Filed 6/1/17 In re Nathan W. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re NATHAN W., a Person Coming Under the Juvenile Court Law.	B278335 (Los Angeles County Super. Ct. No. DK16104)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.W., Objector and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Joshua D. Wayser, Judge. Affirmed.

John M. Kennedy, under appointment by the Court of Appeal, for Objector and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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Immediately after the juvenile court asserted dependency jurisdiction over nine-year-old Nathan W. (Nathan) based on allegations that I.W. (mother) and her new boyfriend had subjected Nathan to physical and emotional abuse, the court issued an order awarding Kevin W. (father) sole legal and physical custody. Mother appeals this order. The juvenile court's order was correct, and we affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother and father have one child together, Nathan. Nathan was born in 2006. By 2015, mother and father had divorced. The parents shared joint legal custody, but Nathan lived with father except during summer break and every other weekend during the school year.

When Nathan stayed with his mother, he would regularly be in the room when mother's new boyfriend would physically assault her by slapping her and grabbing her throat. Mother and the boyfriend would also leave Nathan and his younger half brother in the house alone while they went out drinking and bowling. Nathan did not feel safe when he visited mother, and in December 2015, he became so scared about an upcoming visit that he threatened to kill himself.

After officials at Nathan's school reported his threat of suicide, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Nathan. In the

operative first amended petition, the Department alleged that (1) mother's history of domestic violence with her boyfriend created a "substantial risk" that Nathan "will suffer[] serious physical harm" due (a) to the "nonaccidental[]" infliction of harm upon him (in violation of Welfare and Institutions Code section 300,[1] subdivision (a)), and (b) to mother's "failure . . . to adequately protect" Nathan (in violation of section 300, subdivision (b)); (2) mother's history of domestic violence placed Nathan at "substantial risk of suffering serious emotional damage" (in violation of section 300, subdivision (c)); and (3) mother's practice of leaving Nathan and his half brother unattended placed Nathan at "substantial risk" of "suffering serious physical harm" (in violation of section 300, subdivision (b)).

The juvenile court sustained all of the allegations in the first amended petition and exerted dependency jurisdiction over Nathan. Simultaneously, the court ruled that "th[e] conditions which would justify [its] . . . assumption of jurisdiction . . . no longer exist and are not likely to exist if supervision is withdrawn and the court terminates jurisdiction with a juvenile custody order awarding sole physical and legal custody of [Nathan] to father." The court issued that order, which also provided for mother to have visitation rights.

Mother filed a timely notice of appeal.

DISCUSSION

Mother argues that the juvenile court lacked the statutory authority to issue its terminating order. We disagree.

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

Functionally, the juvenile court's order terminating jurisdiction and awarding father custody of Nathan was an "exit order" under section 362.4. That section authorizes a juvenile court to terminate its dependency jurisdiction over a child and enter a custody and visitation order regarding that child if a family court matter is pending, if doing so is in the "best interests of the child." (§ 362.4; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712; *In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455 [referring to such orders as "exit order[s]"].) That is precisely what the juvenile court's order did in this case. Indeed, the court at one point actually referred to its order as an "exit order."

We conclude the juvenile court did not abuse its discretion in entering that "exit order." (*In re M.R.* (2017) 7 Cal.App.5th 886, 902.) The record amply supports the court's finding that awarding father sole custody was in Nathan's "best interest[s]" given that Nathan was in harm's way of the domestic violence at mother's house, that Nathan was scared of living with mother, that father was non-offending, and that mother had since moved out of state. Mother asserts that father was not as "non-offending" as the juvenile court believed because father knew that Nathan's visits with mother were risky and did not stop Nathan from visiting her. Although father admitted to being aware of the ever-escalating domestic violence in mother's home, this fact does not undermine the soundness of the juvenile court's finding that it was in Nathan's best interest (1) to live with father (in whose custody he was safe) and not to live with mother (in whose custody he was at risk of physical and emotional abuse), and (2) to allow father alone to make decisions about Nathan's upbringing in light of mother's total "absen[ce]" from Nathan's

life in the many months leading up to the hearing at which the exit order was issued.

Mother argues that the juvenile court's order was improper because the court did not comply with sections 361, subdivision (c), 361.2, or 364.

Neither section 361, subdivision (c) nor section 361.2 applies. Section 361, subdivision (c)(1) limits a juvenile court's power to remove a child "from the physical custody" of the parent "with whom the child resides at the time the petition was initiated" unless the court finds, by clear and convincing evidence, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home." Section 361.2 provides that, if a child is so removed and there is another parent with whom the child is not at that time "residing," the juvenile court must "first" consider whether to place the child with that other parent. These provisions do not apply because the juvenile court never issued any order removing Nathan from anyone's physical custody; it asserted jurisdiction and then, in the next breath, terminated it.

Even if we were to view the juvenile court's terminating order as effecting a "removal" of Nathan, there was still no reversible error. As a threshold matter, it is unclear whether Nathan was "residing" with mother at the time. That is because Nathan's summer and alternating weekend visits with his mother fall analytically in between cases holding that a child "resides" with *both* parents when he resides with either for "part of the year" (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 352), and those holding that a child does not "reside" with a parent whom he visits only on weekends (*In re Julien H.* (2016) 3 Cal.App.5th

1084, 1089). Mother's argument lacks merit no matter what Nathan's residential status. If Nathan was *not* residing with mother, then section 361, subdivision (c) is irrelevant because Nathan was not removed from *her* custody and section 361.2 is irrelevant because Nathan was never removed from *father's* custody. Alternatively, if Nathan was residing with mother, section 361.2 is irrelevant because its mandate applies to the noncustodial parent. However, if Nathan was residing with his mother, the court would have been obligated to make the requisite findings under section 361, subdivision (c). The juvenile court made no such findings, but the evidence that Nathan's continued residence with mother placed him in "substantial danger" was overwhelming, which renders the lack of express findings harmless. (See *In re S.N.* (2016) 2 Cal.App.5th 665, 672.)

The juvenile court's order was also not invalid for lack of compliance with section 364. When a juvenile court asserts dependency jurisdiction but does "not remove[]" a child from "the physical custody of his . . . parent," section 364 contemplates that the court will hold a "continued hearing" fewer than six months later at which it will presumptively terminate jurisdiction absent proof that "the conditions still exist which would justify initial assumption of jurisdiction" or "that those conditions are likely to exist if supervision is withdrawn." (§ 364, subds. (a) & (c).) The juvenile court's minute order parrots some of this language, which suggests that the court may have had section 364 in mind as well as section 362.4. Whether or not the court had section 364 in mind, the court complied with section 364's substantive mandate when it terminated jurisdiction; there was no evidence that Nathan would encounter the conditions leading to the

assumption of dependency jurisdiction—that is, witnessing domestic violence and being neglected at mother's house—if father were granted sole legal and physical custody over him. Even if section 364 could also be read to mandate, as a procedural matter, that the juvenile court terminate jurisdiction at a second, continued hearing (rather than terminating jurisdiction at the same hearing it asserted jurisdiction), it is well settled that a juvenile court may issue "appropriate orders regarding dependent children consistent with [the] foundational principle" of serving "'the best interests of the dependent child,'" even if those orders do not "fit neatly" into specific statutes, including section 364. (*In re A.J.* (2013) 214 Cal.App.4th 525, 536; see also § 245.5 [juvenile court "may direct all such orders to the parent, parents, or guardian of a minor . . . as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor"].)

DISPOSITION

The order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ