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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TAMMI ANDERSON, Plaintiff and Appellant, v. GENE MARSHALL II, Defendant and Respondent.	B278002 (Los Angeles County Super. Ct. No. KF013585)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rocky L. Crabb, Judge. Affirmed.

Tammi Anderson, in pro. per., for Plaintiff and Appellant.

Law Office of Sandra D. Muñoz-Harlow and Sandra D. Muñoz-Harlow for Defendant and Respondent.

INTRODUCTION

Tammi Anderson, mother of seven-year-old C.M., appeals from the judgment in this paternity action, contending the trial court erred in making custody and visitation orders that modified an "exit order"[1] issued by the juvenile court in a dependency case concerning C.M. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Juvenile Court's Exit Order*

Soon after C.M. was born in March 2011, her paternal grandparents filed a petition in the probate court for temporary legal guardianship, which the probate court granted. In the meantime, Anderson filed this paternity action in the family law court, which stayed the paternity action pending in the probate court proceeding. The probate court terminated the paternal grandparents' guardianship in August 2011. But it appears no significant developments occurred in this action between that time and January 2013, when the Department of Children and Family Services (Department) filed a petition concerning C.M.

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[1] Under Welfare and Institutions Code section 362.4, when a juvenile court terminates jurisdiction over a case, it may "issue an order 'determining the custody of, or visitation with, the child,'" which "may be enforced or modified by the family court." (*In re Ryan K.* (2012) 207 Cal.App.4th 591, 594, fn. 5.) Such an order is "sometimes referred to as 'family law' orders or 'exit' orders." (*Ibid.*)

under Welfare and Institutions Code section 300,[2] thus giving the juvenile court "exclusive jurisdiction of all issues regarding custody and visitation of [C.M.], and all issues and actions regarding [her] paternity." (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 102.)

In March 2013 the juvenile court sustained that petition, finding true the Department's allegations that Anderson had a history of methamphetamine use and currently used marijuana, which rendered her incapable of providing regular care for C.M., that Anderson used marijuana during her pregnancy with C.M., that on occasions in 2012 Anderson was under the influence of marijuana while C.M. was in her care, and that Anderson's substance use endangered C.M.'s physical health and put C.M. at risk of harm. Upon sustaining the petition, the juvenile court removed C.M. from Anderson,[3] placed C.M. with her father, Gene Marshal II, on the condition he and C.M. reside with the paternal grandparents, and ordered services, drug testing, and monitored

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[2] The probate court had referred the case to the Department because there were allegations of an unfit parent. (See former Prob. Code, § 1513, former subd. (c), amended by Stats. 2012, ch. 638, § 14; *In re Kaylee H.* (2012) 205 Cal.App.4th 92, 101.)

[3] At the time of the removal order, C.M. did not live with Anderson, but with the paternal grandmother. In fact, it appears C.M. had continued to live in the paternal grandmother's home under various court-ordered arrangements since the time the probate court granted the paternal grandparents' petition for legal guardianship.

visits for Anderson, which the Department had discretion to liberalize.[4]

Initially, a Department human services aid monitored Anderson's visits with C.M. But beginning in July 2013, because of Anderson's progress in her court-ordered programs, the Department increased the amount of visitation and allowed Anderson's mother to act as monitor. In September 2013, with Anderson continuing to make progress in her programs and having remained sober since June 2013, the juvenile court allowed Anderson to have unmonitored visits. Those visits went without incident.

In January 2014 the juvenile court terminated its jurisdiction over C.M., granting joint legal custody to Anderson and Marshall and physical custody to Marshall and ordering C.M.'s primary residence to be with Marshall. The court's exit order incorporated the terms of a mediation agreement between Anderson and Marshall concerning Anderson's visitation with C.M. The agreement provided for regular weekday and alternate weekend unmonitored visits.

B. *The Family Law Court's Modification of the Exit Order and Subsequent Entry of Judgment*

On August 28, 2014 the family law court heard a request by Marshall in this action for an order modifying the juvenile court's exit order. Marshall asked the family law court to order, among other things, "either no visits or professionally monitored visits"

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[4] Anderson appealed from the juvenile court's disposition order, and Division Eight of this court affirmed. (*In re C.M.* (June 3, 2014, B248239) [nonpub. opn.].)

between Anderson and C.M. In declarations supporting the request, Marshall and his mother described recent conduct by Anderson that they believed indicated Anderson was using drugs again or (in Marshall's words) "just having a mental breakdown," but that, in any event, made them fear for C.M.'s safety when she was with Anderson.

For example, beginning in February 2014 and continuing through July 2014, Anderson sent Marshall increasingly desperate, unintelligible, and obscene text messages. A small sample, from the nearly 20 pages of such messages attached to Marshall's declaration: "I just want u to tell me that it's ok for me to leave all behind[.] Tell me that [C.M.] will be ok if I just walk away & never look back" (February 19); "[C.M.] is my immaculate conception. God is her father" (February 22); "Now I'm in a mood where I could do anything. Come what may I may get hit by a train or bus & die today. Jimmy crack corn and I don't care" (May 28); "I'm in a trance lije state texting day away. I could been somewhere with [C.M.] but she with u and u wannu snuff me out still. . . . I should go do drugs or I just sit sad here. This is my life. . . . [¶] I'm going on my bike tonite maybe I die. . . . [¶] I like to daydresm of 3 if naked together dieing in gas chamber like Hitler did to jews. I lke to see u decapitated" (July 28, typographical errors in original).

In addition, Anderson was often and increasingly late and uncooperative when picking up C.M. for visits or dropping her off after visits.[5] At least five times in February and March 2014 she was 20-30 minutes late, and by July 2014 she was more than an

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[5] These visitation exchanges took place at the San Dimas station of the Los Angeles County Sheriff's Department.

hour late on several occasions, culminating in an incident on July 24 that prompted Marshall to request the modification of the juvenile court's exit order.

On that day Anderson was supposed to return C.M. at 4:00 p.m. to the sheriff's station where the exchanges occurred, but she did not show up. For the rest of the afternoon and evening, Marshall and his mother tried unsuccessfully to contact or locate Anderson, enlisting the help of the sheriff's department and the police department. At 3:00 a.m. Anderson finally called Marshall or his mother (the record is unclear), said that C.M. "was fine" and "would see [them] the next day," and hung up. Marshall and his mother tried calling back, but could not reach her. At 6:15 a.m. (on July 25) Anderson returned C.M. to Marshall at his house. She said she had taken C.M. to the beach and her car overheated, but she would not respond when asked why she did not call for help or answer Marshall's and his mother's calls.[6] Marshall thought Anderson "looked high," and in Marshall's presence she admitted to a police officer on the scene that she "ran out of one of her medications" and had "smoked pot two days ago." After interviewing Anderson, the officer told Marshall and his mother he thought Anderson "was using" again. Later that day Anderson texted Marshall: "Thank u I know that u convinced cop not to arrest me or drug test me."[7]

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[6] C.M., who was three years old at the time, would not answer when asked if she "'had gone to the beach' with Mommy."

[7] A police report on the incident stated that Anderson "finally returned [C.M.] to [Marshall] at 0600 the next morning. [Anderson] was not found to be under the influence and had vehicle problems preventing her from returning [C.M.].

In her responsive declaration, Anderson asked the family law court to award her and Marshall joint legal and physical custody of C.M. and order visitation in accordance with the juvenile court's exit order. Regarding the July 24, 2014 incident, she repeated her explanation that car troubles prevented her from returning C.M. to Marshall as scheduled and stated she could not contact anyone sooner than she did because "the battery of [her] phone died." Anderson also asked the court not to order drug testing for her. She stated: "[F]or the drug screening DCFS tested me and I completed the drug counseling program under the Children's Courthouse."

At the conclusion of the hearing on Marshall's request, at which both Marshall and Anderson testified, the family law court awarded Marshall sole legal and physical custody of C.M. The court further ordered that Anderson "have professionally monitored visits with [C.M.] . . . on the 2nd and 4th Sunday of each month for a period of two hours," that Anderson "give 14 days' prior written notice to [Marshall's] counsel of her intent to exercise such visitation," and that Anderson "bear the full expense of the monitored visits." The court also ordered: "Should [Anderson] later wish to seek a modification of these Orders, she must first meet with a licensed psychologist or psychiatrist for the purpose of them reviewing and discussing the text messages that [Anderson] sent to [Marshall] and/or his Mother on July 28, 2014. The treating physician must then submit a written declaration to this Court that s/he has met these requirements as

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[Marshall] accepted the reason and refused to prosecute [Anderson] for the custody order violation."

set forth herein, and that [Anderson] does not pose any risk to the child."

Between the time the family law court made these orders and the time it entered judgment in September 2016, Anderson sought at least twice, without success, to have the court modify its August 2014 custody and visitation orders.[8] In September 2016 the family law court entered a judgment that incorporated the terms of a settlement agreement between the parties. The agreement provided that Marshall would have sole legal and physical custody of C.M. and that Anderson's visits would be professionally monitored. Anderson timely appealed.

DISCUSSION

As a preliminary matter, there are serious questions, unaddressed by the parties, regarding whether Anderson can challenge the family law court's custody and visitation orders by appealing, as she has, from the September 2016 stipulated judgment. "'Ordinarily, a judgment entered pursuant to a stipulation is not appealable.'" (*Adoption of Myah M.* (2011) 201

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[8] In August 2015 Dr. Shirley J. Harrison conducted a psychological evaluation of Anderson pursuant to Evidence Code section 730. Harrison reported she agreed with Anderson's previous diagnoses of bipolar disorder, attention-deficit/ hyperactivity disorder, and drug dependency. Dr. Harrison expressed particular concern about Anderson's methamphetamine use, questioned Anderson's credibility in denying she was suicidal, and opined that, "given the unpredictability, lack of judgment, and poor insights [Anderson] has demonstrated over the last 18 months, . . . the risk she poses to her child, in an unmonitored situation, is not acceptable."

Cal.App.4th 1518, 1534.) In addition, the September 2016 judgment provides that "[t]he custody and visitation Orders set forth herein are non-[*Montenegro v. Diaz* (2001) 26 Cal.4th 249 (*Montenegro*)] Orders," which generally means the parties did not intend the orders to be a final determination on issues of custody and visitation. (See *Montenegro*, at p. 258 ["a stipulated custody order is a final judicial custody determination for purposes of the changed circumstance rule only if there is a clear, affirmative indication the parties intended such a result"].) Temporary custody and visitation orders are not appealable. (*Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1089; *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 541, 556-557.) The family law court did make a final custody and visitation order in this action, but not until January 2017, when the court denied a request by Anderson for an order modifying the custody and visitation orders set forth in the judgment and stated in its minute order that "the existing order shall be considered a Montenegro order." Anderson, however, did not appeal from that order. Finally, the August 2014 order modifying the exit order may have been an appealable postjudgment order. (See Code Civ. Proc., § 904.1, subd. (a)(2).)

These intricate procedural issues would likely challenge an experienced appellate lawyer attempting to navigate the rock shoals and whirlpools of appealability and mootness. A self-represented litigant like Anderson undoubtedly would have an even harder time. Because whenever possible we will not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing, we will address the merits of Anderson's argument.

Anderson contends the family law court erred when, in August 2014, it made custody and visitation orders that modified the juvenile court's exit order. We review a family law court's custody and visitation orders for abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32; *Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 878; see *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1162 [reviewing modification of an exit order for abuse of discretion].) "An abuse of discretion occurs when the trial court exceeds the bounds of reason; even if we disagree with the trial court's determination, we uphold the determination so long as it is reasonable." (*Heidi S. v. David H.*, at p. 1163.)

As Anderson concedes, a family law court may modify a juvenile court's exit order concerning custody and visitation if the family law court finds "'there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.'" (*Heidi S. v. David H.*, *supra*, 1 Cal.App.5th at p. 1163; accord, *In re Marriage of David & Martha M.* (2006) 140 Cal.App.4th 96, 103; see Welf. & Inst. Code, § 302, subd (d).) Anderson argues the family law court erred here, however, because the record does not reflect it made a finding of changed circumstances.

Anderson is correct that the family law court's written orders granting Marshall's request for an order modifying the exit order do not state the court made a finding of changed circumstances. But because "'[j]udgments and orders of the lower courts are presumed to be correct on appeal,'" "'[w]e imply all findings necessary to support the judgment, and our review is limited to whether there is substantial evidence in the record to support these implied findings.'" (*Willmer v. Willmer* (2006) 144 Cal.App.4th 951, 959-960.) Thus, "'even where there are no

express findings, we must review the trial court's exercise of discretion based on implied findings that are supported by substantial evidence.'" (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1148-1149; see *In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 287 ["we will presume that the trial court made all the factual findings necessary to support the judgment, so long as those implied findings are supported by substantial evidence"].)

Substantial evidence supports the court's implied finding there was a significant change in circumstances between the time the juvenile court made its exit order and the time the family law court modified it. In particular, the steady devolution of Anderson's text messages to Marshall in the months following the exit order and the pattern of her conduct in connection with visitation exchanges, culminating in the incident on July 24-25, 2014, suggested Anderson's emotional and psychological stability had deteriorated significantly, whether as a result of drug use, mental disorder, or both. Those changed circumstances made it reasonable for the family law court to conclude that modifying the exit order as it did was necessary to ensure C.M.'s safety during visits with Anderson and to ensure that decisions relating to C.M.'s health, education, and welfare did not fall to Anderson's poor judgment. (See Fam. Code, § 3006 ["'[s]ole legal custody' means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child"].) The family law court did not abuse its discretion in modifying the exit order.

DISPOSITION

The judgment is affirmed. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.