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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.K.,

Defendant and Appellant.

B269975

(Los Angeles County
Super. Ct. No. DK12066)

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

Law Offices of Vincent W. Davis & Associates and
Stephanie M. Davis for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Tracey F. Dodds, Principal
Deputy County Counsel, for Plaintiff and Respondent.

T.K. (aka Diana R.) (mother) appeals an order denying her visitation after the juvenile court declared her twin sons juvenile court dependents and transferred their legal and physical custody to their father. We find no abuse of discretion, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Investigation

Twins T.M. and M.M., born in August 2001, are the children of mother and Joseph R. (father). The children lived with both parents until the parents separated in 2011 or 2012, and then with mother until December 2014. When these proceedings began, the children had been living with father for about four months.

In April 2015, the Los Angeles County Department of Children and Family Services (DCFS) received a report from Byron C., the son of mother's roommate, that he had been sexually abused by father when he was five years old. Byron believed M.M. and T.M. were at risk of sexual abuse in father's home.

A children's social worker (CSW) interviewed T.M., who denied any abuse by father. However, T.M. reported that he and M.M. had been severely physically abused by mother during the years they lived with her. He said that mother had not allowed the boys to leave the house or to play outside, and sometimes the boys were locked in separate bedrooms for hours at a time without food. He said mother had hit him with a wooden pole and with the heel of her shoe, leaving a scar and a bald spot on his scalp; and she had choked, hit, and scratched M.M. and banged his head against a wall. T.M. said he did not want to live with mother because he was fearful of being locked up or beaten

again. According to the CSW, T.M. appeared shaken and his voice trembled when questioned about mother. T.M. said he liked living with father and did not want to see or visit mother.

M.M. said mother had treated him and T.M. well during the years father lived with them, but became violent after father and mother separated. M.M. said that when mother and her adult daughter, Miranda, left the house, they would lock the boys in separate bedrooms without access to food or a bathroom, sometimes for an entire day. He showed the CSW scratch marks and scars on his face and neck from mother's nails, and said mother had pushed his head against a wall. M.M. said he and T.M. had not attended school for several years. He denied any abuse by father or father's girlfriend, Gloria, and said he felt safe living with them. He said, "They love me and my brother. They don't hit us or lock us up in the room. They love us and feed us." M.M. said he did not want to see or visit mother.

Father's girlfriend, Gloria, said that mother had appeared unannounced and dropped the boys off at father's home in December 2014. The boys had been living with father and Gloria ever since. When the children first moved in with father and Gloria, they could not read or write well, and they disclosed they had been abused by mother. Gloria said she believed mother was mentally ill.

Father told the CSW that he and mother were married, but separated. Mother and father had two biological children, Miranda R. and Nicholas R., and had adopted T.M. and M.M. when they were three years old. Byron C. and Vanessa C. were the children of mother's roommate, Patricia. Father appeared surprised by Byron's sexual abuse allegations, which he denied. He said he and mother had separated in late 2012 without any child custody arrangements. Mother initially allowed him to visit

the boys, but then stopped letting him visit on the advice of her “spiritual adviser,” Zack. He said the boys had been traumatized by mother’s abuse and were receiving counseling.

Therapist Brooke Bender told the CSW that the boys had disclosed physical and emotional abuse by mother and were terrified of her. Bender had been providing trauma-focused cognitive behavioral therapy to T.M. and M.M. on a weekly basis, and she reported they were making progress. She said neither child had disclosed sexual abuse by father. Subsequently, Bender provided a letter to DCFS stating that M.M. had been diagnosed with posttraumatic stress disorder (PTSD) and child physical abuse, and T.M. had been diagnosed with anxiety and child physical abuse. Both boys had “expressed increased fears related to concern about the possibility of having to return to live with [mother] again,” and had said they did “not want to have contact with . . . mother and [are] . . . fearful of being around her.” The therapist recommended no contact between mother and the boys.

Mother reported that she and father had adopted the children when they were three years old, and said she had had sole custody after father moved out in 2011. She denied abusing T.M. and M.M., and said they had no scars or scratches when she dropped them off at father’s home in December 2014. Mother said the boys had been coached by father and a “San Bernardino adoptions worker,” who she said was father’s “best friend[.]” She denied locking the boys up or physically abusing them. Mother did not know where the children had attended school when they lived with her.

Through child welfare records obtained from San Bernardino County, DCFS learned that in 2014, mother had been the legal guardian of 17-year-old Crystal L. Crystal

had reported physical abuse by mother and had visible marks on her face and neck.

II.

Detention

On May 28, 2015, father told DCFS that there had been a hearing in San Bernardino family court that day. The family court did not have the DCFS records and had ordered the children placed with mother. Father said mother and Miranda had followed him after the hearing and were now videotaping him. Father said he was devastated by the outcome of the hearing and terrified of mother's behavior.

On May 29, 2015, DCFS received a call from Vanessa, reporting that she, T.M., and M.M. had been molested by father. The call originated from mother's home. When the DCFS screener asked follow-up questions, Vanessa "fumbled in her responses."

On June 4, 2015, the family court issued a written order granting mother custody of T.M. and M.M., denying father any visitation, and ordering father not to have any contact with mother or Vanessa.

On June 20, 2015, mother went to the police for help obtaining custody of the children. When an officer went to father's home, however, the boys refused to go with mother, reporting that she had physically abused them. The officer stated that "the children's voices were cracking out of fear." The officer refused to turn the children over to mother and contacted DCFS.

On June 30, DCFS obtained a court order removing the children from mother and placing them with father. On July 6, 2015, the juvenile court found a prima facie case for detaining the children from mother and ordered them released to father. DCFS

was ordered to provide family maintenance services to father and to refer the children for mental health services. Mother was not granted any visitation pending further order of the court.

III.

Petition

A juvenile dependency petition, filed July 6, 2015, alleged that the twins were within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (c), and (j)¹ as follows:

(a-1, b-1, j-1) Mother physically abused M.M. by choking and scratching him and pushing his head against a wall. M.M. is fearful of mother and refuses to live with her due to ongoing physical abuse.

(a-2, b-2, j-2) Mother physically abused T.M. by striking him with a wooden pole and striking his head with a shoe heel, causing scarring and a bald spot on his head. T.M. is fearful of mother and refuses to live with her due to ongoing physical abuse.

(c-1, c-2) Mother emotionally abused the twins by physically abusing them, locking them in bedrooms for hours without food, and permitting the twins' adult sister, Miranda, to lock them in bedrooms for hours. The children are afraid of mother and suffer from anxiety and posttraumatic stress disorder as a result of mother's emotional abuse.

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

IV.

Jurisdiction and Disposition

DCFS filed a jurisdiction/disposition report on August 26, 2015. It reported as follows.

During an August 19, 2015 interview, M.M. disclosed that if mother was angry or thought the boys were lying to her, she would hit them with objects or slap and punch them with her hands. Once, she grabbed M.M. by the neck and hit his head against a wall. The last time mother abused the boys “was in December of 2014, the same night we got dropped off at my dad’s [house] because [mother] said that she couldn’t take it anymore. She told us that dad was a bad person and she was dropping us off. She asked me if I hurt T.M. I remember her saying that if I [did] anything, she’ll take both of us to our dad so I lied and said I did do something so I can go with my dad. But there was a consequence to pay. [¶] She beat me up with a crock pot. It has sides on top to close it. She got it like a hammer on one of the sides and hit me on the side of the face right here.”

M.M. said mother “started making people change their names” and “talking about seeing spirits.” Mother “would say that she can talk to daemons and stuff.” Mother’s spiritual advisor, Zack, threatened to put T.M. “in a coma and slapped [T.M.] in the face . . . [Zack] said, ‘[b]ecause my eyes are blue, I’m a daemon.’” Mother “told us not to say anything. She said, ‘Don’t tell dad and Gloria anything’ and that no one would believe us. [Zack] told us he would go into our dreams and kill us.” M.M. still felt afraid when he first moved to his dad’s: “Every time they were asking us questions, I would take a long time to answer. I was not looking in people’s eyes. . . . I just felt like I was going to die the way she was beating me, I thought she was going to break my neck or something. . . . I was shaking. My

stomach would tighten. At night, every time I woke up, I peed myself. She would beat me for it. T.M. wouldn't pee. One time, I peed at my dad's but that was the last time, a couple of days after we got there." M.M. said father had never hurt him or touched him inappropriately. He described father as a kind and generous person. He did not want to see mother.

T.M. gave a similar account of life with mother. He said mother started abusing him and M.M. after father moved out of the house. Mother "beat us with her hands. She would punch us and slap us. She would hit us everywhere except our private areas. . . . At first [mother hit us] with her hands and fists. As the years passed, she hit us with shoes. She threw a phone at me once. . . . With the shoe, she got the end of the shoe and hit me with the long stem. I was bleeding from there. She kept hitting the same area so naturally it healed over but as a bump. . . . She hit us almost every day."

Mother "thinks she has 'powers.' . . . She thinks she's able to see daemons and ghosts. She has to make them appear. She says she's able to see things from her bed like some kind of psychic visions. She has a spiritual advisor. Not only did he say he had these powers, but also encouraged her to think she had magic powers. . . .

"They would take these baths with water and . . . sand and sleep in the sand. I have no idea why. We would ask and they would never tell us. She had a box of weird artifacts. It was bizarre. . . . She told me we weren't ready to know. They looked like some ancient artifacts stuff you would find in the museum. There was a pot with holes and a stick through it. They would light candles. They would write the names of people and they would burn it with the candle. They had chickens with different

color bandanas on them. They were wooden carved chickens. I thought they were mentally going crazy.

“Zack [spiritual advisor] says he’s a daemon. I definitely know he was going crazy. . . . He says, ‘I’m able to go into your dream and kill you in the dream.’ He told us if we don’t behave, he’ll do that.

“I was deeply afraid. . . . I thought of running away before. I didn’t leave because I didn’t want to leave M.M. [¶] [Mother] would lock us up in separate bedrooms and let us out when we had to use the restroom and when they wanted us to clean the house. They would take us food. Not only did they lock us up in the room, they didn’t let us out to play or anything. The only time we would go out was when they would take us to school. It was rarely. First she’s mad at one twin then not mad at the other and then she switches. She was mostly mad at both of us. I would have to go (urinate) out the window through the net. There was a hole in the net. They had me locked up in the closet before and . . . I had to go poop. I pooped in the closet. She was okay with it because I was locked up in the closet. . . .

“I would think every time I wake up in the morning, afraid I would get beat. I was afraid of what kind of mood she’ll be in. If she was in a good mood, chances were I would not get beat. If she was in a bad mood, chances were we would get beat.”

Mother denied all of the children’s allegations of abuse. She said father had sexually abused her older children, and father’s girlfriend was schizophrenic.

Based on the foregoing, DCFS recommended that the petition be sustained and jurisdiction terminated with a family law order granting father full legal and physical custody. DCFS further recommended that mother receive monitored visitation in

a therapeutic setting when the children's therapist deemed it appropriate.

On December 14, 2015, mother submitted to adjudication of the petition on the basis of the social worker's report, and to DCFS's recommendations regarding custody and visitation.

The juvenile court sustained the allegations of the petition and then terminated its jurisdiction with an order granting father sole legal and physical custody. The court declined to follow DCFS's recommendations regarding visitation, however, ordering as follows: "The mother is to have no visits. The father is to ensure the children are participating in individual therapy at least once per week and inform the mother if the therapist recommends conjoint counseling at any point. ¶ . . . ¶ If and when the therapist contacts the mother to say that the therapist thinks the conjoint counseling would be appropriate, the mother can then file in San Bernardino family court a change of circumstance, an OSC asking to modify the . . . order allowing her to have contact. ¶ Just because the therapist thinks it's appropriate doesn't mean it starts. The custody order is still no visits. They would need to go to the family law court in San Bernardino to modify the custody order and visitation."

Mother timely appealed.

CONTENTIONS

Mother contends the juvenile court abused its discretion by denying visitation because (1) mother's counsel had no opportunity to be heard on the issue, (2) substantial evidence did not support the no-visitation order, and (3) the juvenile court misconstrued prevailing law.

DISCUSSION

I.

The Juvenile Court Did Not Deny Mother the Opportunity to Object to the Visitation Order

We begin with mother's contention that the juvenile court abused its discretion by denying her visitation without giving her counsel an opportunity to be heard. The contention fails because the court *did* give mother's counsel an opportunity to be heard. After indicating its inclination to deny visitation, the court asked whether "anyone else" wanted to present evidence or witnesses relevant to disposition. After some further discussion among counsel, the court announced its ruling and then asked, "Anything else from any counsel?" Mother's counsel thus had the opportunity to object to the visitation order, but did not do so.²

II.

The Trial Court Did Not Abuse Its Discretion by Denying Mother Visitation

When the dependency court terminates jurisdiction, it has authority to make orders addressing custody and visitation. (§ 361.2; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1122–1123.) We review those orders for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) Custody determinations are not disturbed in a dependency proceeding in the absence of an arbitrary, capricious, or patently absurd exercise of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.) Where

² DCFS urges that mother forfeited her objections to the visitation order by failing to raise them in the juvenile court. Because we affirm the visitation order on the merits, we do not reach the forfeiture issue.

the juvenile court applied the correct legal standards and substantial evidence supports the order, there is no abuse of discretion. (*Jane J. v. Superior Court* (2015) 237 Cal.App.4th 894, 901; *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.)

Mother contends the no-visitation order was an abuse of discretion because the juvenile court did not make a finding that visitation would be detrimental to the children and, in any event, there was no substantial evidence of detriment. As we now discuss, mother's contention assumes that the juvenile court was required to order visitation absent a finding of *detriment*. The law is otherwise, however. Because the children were placed with their father and juvenile court jurisdiction was terminated, mother was entitled to visitation only if it was in the children's best interests. Because there was substantial evidence that visitation was *not* in the children's best interests, the order denying visitation was not an abuse of discretion.

A. *Best Interest of the Child, Not Absence of Detriment, Governs the Visitation Order*

The juvenile court placed M.M. and T.M. with father pursuant to section 361.2, subdivision (a), which provides that when a court orders removal of a child, it must determine "whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child." If that parent requests custody, the court "shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

After placing the child with the formerly noncustodial parent, the court “has three dispositional options. It may grant custody to the previously noncustodial parent and terminate dependency jurisdiction. (§ 361.2, subd. (b)(1).) It may order that a home visit be conducted within three months of the minor’s new placement and that the results of that visit be provided to the court before it takes further action with respect to custody of the minor. (§ 361.2, subd. (b)(2).) Or, it may order that the previously noncustodial parent ‘assume custody’ of the minor subject to the supervision of the juvenile court. (§ 361.2, subd. (b)(3).)” (*In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1281-1282.)

In the present case, the juvenile court chose the first dispositional option: It granted custody to the previously noncustodial parent (father) and terminated dependency jurisdiction.³ Accordingly, mother’s visitation was governed by section 361.2, subdivision (b)(1), which provides that if a child has been placed with a parent, the court “*may* also provide reasonable visitation by the noncustodial parent.” (§ 361.2, subd. (b)(1), italics added.) Courts have held that visitation under this section should be granted or denied consistent with the best interests of the child. (E.g., *In re John W.* (1996) 41 Cal.App.4th 961, 973, superseded on other grounds by statute as noted in *In re Marriage of David & Martha M.* (2006) 140 Cal.App.4th 96, 102-103 [“in making exit orders, the juvenile court must look at the *best interests of the child.*”], italics added;

³ Such an order “is commonly referred to as a family law or exit order transferring custody of the child to the parent with whom the child was placed.” (*In re Maya L., supra*, 232 Cal.App.4th at p. 101.)

see also *In re Jaden E.*, *supra*, 229 Cal.App.4th at pp. 1288-1289 [“When a minor is placed with a previously noncustodial parent pursuant to subdivision (b)(3) of section 361.2, . . . ‘the court’s focus and primary consideration must always be the *best interests of the child.*’ ”], italics added.)

In contrast, the “detriment” standard mother would have us apply to the present case derives not from section 361.2, but from section 362.1, which provides that visitation “*shall*” be ordered as part of any order “*placing a child in foster care, and ordering reunification services.*” (§ 362.1, subd. (a)(1)(A), italics added.) Visitation under this section “shall be as frequent as possible, consistent with the well-being of the child,” but “[n]o visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(A)-(B). Thus, cases have held that visitation under this section may not be denied during the reunification period “absent a showing of detriment.” (E.g., *In re Mark L.* (2001) 94 Cal.App.4th 573, 580 [“It is ordinarily improper to deny visitation absent a showing of detriment.”]; *In re Luke L.* (1996) 44 Cal.App.4th 670, 679 [“Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt visits”]; *In re David D.* (1994) 28 Cal.App.4th 941, 954 [“the juvenile court was *required* to permit continued visitation pending the section 366.26 hearing absent a finding visitation would be detrimental to the minors.”].)

Although mother acknowledges that the present case is governed by section 361.2, *not* section 362.1, she urges that the “detriment” standard that applies to the latter section should also apply to the former. Not so. As we have noted, the language of the two sections is different: While the visitation language of section 362.1 is mandatory (“*shall*”), the language of section 361.2 is permissive (“*may*”). This distinction is a logical one. As a court

has noted in an analogous context, “Visitation is an essential part of a *reunification plan*. . . . Therefore, when reunification services are being provided, it is error to deny visitation with the parent to whom the services apply unless there is sufficient evidence that visitation would be detrimental to the child. [Citations.] On the other hand, visitation is not integral to the overall plan when the parent is not participating in the reunification efforts.” (*In re J.N.* (2006) 138 Cal.App.4th 450, 458-459, italics added.)

In view of the permissive language of section 361.2, subdivision (b)(1) and the Legislature’s intent “to enforce a different set of rules regarding the provision of reunification services in those cases where custody of a minor is shifted from one parent to another parent,” we decline to make mandatory that which section 361.2, subdivision (a)(1) explicitly makes discretionary. (See *In re Erika W.* (1994) 28 Cal.App.4th 470, 475.) We therefore decline to apply the “detriment” standard to a visitation order made pursuant to section 361.2, subdivision (a)(1).

B. Substantial Evidence Supported the No-Visitation Order

Mother contends the no-visitation order was erroneous because there was no substantial evidence that visitation would cause the children detriment. But as we have explained, the standard applicable to the visitation order was the best interests of the children, not absence of detriment. There can be no doubt that substantial evidence supported the juvenile court’s finding that visitation was not in the children’s best interests. The boys reported being fearful of mother as a result of suffering her repeated physical abuse over a period of years. When the boys were told they might have to return to mother, their voices

reportedly were “cracking out of fear.” Significantly, both boys had suffered psychological disorders as a result of the abuse, and both were receiving trauma-focused behavioral therapy. Their therapist reported that the boys were making progress in therapy and recommended against contact between mother and the children, noting that both boys remained “terrified” of mother. Under these circumstances, substantial evidence supported the juvenile court’s finding that visitation with mother was not in the children’s best interests.

III.

The Juvenile Court Did Not Misunderstand Its Discretion Under Governing Law

Mother contends finally that when the juvenile court made the disposition order, it “believed it had to order no visits.” The record does not support this characterization, nor does it in any way suggest that the juvenile court misunderstood the scope of its discretion.⁴ As we have described, DCFS recommended that mother receive monitored visitation in a therapeutic setting when the children’s therapists deemed it appropriate. The court noted—correctly—that it could not issue the visitation order DCFS proposed. (See, e.g., *In re S.H.* (2003) 111 Cal.App.4th 310, 317-318, fn. omitted [court violates the separation of powers doctrine when it “permits a third party, whether social worker, therapist or the child, to determine whether any visitation will occur”]; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1477-1478 [order that father had “no visitation rights without permission of

⁴ Similarly, nothing in the appellate record supports mother’s suggestion that the juvenile court used an “inaccurate ‘denial’ of reunification services to somehow justify denying visitation to [mother].”

minors' therapists' ” was “an improper delegation of judicial power”]; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 755, 757 [orders that “‘[v]isitation with the mother and [father] be under the direction of the Department Social Services’ ” were “improper and inadequate in that they determine neither whether the parents have a right to visitation nor, assuming that such a right was intended, the frequency and length of visitation”].) Nothing suggests, however, that the juvenile court believed it lacked discretion to enter a *different* visitation order—i.e., one that required or permitted visitation.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.