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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B294387
(Los Angeles County
Super. Ct.
No. 17CCJP00818)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff,

v.

FRED F.,

Defendant and Appellant,

NATALIE M.,

Defendant and
Respondent.

APPEAL from an order of the Superior Court of Los Angeles
County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Respondent.

Fred F. (Father) appeals from the final juvenile custody order entered by the juvenile court when it terminated jurisdiction over then six-year-old Joshua C. at the Welfare and Institutions Code¹ section 364 hearing. Father contends the trial court abused its discretion in granting Natalie M. (Mother) sole legal and physical custody of Joshua. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Referral and Investigation

On September 29, 2017 the Los Angeles County Department of Children and Family Services (Department) received a referral alleging Father physically abused then five-year-old Joshua. The school reported Joshua kicked another student. When the teacher told Joshua she would call Father, Joshua said, “[N]o[,] my dad is going to spank me with a big stick.”

On September 30 a sheriff’s deputy interviewed Joshua and observed he had red, raised marks on his back and bruises on his buttocks. Father interrupted the interview and admitted to spanking Joshua. Father told the deputy, “[Y]ou can take him if you want, I just don’t want to get in trouble.” Father’s wife, Aida, told the deputy she had seen Father hit Joshua with a back

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

scratcher, and she told Father to stop.² Father told Aida not to get involved because Joshua was his son. The deputy arrested Father for inflicting corporal punishment on Joshua. (Pen. Code, § 273d, subd. (a).)³

The same day the investigating social worker had a telephonic interview with Mother, who lived in Pennsylvania. Mother said she left Father because he was abusive towards her and her two older children from a prior relationship. When Mother was living with Father, he repeatedly beat her older children, picked up her daughter by the throat and threw her, made the children lick the floor if they spilled something, and wiped feces on her son's face because he was not toilet-trained. Mother's son suffered posttraumatic stress disorder because of Father's abuse. When Mother tried to intervene, Father would grab her in a hold, twist her arm, and threaten to beat her children more if she did not stop undermining his authority. In addition, Father grabbed Mother by the throat and threw her on top of her children. Father threatened to kill her, saying, "I wish it was legal to kill you."

Mother told the social worker she left Joshua with Father when she moved to Pennsylvania to live with a friend, but she had

² In his later interview with the social worker, Father denied he physically abused Joshua, and Father claimed the deputy led Joshua to make the statements. A month later Aida denied she saw Father hit Joshua with a stick, but she admitted she saw a fresh red mark on Joshua's back. Aida claimed she did not know how Joshua got the red mark.

³ According to the court docket submitted by Father to the juvenile court, the jury found Father not guilty of inflicting corporal punishment on a child.

intended to return to California to bring Joshua back with her. Father obtained custody of Joshua when Mother left California, although Mother continued to have weekly contact with Joshua through Internet video calls (Skype). Mother was now married, had a stable home, and could provide for Joshua. She wanted full custody of Joshua.

On October 1 the social worker spoke by telephone with Father's former girlfriend, Roxanne K., who had a child with Father. Roxanne reported Father was very controlling and abusive. When she tried to leave the relationship on multiple occasions, Father threatened to kill her. Father broke her windows and tried to break down her door to enter her home by force, causing Roxanne repeatedly to call the police. Father's abusive behavior did not stop until Roxanne's fiancé confronted him. Roxanne continued to be afraid of Father, and she refused to provide her address to the social worker because she did not want Father to learn where she lived.

B. The Petition and Detention

On October 3, 2017 the Department filed a petition alleging Joshua came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b)(1), and (j). The petition alleged Father physically abused Joshua by repeatedly striking him with a stick, inflicting red welts, cuts, marks, bruising, and swelling to his buttocks and back.⁴

⁴ The petition also alleged half sister Chloe had a healing fracture of her distal fibula, but a genetics specialist later determined the fracture was caused by a genetic condition, and the allegation was dismissed.

At the October 5, 2017 detention hearing, the juvenile court detained Joshua from Father and Mother and placed him in foster care. The court denied Mother's request for placement of Joshua in her home until it obtained the family court record to determine why Father had sole legal and physical custody. The court ordered the Department to investigate Mother's home situation to address visitation and custody issues. The court ordered Father not to use corporal punishment and granted monitored visits for Mother and Father, with the Department having discretion to liberalize Mother's visits.

C. *The Jurisdiction and Disposition Report*

The November 13, 2017 jurisdiction and disposition report stated the family court documents showed on September 23, 2013 the family court had granted Father sole legal and physical custody of Joshua on the basis Mother had abandoned him and violated court orders. Mother reported the family court later granted her request for supervised visitation with Joshua.

D. *The Jurisdiction and Disposition Hearings*

At the February 9, 2018 jurisdiction hearing, the juvenile court sustained the allegations Father physically abused Joshua. The court allowed unmonitored visits for Mother while she was in Los Angeles and monitored visits for Father, with the Department having discretion to liberalize visitation.

At the March 9, 2018 disposition hearing, the court declared Joshua a dependent of the court under section 300, subdivisions (a) and (b)(1). The court removed Joshua from Father's physical custody under section 361, subdivision (c), and placed him with Mother pursuant to section 361.2. The court ordered the Department to provide family maintenance services for Mother,

individual counseling and testing referrals for Joshua, and family reunification services for Father. The court ordered Mother to continue individual counseling and to participate in conjoint counseling with her family and Joshua. It also ordered the Department to initiate an evaluation of Mother's home in Pennsylvania pursuant to the Interstate Compact for the Placement of Children (ICPC; Fam. Code, § 7900 et seq.). The court granted Father unmonitored day visits and ordered him to participate in individual counseling, anger management counseling, and parenting classes.

E. *The Sexual Abuse Allegations*

On May 1, 2018 the Department filed an ex parte application seeking to limit Father's visitation with Joshua to monitored visits based on Joshua's disclosure in April to his psychologist, Pamela McCloskey, of Father's sexual abuse. (§ 385.) According to the application, in November 2017 the Department received a referral that Father had sexually abused Joshua after Joshua disclosed to his foster father that Father had touched Joshua's private parts and let Joshua touch Father's private parts. However, after Joshua later denied Father had touched him, the Department found the referral was inconclusive. The application also reported that in February 2018 Joshua touched his roommate's private parts while acting out in their foster home, and in April 2018 Joshua made sexual advances towards his older half brother. McCloskey was concerned about Joshua's behavior because it was not typical for someone his age to act out sexually. The juvenile court granted the application, ordered monitored visitation for Father, and set the matter for a further hearing to enable the Department to conduct a forensic interview of Joshua in Pennsylvania.

The June 18, 2018 last minute information for the court reported that during his forensic interview, Joshua said only a parent may touch a child on his or her private parts, after putting on a glove. He stated he learned this from a television show, but he could not remember the name of the show. Joshua denied anyone inappropriately touched him. Based on Joshua's denial of sexual abuse, the Department recommended Father be allowed unmonitored visits. At the June 20 section 385 hearing, the court reinstated Father's unmonitored day visits with Joshua over the objection of minor's counsel.

On July 20, 2018 minor's counsel requested a rehearing of the contested section 385 hearing on the basis she was not provided a transcription of the forensic interview. (§ 252.) The juvenile court granted the request and set a hearing for September 27. McCloskey stated in a September 7 letter that during an April 12, 2018 therapy session, six-year-old Joshua spontaneously said Father had locked the bedroom door, put on a glove, and touched Joshua's private parts. But in a June 14 session, after Joshua's monitored visit with Father in Pennsylvania, Joshua stated, "I made a mistake for my dad touching my private. He told me he didn't touch me." Joshua reported during the monitored visit Father and Joshua "lost the [monitor] for a while in an arcade."

McCloskey told the social worker she believed Joshua's initial disclosure of sexual abuse by Father was true because of Joshua's sexualized behavior, his spontaneous disclosures of abuse, and the consistent specific details he provided. Based on McCloskey's letter and conversation with the social worker, the Department recommended Father have monitored visitation until Joshua and Father had conjoint therapy.

Prior to the rehearing, the expert for minor's counsel, Lauren Maltby—a child psychologist and professor who trained forensic interviewers—provided a letter with her expert opinion relating to the sexual abuse allegations. Maltby opined the second forensic interview was flawed because of the interviewer's questions and use of anatomically correct drawings prior to a disclosure of sexual abuse at the interview. Maltby also stated studies suggest children in situations similar to Joshua recant even when the sexual abuse allegation is true. Maltby noted Joshua was young at the time of the initial disclosure, the alleged abuser was a parent, and his recantation occurred the day after he had a visit with Father, some portion of which was unsupervised.

At the September 27, 2018 rehearing, the juvenile court ordered, "Father's visits are to remain monitored until he meets with Pamela McCloskey and appropriate safeguards regarding physical discipline and sexual boundaries are put in place." The court also ordered Father to have conjoint therapy with Joshua and McCloskey to address physical discipline and sexual boundaries.

F. *The Reports for the Section 364 Hearing*

The August 16, 2018 status review report stated Father and Mother were in compliance with their case plans. Father had participated in individual counseling, anger management counseling, and parenting classes. Father's therapist indicated Father no longer needed individual therapy as of May 11, 2018 because he had met his treatment goals. Earlier that month Father had enrolled in additional anger management counseling and parenting classes. Joshua initially told the social worker he was treated better in Father's home than Mother's, and he would like to return to Father's home. But the October 9, 2018 last

minute information for the court reported Joshua told the social worker he was happy in Mother's home and wanted to continue living with her. However, Joshua also said he "kind of" wanted to live with Father as well.

In her November 15, 2018 letter, McCloskey reported that during her October 30 call with Father, Father acknowledged he used physical discipline, but denied Joshua sustained any bruises. Father adamantly denied any inappropriate sexual touching of Joshua and stated any touching of Joshua's genitalia would be have been in the context of normal caregiving, such as bathing. In a November 8 call McCloskey had with Father and Joshua, Joshua told Father he did not like the spankings. Father responded he was glad Joshua talked about his feelings, but the spankings were part of his discipline of Joshua, and parents needed to discipline their children. Joshua reminded Father he could use a "timeout" or other discipline instead of spanking. McCloskey stated in her letter "[t]here is still concern . . . about the basis for Joshua's statement about being touched inappropriately by [Father]." McCloskey recommended a further psychological evaluation of Father.

G. *The Section 364 Hearing*

At the start of the November 16, 2018 section 364 hearing, the juvenile court indicated it would terminate jurisdiction and grant Mother sole legal and physical custody of Joshua, with reasonable unmonitored day visits for Father. Father's counsel did not object, but instead proposed, "[Father] would visit Joshua one weekend per month and try to coordinate that weekend around the holiday weekend, if possible, so he can have Joshua [on a] day off on a holiday. Additionally, he would be able to visit Joshua for one week in the summer and one week over winter

break.” Father’s counsel explained Father would visit with Joshua in Pennsylvania during the two weeks of summer and winter break, or Mother could bring Joshua to California for unmonitored day visits. Father also requested continued contact with Joshua through Skype. Towards the end of the hearing, Father’s counsel added, “And, Your Honor, just for the record, we understand the court’s indicated—not arguing but, just for the record, Father’s position is he would request custody of his child. He believes he’s done everything. [¶] In the alternative, he would request overnight visits. We understand the court’s ruling. We need to put that on the record.”

The Department objected to Father’s unmonitored visitation because “the child remains at risk from the father should he have unmonitored contact.” The Department noted McCloskey was not recommending unmonitored visits. The Department also urged the court not to terminate jurisdiction until completion of the ICPC process for Mother. Minor’s counsel and Mother argued the court should terminate jurisdiction because an ICPC evaluation was not required. They also objected to Father’s unmonitored visitation. The court terminated jurisdiction over Joshua, but stayed it pending receipt of the juvenile custody order.

On November 26, 2018 the juvenile court entered the juvenile custody order, granting Mother sole legal and physical custody. The attached visitation order granted Father unmonitored day visits “[o]ne weekend per month, one week at summer and one week at winter break.” The order did not allow Father to have overnight visits.

Father timely appealed from the November 26, 2018 custody order.

DISCUSSION

When the juvenile court terminates jurisdiction, “section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*In re Chantal S.* (1996) 13 Cal.4th 196, 203; accord *In re C.W.* (2019) 33 Cal.App.5th 835, 862-863.) In determining custody or visitation, the court’s primary consideration is the best interests of the child. (*Chantal S.*, at p. 206; *In re John M.* (2013) 217 Cal.App.4th 410, 421; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review a custody order for an abuse of discretion. (*C.W.*, at p. 863; *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.) “[W]hen a court has made a custody determination in a dependency proceeding, “a reviewing court 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; accord, *C.W.*, at p. 863.)

Father contends the juvenile court abused its discretion in awarding Mother sole legal and physical custody of Joshua.⁵ He

⁵ Mother contends Father forfeited any challenge to the juvenile custody order because his counsel did not object at the section 364 hearing. But at the start of the hearing, the juvenile court indicated it would terminate jurisdiction and grant Mother sole legal and physical custody. Father’s counsel proposed the visitation schedule in response to the court’s inquiry about the agreed-upon visitation arrangement. Further, Father’s counsel stated he understood the trial court’s ruling, but requested custody or overnight visitation “for the record.” Under these

asserts joint legal and physical custody was in Joshua's best interests because Joshua wanted to live with him and Father addressed the sustained physical abuse allegations by completing individual counseling, anger management counseling, and parenting classes multiple times. But Father appears not to have benefitted from the programs. Although Father learned about alternative discipline methods as part of the family reunification services provided in Chloe's case and was ordered by the juvenile court in this proceeding not to use corporal punishment, he continued to believe it was appropriate to discipline Joshua by spanking him. Father's previous "spanking" included hitting Joshua with a stick, causing visible bruising. During their November 8, 2018 telephone call, Joshua had to remind Father that he could use a "timeout" and other alternative disciplinary methods, instead of spanking.

In addition, Father continued to minimize the injuries he inflicted on Joshua. In his October 30, 2018 telephone call with McCloskey, Father acknowledged using physical discipline, but denied Joshua had any bruises. Father's claim is contradicted by the deputy's observations of red marks and bruises on Joshua's back and buttocks on September 30, 2017, and Aida's acknowledgement that Joshua had a red mark on his back.

Although Joshua stated in August 2018 he was treated better in Father's home than in Mother's, according to the October 9, 2018 last minute information for the court, Joshua at that time told the social worker he was happy in Mother's home and wanted to continue living with her.

circumstances, Father has not forfeited his challenge to the custody order.

Moreover, the juvenile court reasonably could have been concerned about Father's possible sexual abuse of Joshua. Joshua made spontaneous statements to his foster father, and later to McCloskey, that Father touched Joshua's private parts. During an April 12, 2018 therapy session with McCloskey, Joshua stated Father had touched his private parts with a gloved hand after Father locked the bedroom door. Although in two later forensic interviews Joshua denied anyone had sexually touched him, in the first forensic interview the social worker noted Joshua "appeared very guarded," his answers were "very limited and short," and the interview ended after Joshua became anxious. As to the second forensic interview, the expert retained by minor's counsel (Maltby) found flaws with the interview questions and procedure. Further, both Maltby and McCloskey found the circumstances leading to Joshua's second recantation were suspicious. Maltby noted Joshua was young at the time of the initial disclosure, the alleged abuser was a parent, and Joshua's recantation occurred the day after he had a visit with Father, at least some portion of which was unsupervised. McCloskey believed Joshua's disclosure of sexual abuse by Father was true because of Joshua's sexualized behavior towards other children, his spontaneous disclosures of abuse, and the consistent specific details he provided of Father's sexual touching.⁶ McCloskey recommended there be monitored

⁶ Father claims McCloskey was biased in favor of Mother because she was a witness for Mother during the prior family law proceedings before she became Joshua's therapist. But there is no evidence in the record showing McCloskey served as a witness for Mother in the prior family case; rather, Father only points to the assertion he made in a brief filed in the dependency proceeding. Moreover, Father has not pointed to any statements by McCloskey that show bias.

visitation until Father had a further psychological evaluation. The juvenile court allowed unmonitored visitation over the objections of the Department, Mother, and minor's counsel.

Father also contends he should have been allowed joint legal custody so he and Mother could share in decisionmaking regarding Joshua's health and educational needs. Father asserts Mother and Father were getting along, but the only evidence he points to is that Mother was monitoring Father's calls with Joshua on Skype. Father had a history of controlling and threatening Mother, including grabbing and threatening to kill her when she tried to intervene to stop him from physically and verbally abusing her children, which caused her to flee to Pennsylvania. Father's former girlfriend, Roxanne, similarly reported Father was controlling and had physically abused and threatened her. She was so fearful of Father that she refused to give the social worker her address out of a concern Father would learn where she lived.

On these facts the trial court acted within its discretion in determining that awarding Mother sole legal and physical custody, with unmonitored day visits for Father, was in Joshua's best interests.

DISPOSITION

The juvenile custody order is affirmed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.