Law Center of Los Angeles, Jennifer M. McCarney and Benjamin Mudd for the minor, M.M.

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In this writ proceeding, petitioners J.J. (father) and C.M. (mother) are challenging a juvenile court order placing their 14-year-old daughter, M.M., a dependent child (Welf. & Inst. Code, § 300),<sup>1</sup> with the maternal grandparents who raised her in Guatemala. Father and mother argue that returning M.M. to Guatemala, the country where she was born and raised until age 12, will deprive them of a realistic opportunity for reunification. Counsel for M.M. argues that the placement is premature. We find no abuse of discretion. The petition is denied.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father and mother were living in Guatemala when their first child, M.M., the subject of this writ petition, was born in 2004. When M.M. was a one-year-old child, father and mother left her in Guatemala and moved to the United States. M.M. lived with her maternal grandparents in Guatemala for the next ten years, while father and mother established a home for themselves and their two younger children who were born in the United States.

When M.M. was 12 years old, father and mother arranged for her flight to Tijuana, Mexico. A third party picked her up at the Tijuana airport and dropped her off at the United States

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<sup>1</sup> All further statutory references are to this code.

border. She was detained in a federal shelter for unaccompanied minors, and was then released to her parents. She moved to Los Angeles to live with her parents and siblings while awaiting a court hearing in her immigration case. That action is still pending.

Not long after her arrival in Los Angeles, M.M. became depressed because of physical and emotional abuse inflicted by mother, which was ignored by father. After receiving several referrals, the Los Angeles County Department of Children and Family Services began providing the family with voluntary maintenance services in early 2017. The abuse continued despite the Department's intervention. On June 6, 2017, M.M. was taken into emergency protective custody because of injuries consistent with physical abuse.

In a dependency petition filed on behalf of M.M. and her two younger siblings,<sup>2</sup> the Department alleged that: (1) mother physically abused M.M., and father was aware of the abuse but did not protect M.M. (sustained counts a-1, b-1, j-1); (2) father physically abused M.M., and mother was aware of the abuse but did not protect M.M. (dismissed counts a-2, b-2, j-2); and (3) mother emotionally abused M.M., who demonstrated suicidal ideation and depression resulting in two psychiatric hospitalizations in December 2016 and March 2017 (sustained count c-1).

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<sup>2</sup> The juvenile court sustained the allegations as to the siblings, who were found to be dependent children because of the abuse and neglect of M.M. The siblings were not removed from the custody of the parents, and are not parties to the present writ petition.

At the detention hearing, M.M. was placed in shelter care. Father and mother were granted family reunification services and visitation in a therapeutic setting. M.M. was granted weekly telephone calls with her maternal grandparents.

At the adjudication hearing, which was conducted over two dates in November and December 2017, the Department explained that the parents' decade-long separation from M.M. had resulted in the child's bonding with her maternal grandparents rather than her parents. Because of the abuse and neglect she suffered while living with her parents, M.M. was afraid of her parents and was not willing to visit or live with them. M.M. was doing well in foster care, and her condition had improved following her detention. The Department recommended that the parents participate in a parenting program, individual counseling, and conjoint counseling with M.M. when appropriate.

Because M.M. was asking to return to her grandparents' home in Guatemala, she was advised that doing so would likely be permanent as she would need a visa to reenter the United States. Father and mother opposed M.M.'s request, arguing the reunification process would be difficult if not impossible if M.M. returns to Guatemala. The juvenile court requested an international home assessment for the maternal grandparents, and continued the adjudication hearing.

At the continued adjudication hearing, the court sustained the allegations of physical and emotional abuse against mother, and the allegation of failure to protect against father. It dismissed the remaining counts. The parents were ordered to participate in conjoint counseling, a parenting program, individual counseling, and visits in a therapeutic setting. The

court removed M.M. from the home of her parents, and ordered that she be suitably placed. (§ 361, subd. (c).) The court scheduled a contested hearing for April 6, 2018 on M.M.'s request to return to Guatemala.

In March 2018, M.M. filed a section 388 petition seeking to terminate family reunification services. She stated that the uncertainty of her situation was causing emotional stress. She explained that visitation with her parents had been infrequent and brief, and her mother had made inappropriate comments. She claimed that her mother was using sibling visits as leverage to gain parental visits. In response to her petition, the Department offered to provide M.M. with airfare to Guatemala and a caseworker to accompany her. It also offered to contact M.M.'s immigration attorney to seek a voluntary departure order.

At the April 6, 2018 contested hearing on M.M.'s requests, the maternal grandfather testified by telephone that both grandparents were able and eager to care for M.M. in their home. M.M. testified in chambers that she came to this country alone at age 12. She was met at the airport in Tijuana by a person who dropped her off at "immigration." She was sent to a shelter for "undocumented kids," and was released to her parents. Shortly thereafter her mother began to physically and verbally abuse her. She wants to return to her grandparents in Guatemala who had not mistreated her, and states that she will be happier there. She would like to visit her siblings, but not her parents. After she returns to Guatemala, she plans to go to school, become an attorney, and, when she is older, vacation in the United States under a tourist visa.

M.M. testified that she does not want to reunify with her parents. She explained that if the court makes her stay in this

country, she will live in foster care. She thinks her mother is a “very angry” person who is unlikely to change in light of her mother’s statements that therapy is a waste of time.

Mother argued that the juvenile court lacks authority to send M.M. to Guatemala. (Citing *In re Luke L.* (1996) 44 Cal.App.4th 670.) Father argued that sending M.M. to Guatemala would destroy any realistic chance of family reunification. He contended that conjoint therapy and therapeutic visitation will be impossible if M.M. is in Guatemala, and the separation would only exacerbate the strained relationships that led to her removal. He explained that because he is undocumented, he is unable to visit M.M. in Guatemala.

At the continued hearing on April 12, 2018, the court received a positive assessment report on the grandparents from the Guatemalan social services agency. The Department argued that the parents were entitled to at least six months of reunification services, and the first six-month review hearing was scheduled for June 6, 2018 (§ 366.21, subd. (e)). The Department also explained the requirements for obtaining a voluntary departure order for M.M.: The immigration court was requesting a juvenile court order stating that M.M. expressed her desire to return to Guatemala; the Department would finance her return; and the Department would send a case worker or other appropriate person to accompany M.M.

Counsel for M.M. argued that it was in the child’s best interest to return to her grandparents in Guatemala, but that he would “submit” the matter under *In re Karla C.* (2010) 186 Cal.App.4th 1236.

After considering the evidence, testimony, and arguments by the parties, the juvenile court issued the April 12, 2018 order

that is the subject of the present petition. The court denied the request to terminate family reunification services; granted the request to place M.M. with her grandparents in Guatemala; and ordered that arrangements be made to obtain a voluntary return order.

The transcript of the April 12, 2018 hearing provides the court's detailed rationale for its ruling:

“[V]ery early on in these proceedings, [M.M.] indicated a desire to return to her maternal grandparents in Guatemala. She has been suitably placed since the filing of this petition, now almost a year ago. She's living with nonrelative caretakers. And she has been asking, for almost the entirety of the time I have heard this case, to return to her grandparents. The court initiated a request for international placement investigation on the home of the maternal grandparents, who have raised this child her entire life. Her parents left her behind in Guatemala – that was a volitional act – and traveled to the United States in search of a better life. The court is in no way impugning the parents' reasons for coming to the United States. But what the parents have to realize is that there are emotional consequences when parents leave children behind in their country of origin for almost a decade. Their bonding and their attachment, if there was one, is significantly impacted. And when Maria was brought back to the parents' custody at age 12, she had been living with her grandparents, who she looks at as her mother and father, since she was a newborn.

“And she has had a very difficult adjustment to living with her parents from the onset of her arrival to California from Guatemala, so much so that she was psychiatrically hospitalized a year before the filing of this petition. She was prescribed

medication. And [M.M.] has been very unhappy living in Los Angeles, living in California. She testified that she views her home country of Guatemala as her home; that's where she was born; that's where she first learned her language; that's where her tradition, her culture, her history come from. And I think it's been very difficult for the parents to realize how unhappy their daughter has been.

“Further, the court notes that the WIC 300 petition that was filed in this case was not a simple matter of physical abuse. The court sustained egregious counts of physical abuse by the mother to [M.M.] So here you have a child who has not even seen her mother for almost a decade. And within the first 12 months that she is living with her parents, the mother inflicts punishment, striking the child with a sandal, a broom, a cell phone, a belt, a plastic handle – a plastic hanger, a wooden backscratcher. The mother placed a wipe cloth with mother's feces inside the child's mouth. The child demonstrated suicidal ideation and depression resulting in the child's hospitalization on two occasions – in December of 2016 and in March of 2017—as a result of the emotional abuse of the child by the mother.

“And that was sustained by the court. The court is quoting from the WIC 300 (c) count that the court sustained. And the father failed to protect the child when the father knew of the mother's physical and emotional abuse. There were allegations of physical abuse sustained in the (a) counts—in the (a) count. And the court takes judicial notice of the sustained petition filed on June 12, 2017. The record will speak for itself in terms of what the child endured in that year that she lived with her mother and father and her two young siblings.



“The court granted family reunification services to the parents. They were entitled to family reunification services. And the child, a year later—we’re ten months from the filing of the original petition—doesn’t want to visit her parents. She hasn’t wanted to visit her parents for many months.

“And while I understand the parents went to great expense to bring [their] daughter back in the hopes that she would reunite with the family, sometimes the passage of time makes that impossible. And I think that is very difficult for parents in situations that this family finds itself to understand.

“[M.M.’s] bond and attachment is not to her mother and not to her father. It is to her maternal grandparents, who raised her, with whom she has lived since was born, and who she considers her mother and father. And that’s where she wants to return.

“So the court is not terminating parents’ family reunification services. Family reunification services will continue through the .21(e) date of June 6, 2018.

“Now, the orders that the court made for the mother and father are orders that impact the other siblings as well. The court took jurisdiction not only of [M.M.] but, based on the sustained adjudication findings, also included the two younger children of the parents. And so the case plan may continue to be completed, whether [M.M.] is here or not, in terms of the parenting that the court ordered, the individual counseling, to address case issues that the court ordered. What will not be able to take place is face-to-face visitation with [M.M.]

“The court is aware that many parents receive family reunification services that live outside of the United States. . . . I’m sure that regularly in one of these 25 dependency courts in L.A. County, parents are being granted family reunification

services when they live in Mexico, when they live in Honduras, when they live in El Salvador, when they live in Guatemala, which are the most common countries where parents are deported while their children are residing in California, in Los Angeles County, in this particular juvenile dependency court system. Parents still get family reunification services even if they live in Mexico, out of the country.

“So while I understand there is a very big difference between being able to visit your child face-to-face versus having perhaps visits by video or visits by Skype. Certainly those are both available and they were utilized by the parents when [M.M.] was living in Guatemala.

“The court is not going to change its orders regarding visitation. Conjoint counseling has not taken place because [M.M.] refuses to have conjoint counseling with her parents because she refuses to consider returning to the home of her mother and father.

“She is not seven years old. She is not ten years old. She is . . . now 14 years old. And while some may consider that still a young child, the court notes that that is an adolescent, and she is a young teen with strong desires about where she wants to live.

“And the court believes that it’s contrary to this child’s physical and emotional well-being to continue having her remain in nonrelative placement when she has loving, appropriate, nurturing grandparents in Guatemala, who have raised her since birth and want her to return there, and she wants to return there.

“She has no legal standing in the United States. And that is not the basis for the court’s decision. The basis for the court’s decision is her emotional well-being and the court’s belief that it’s

in this child's best interests to be returned to the home of her maternal grandparents and that it's detrimental to this child's emotional and physical well-being to continue living in Los Angeles County in nonrelative foster care."

Father filed a request for immediate stay and petition for writ of mandate seeking to reverse the order granting the child's request to be placed with her maternal grandparents in Guatemala. Mother filed a notice of joinder in father's petition. Counsel for M.M. filed a brief arguing that although the placement in Guatemala would be in the child's best interest, the placement order was premature under *In re Karla C.*, *supra*, 186 Cal.App.4th 1236.

We issued a stay and alternative writ of mandate, established a briefing schedule, and set the matter for oral argument.

## DISCUSSION

Following the removal of a dependent child from the physical custody of his or her parents under section 361, the juvenile court shall give preferential consideration "to the request by a relative of the child for placement of the child with the relative, regardless of the relative's immigration status." (§ 361.3., subd. (a).) "Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (*Id.* at subd. (c)(1).) Grandparents are among those who are entitled to preferential consideration. (*Id.* at subd. (c)(2).)

In considering a request to place a child with a relative who is entitled to preferential consideration, the relevant factors include:

- “The best interest of the child, including special physical, psychological, educational, medical, or emotional needs” (§ 361.3, subd. (a)(1));
- “The wishes of the parent, the relative, and child, if appropriate” (*id.* at subd. (a)(2));
- “The nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful” (*id.* at subd. (a)(6)); and
- The ability of the relative under consideration to:
  - (A) Provide a safe, secure, and stable environment for the child.
  - (B) Exercise proper and effective care and control of the child.
  - (C) Provide a home and the necessities of life for the child.
  - (D) Protect the child from his or her parents.
  - (E) Facilitate court-ordered reunification efforts with the parents.
  - (F) Facilitate visitation with the child’s other relatives.
  - (G) Facilitate implementation of all elements of the case plan.
  - (H) (i) Provide legal permanence for the child if reunification fails.
  - (ii) However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G)

shall not be the sole basis for precluding preferential placement with a relative.

- (I) Arrange for appropriate and safe child care, as necessary. (*Id.* at subd. (a)(7).)

The juvenile court carefully balanced the parents' interest in keeping the child in nonrelative foster care in Los Angeles against the child's desire to live with the maternal grandparents who raised her and are the only stable parental figures in her life. The record contains substantial evidence to support the juvenile court's finding that it is in the best interest of the child to be placed with her grandparents, and that it would be detrimental to the child's emotional and physical well-being to keep her in nonrelative foster care.

Before reaching this decision, the juvenile court considered the Guatemalan social services agency's positive assessment report for the grandparents, the telephonic testimony by the maternal grandfather regarding his ability and desire to care for M.M., and the live testimony by M.M., who was very clear in expressing her wish to return to Guatemala. Because M.M. is 14 years old, her desires are a factor that may be considered in evaluating whether it is in her best interest to grant her request to return to Guatemala. (§ 361.3, subd. (a)(2).)

There is substantial evidence to support a reasonable determination that even were M.M. to remain in Los Angeles, the prospects of reunification are dim. Her brief stay with her parents was marred by serious incidents of violence and emotional abuse that caused her emotional and mental distress, and resulted in two psychiatric hospitalizations for suicidal ideation. Neither parent has played a positive parental role for any substantial period in her life. When M.M. rejoined her

family at age 12, she was abused and mistreated by her mother, and her plight was ignored by her father. M.M.'s trust was broken, and there is no immediate remedy in sight. Because M.M. is unwilling to participate in conjoint therapy or therapeutic visitation, there is little prospect of reunification at present.

Notwithstanding the critical role of visitation in family reunification (*In re Luke L.*, *supra*, 44 Cal.App.4th at pp. 678–679) and the preference given to the parent's interest in reunification at this stage of the dependency proceedings (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310), the lack of progress in this case is undoubtedly a result of the decade-long separation during which the parents created a new family with M.M.'s two younger siblings. Even though a proper "reunification plan must include visitation" that is "as frequent as possible," it is important to recognize that the visitation also must be "consistent with the well-being of the minor." (*In re Luke L.*, *supra*, 44 Cal.App.4th at p. 679.) Because M.M. is unwilling to participate in conjoint therapy and therapeutic visitation, forcing her to stay in nonrelative foster care in Los Angeles is unlikely to advance the parents' prospects of reunification, and is detrimental to her emotional and physical well-being.

Because the record contains substantial support for the juvenile court's finding that placing M.M. with her grandparents in Guatemala would be in her best interest (§ 361.3, subd. (a)(1)), we find no abuse of discretion.

*In re Karla C.*, *supra*, 186 Cal.App.4th 1236 does not compel a different result. The dependent child in that case was a California resident whose placement with a noncustodial and nonoffending father in Peru was being challenged by the child's

mother, whose failure to protect the child from sexual abuse committed by the child's stepfather had led to the child's removal from the mother's custody. Remand was granted for a further hearing on whether, should the mother regain custody, the father would be willing to return the child to the mother, and if not, whether the juvenile court had authority to compel the father to do so. In this case, no comparable concerns have been expressed as to the grandparents.

*In re Luke L.*, *supra*, 44 Cal.App.4th 670 also is distinguishable. The three dependent children in that case were living with their mother in Northern California when they were removed from her custody. One child was placed in Illinois and the other two in Southern California. The mother successfully challenged the placement order, arguing the distances involved would make visitation so difficult that she would not have a realistic opportunity for unification. Because the children in that case were younger (ages four, six, and eleven) and had lived with their mother—they were not estranged from or unwilling to visit their mother—the reasoning of the *Luke L.* court is not dispositive.

### **DISPOSITION**

The alternative writ of mandate is discharged. The petition for writ of mandate is denied.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.