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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.S., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.S.

Defendant and Appellant.

B290050

(Los Angeles County
Super. Ct. No. CK93417B)

APPEAL from orders of the Superior Court of Los Angeles County, Veronica S. McBeth, Judge. Affirmed in part and reversed in part.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother appeals from the juvenile court's findings and orders made under Welfare and Institutions Code¹ section 362.4 on April 23, 2018. She contends the juvenile court abused its discretion when it terminated dependency jurisdiction over her 15-year-old daughter Emily, granted Father² sole legal and physical custody of Emily, and placed "vague and unreasonable limits" on Mother's visitation rights with Emily.

The juvenile court's order that Mother's visitation cannot be liberalized until after her completion of a psychological evaluation and services is reversed. All other orders are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Investigation, Petition, and Detention*

On March 19, 2017, the Los Angeles County Department of Children and Family Services (hereinafter DCFS) received a referral regarding Mother's "violent assaultive behavior" toward Emily's adult sibling, Nicholas, and his girlfriend. Mother struck Nicholas with a bat and slammed a door against his girlfriend's face, causing a nose fracture. Emily was not present during the altercation, but DCFS was concerned that Mother's violent behavior "endanger[ed] the child's physical health and safety, create[d] a detrimental home environment, and place[d] [her] at risk of serious physical harm" Mother denied having hit

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

² Father is not a party to this appeal.

Nicholas and his girlfriend; she said Nicholas was drinking and that he and his girlfriend hit Mother on the face.

On April 10, 2017, DCFS received a referral regarding Mother's physical abuse of Emily. On April 9, 2017, Mother physically abused Emily in that she pushed Emily off the couch and against the front door, struck Emily with her hands, bit Emily's arm, and grabbed her by the neck to strangle her. Emily sustained bruises and bite marks, which caused her unreasonable pain and suffering. Mother said Emily was lying. Mother said she had caught Emily stealing in Disneyland, and that Emily tried to convince Mother not to tell Father she had stolen. Mother said she reprimanded Emily about stealing and Emily bit her and started jumping up and down on her on the floor.

Emily told the DCFS social worker she was scared of Mother and cannot sleep when she visits³ Mother because Mother would stand by her bed, poke her, and wake her up in the middle of the night. Mother would not allow Emily to drink water or eat food in the house, saying water and food were for emergencies. Emily reported Mother had bitten her as a form of punishment when she attempted to get food from the refrigerator. Emily also said that Mother constantly repeated herself. Emily had difficulty concentrating in school because Mother would constantly call her during class, sometimes up to 30 times a day. Mother also sometimes called Emily at midnight.

³ Emily primarily resided with Father and visited Mother every other weekend and for two weeks in the summer.

Father told the social worker that Emily would call him to report that Mother did not allow her to eat or drink water. Father brought up an incident where Emily's older sister called him and said Mother was going to kill the children and was making strange statements, such as she "knew where Walt Disney was" and that "Mickey Mouse is dead." That same day, Mother was hospitalized, having taken "like 30 [V]icodin[s]."

This is not the first time this family had come to DCFS's attention. In June 2012, the juvenile court sustained a section 300 petition finding that Emily and her then-minor sister were at risk of future harm due to Mother's abuse of prescription medication, mental and emotional problems, a suicide attempt, psychiatric hospitalization, and failure to adequately protect Emily by leaving her alone at home without adult supervision. Emily was removed from Mother's custody and the court granted Mother reunification services. The court had terminated jurisdiction in January 2013 and granted joint legal custody and sole physical custody to Father with supervised visits for Mother. Two years later, Mother was granted unmonitored visits by the family court.

On April 26, 2017, DCFS filed a dependency petition alleging that Emily came within the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b). The petition alleged that Mother physically abused Emily by striking her, pushing her against a door, and grabbing her by the neck (count a-1); Mother's physical abuse of Emily placed Emily at substantial risk of future physical harm (count b-1). In addition, the petition alleged Mother had a history of engaging in violent altercations with Emily's adult sibling, Nicholas, creating a detrimental home environmental for Emily and placing her at

risk of harm (counts a-2 and b-2), and that Mother had a history of substance abuse, mental and emotional problems, and non-compliance with her prescription medication (counts b-3 and b-4). The court ordered Emily detained from Mother and released to Father, with no visitation with Mother pending a recommendation from Emily's therapist. The court also ordered that Mother be given referrals for drug testing, individual counseling, and anger management.

B. *Jurisdiction and Disposition*

DCFS recommended the petition be sustained as to Mother, the court terminate its jurisdiction with a family law order granting father sole full physical and legal custody of Emily, and for Mother to have monitored visits at Emily's request. DCFS further recommended that the custody orders not be changed until Mother completed individual counseling and complied with recommended psychotropic medication treatment.

During the jurisdictional hearing on May 31, 2017, the court ordered DCFS to arrange for Mother to have visits with Emily in a therapeutic setting after Emily's completion of four individual therapy sessions. Emily's therapist opined, however, that it was not the best idea to begin therapeutic visits between Mother and Emily yet.

At the adjudication and dispositional hearing on June 26, 2017, the court dismissed counts a-2 and b-3, and sustained the remaining counts of the petition with some interlineation. The court ordered Emily removed from Mother's custody and placed with Father. The court also granted Mother family maintenance services consisting of parenting classes and individual counseling; it ordered 10 consecutive negative drug tests in lieu of a drug treatment program, and mental health counseling to

include a psychological assessment, a psychiatric evaluation, and compliance with all prescribed medications. Mother was permitted therapeutic visits with Emily when the child's therapist agreed to such visits.

C. *Post-Disposition Progress and Review Hearings*

1. September 25, 2017 Progress Hearing

Mother reported having completed the drug testing requirement of her case plan; she tested negative each time. According to Mother's therapist, the psychiatrist had diagnosed Mother with borderline personality disorder and recommended Mother obtain a psychological assessment. Mother received a psychiatric evaluation, and her therapist and DCFS provided her with referrals for a psychological assessment. Mother appeared unwilling to accept that she needed a psychological assessment in addition to the psychiatric evaluation; she insisted she already fulfilled this requirement. Although Mother attended some parenting classes, she was reported to have been "very disruptive."

2. December 11, 2017 Review Hearing

During the six-month review hearing held December 11, 2017, it was reported Emily felt "safe and secure" in Father's home, where she currently resided. Emily had not visited Mother and did not want to visit Mother because "mother is not well." Emily's therapist reported that Emily was "doing well in treatment," but Emily avoided discussions about Mother and was not yet ready to address their relationship in therapy.

Mother wanted to visit with Emily. Mother said she was mentally stable and did not need to undergo a psychological evaluation or take any medication.

The court granted Mother one visit per month with Emily, in a therapeutic setting and in the presence of Emily's therapist. The court indicated visitation may increase after the holidays. The court also ordered DCFS to provide Mother with referrals for a low cost or no cost psychological assessment.

3. January 22, 2018 Progress Hearing

DCFS reported that Emily and Mother had two visits in a therapeutic setting in December 2017 and January 2018; neither visit went well.⁴ The therapist opined Mother was not emotionally ready to meet with Emily as she was unable to put Emily's needs first. The therapist reported that Mother displayed odd behaviors.⁵

Emily wrote a letter to the juvenile court judge and explained she was doing much better in school and had made friends. She stated she did not want to see Mother because she is "trying to make [her] live [*sic*] better and going to mom's . . . will make it worse for [her]." She "do[es] not feel safe with [her] mother" and begged the court, "Please don't make me see her."

Mother said Medi-Cal did not pay for the psychological evaluation and she could not afford it. She insisted she was not a danger to herself or others and could not understand why a psychological assessment was required.

⁴ During the first visit, Emily cried for 10 minutes and ran out of the room because Mother persisted in discussing past issues and did not listen to redirection from the therapist. During the second visit, Emily broke down crying.

⁵ Mother brought Emily stuffed teddy bears that were not age-appropriate gifts and would obsessively repeat "I love you" to Emily.

DCFS recommended the court terminate jurisdiction, with family law exit orders granting sole physical custody to Father, joint legal custody, and therapeutic visitation for Mother when Emily's therapist agreed.

The court found continued jurisdiction was necessary. The court found Mother was in partial compliance with her case plan, and ordered continued individual counseling for Mother and for Emily.

4. April 23, 2018 Progress Hearing

Emily's therapist reported Emily continued attending therapy regularly, but remained steadfast in her decision not to see or talk to Mother at this time.

Father's counsel, minor's counsel, and DCFS all requested the juvenile court terminate jurisdiction over Emily; Mother's counsel, however, argued termination was premature because Mother "has done everything except her psych[ological] eval[uation]," which she cannot afford to pay for.

The court found that the psychological evaluation "is a very important component and [Mother] refuses to do it." The court found "Father and Emily are doing great," but that Mother "has some mental issues she needs to deal with and she hasn't," and "that's what's preventing things from moving forward here." The court terminated jurisdiction over Emily, with family law orders granting sole legal and physical custody to Father. The court ordered Mother to have monitored visitation in a therapeutic setting with Emily, once a month, only after having completed a psychological evaluation. The court further ordered Mother's visitation not be liberalized until she followed a "regimen of evaluation including services and taking prescribed medication." The juvenile court's exit orders were contained in the *Custody*

Order—Juvenile—Final Judgment (hereinafter custody order) issued on April 23, 2018.

Mother timely appealed.

DISCUSSION

Mother presents three arguments on appeal. First, she argues the juvenile court abused its discretion in terminating dependency jurisdiction over Emily. We conclude the court did not abuse its discretion in terminating jurisdiction. Second, Mother argues the juvenile court abused its discretion in granting Father sole legal and physical custody of Emily. We conclude the court did not abuse its discretion in awarding Father sole custody. And third, Mother contends the juvenile court abused its discretion by placing vague and unreasonable limitations on Mother’s right to visit with Emily. Although we disagree with Mother’s reasoning as to why the court’s visitation order was unreasonable, we conclude the court’s visitation order was invalid because it impermissibly restricted the family court’s power to modify visitation until after Mother’s completion of a psychological evaluation, services, and taking prescribed medication.

A. *Standard of Review*

The juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case, (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4 (*Nicholas H.*)). The decision to terminate dependency jurisdiction and to issue custody and visitation orders pursuant to section 362.4 is reviewed for abuse of discretion, and we 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.” ’ ’ *In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.’ ” (*Id.* at pp. 318–319.) As a reviewing court, we do not substitute our judgment for that of the juvenile court. (*Id.* at p. 319.) We do not “weigh the credibility of the witnesses or resolve conflicts in the evidence. [Citation.] Rather we must indulge in all reasonable inferences to support the findings of the juvenile court and must review the record in the light most favorable to the juvenile court’s orders.” (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) Where substantial evidence supports the trial court’s order, there is no abuse of discretion. (*Ibid.*)

B. *The Juvenile Court Did Not Abuse Its Discretion by Terminating Dependency Jurisdiction.*

When the child remains in a parent’s home, the juvenile court reviews the status of a dependent child every six months. (§ 364; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303–304.) Under such review, the juvenile court “is not concerned with reunification” (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 20 (*Pedro Z.*)), as the goal of dependency proceedings “is to reunify the child with *a parent*.” (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 59.) Instead, the court must determine “whether . . . dependency [jurisdiction] should be terminated or whether further supervision is necessary.” (*In re Joel T.* (1999) 70 Cal.App.4th 263, 267.) “When deciding whether to terminate jurisdiction, the court must determine whether there is a need for continued supervision, not whether the conditions that justified taking jurisdiction in the first place still exist.” (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451.)

Mother argues the juvenile court abused its discretion by terminating dependency jurisdiction “premature[ly]” instead of continuing jurisdiction in order to “provide [M]other with services she could afford.” We disagree. Nothing in the record indicates there was a need for continued supervision by the juvenile court. The court maintained jurisdiction over Emily for almost a year beyond the disposition hearing to provide Mother with continued services,⁶ even though Mother was not necessarily entitled to reunification services, as Emily remained healthy and safely in Father’s care and custody. (See *Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20.) The court found that “[t]here is nothing to show that there is a safety risk if jurisdiction is terminated today.”

The court terminated jurisdiction on April 23, 2018, “with a family law order giving full legal and physical [custody] to Father” after finding that “Emily [is] doing great” in Father’s care and custody. The court stated this case has been “open for a while” and that “[t]here’s been excuse after excuse” from Mother regarding her completion of various programs and services required by the court. The court should not keep a case open and refuse to issue exit orders when the child was placed in the custody of one parent, just to give the other parent “a chance” to continue receiving services. (See *In re Erika W.* (1994) 28 Cal.App.4th 470, 476.)

Because there is no evidence demonstrating a continued need for supervision to ensure the safety of the child, as the child in this case was safe, healthy, and happy in Father’s care and

⁶ The continued services included parenting classes, mental health counseling, conjoint therapy with Emily, visitation in a therapeutic setting, psychological assessment, psychiatric evaluation, and drug testing.

custody, the court's termination of dependency jurisdiction was not an abuse of discretion.

C. *The Juvenile Court Did Not Abuse Its Discretion in Awarding Sole Custody of Emily to Father.*

When a juvenile court terminates its jurisdiction over a dependent child, it may issue family law orders governing custody or visitation, commonly referred to as "exit orders." (§ 362.4, subd. (a); *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) These exit orders are transferred to the family court to become part of the relevant family law case file or, if no proceedings are pending in family court, "may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides." (§ 362.4, subd. (c); *In re John W.* (1996) 41 Cal.App.4th 961, 970, fn. 13 (*John W.*).)

The family court that will be responsible for enforcing or modifying the juvenile court's visitation order is equally capable of ensuring that the custody and visitation take place as ordered. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203 (*Chantal S.*) [" 'When the juvenile court terminates its jurisdiction over a dependent child, 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.' "].)

A juvenile court terminating dependency jurisdiction and making custody or visitation orders "does so as a court with 'a special responsibility to the child as *parens patriae* and [it] must look to the totality of a child's circumstances when making decisions regarding the child.' [Citation.]" (*In re J.T.* (2014) 228 Cal.App.4th 953, 963.) In making custody orders, the court

must “make an informed decision concerning the best interests of the child” (*John W.*, *supra*, 41 Cal.App.4th at p. 972.), and its primary concern must be a determination of “what would best serve and protect the child’s interest.” (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652; see also *Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268; *Chantal S.*, *supra*, 13 Cal.4th at p. 206.)

There is no presumption in favor of joint custody when a juvenile court is making a family law exit order. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712; accord, *Chantal S.*, *supra*, 13 Cal.4th at p. 206.) Family law presumptions favoring joint custody do not apply in the dependency context. (*Chantal S.*, at p. 206 [“application of a family-law-based joint custody presumption would be inconsistent with the purpose of juvenile court law”].) Rather, a “juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case” (*Nicholas H.*, *supra*, 112 Cal.App.4th at p. 265, fn. 4.); these orders will not be disturbed unless an abuse of discretion is clearly established. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

Mother contends the juvenile court erred by granting Father sole legal custody of the children, rather than according her joint legal custody. Mother argues that awarding Father with sole legal custody “unnecessarily removed [M]other’s input from the education and development of her child.” She refers to DCFS’s initial recommendation that the parties be awarded joint legal custody, and contends the court abused its discretion in awarding Father sole legal custody.

Based on a review of the record, we cannot say the juvenile court acted arbitrarily in awarding Father sole legal custody, as

the record reflects that Emily's health and education needs were not met while in Mother's care and custody. Emily reported to DCFS that Mother "denied [her] water and food during her weekend visits" and that Mother would hit or bite Emily if she "attempted to obtain food and water." Emily's grades were affected as a result of Mother's actions. Emily said she had a "difficult time concentrating at school because [M]other is constantly calling her during class," sometimes up to 30 calls daily. The record shows Mother was not capable of managing Emily's health, education, and welfare in her best interests. Additionally, at the time the juvenile court terminated jurisdiction, Mother had not progressed sufficiently in overcoming the problems that led to removal of Emily from Mother's custody. Emily's therapist opined that Mother was difficult to communicate with and unable to put Emily's needs before her own. Based on the foregoing, the court reasonably could determine Emily's best interests would not be served by awarding Mother joint legal custody.

Mother similarly argues that the court abused its discretion in granting Father sole physical custody and contends a joint physical custody award was more appropriate. We disagree. "In any custody determination, a primary consideration in determining the child's best interests is the goal of assuring stability and continuity." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Here, the court reasonably could infer that a joint physical custody arrangement would disrupt the stable environment Emily now enjoyed with Father. In fact, in Emily's letter to the court, Emily specifically stated that she did not want to see Mother because she is "trying to make [her] live [*sic*] better and going to mom's . . . will make it worse for [her]." She begged

the court and said, “Please don’t make me see her.” And finally, Mother had not had joint physical custody of Emily since the 2012 incident that initially brought DCFS into this family’s life, as Father was awarded sole physical custody of Emily at that time. Under these circumstances, the juvenile court reasonably concluded joint physical custody was not in Emily’s best interest.

Mother presents no argument to the contrary. Although she argues that “the totality of the circumstances in this case show that such shared custody would be in Emily’s best interest,” she fails to explain how shared custody would actually be in Emily’s best interest. Instead, Mother relies on Family Code presumptions and preferences that are inapplicable in dependency proceedings to support her case. As we have already explained, however, these family law custody principles do not govern when a dependency court makes a custody determination. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712; accord, *Chantal S.*, *supra*, 13 Cal.4th at p. 201.)

Viewing the record in the light most favorable to the custody orders and based on the totality of the circumstances, substantial evidence supports the court’s decision to award Father sole legal and physical custody. We cannot find the decision was arbitrary or capricious based on this record.

D. *The Juvenile Court’s Visitation Exit Order Was Not Within Its Discretion as It Unreasonably Restricts the Family Court’s Power to Modify Visitation.*

A juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).) In fashioning custody and visitation orders, the juvenile court’s “focus and primary consideration must always be the best interests of the child.”

(*Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268.) The “ ‘juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion . . . order[s] in accordance with this discretion.’ ” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) The court’s exit order “remain[s] in effect after [dependency] jurisdiction is terminated” and may thereafter be modified by the family court if (1) “there has been a significant change of circumstances,” and (2) “modification . . . is in the best interests of the child.” (§§ 302, subd. (d), 362.4, subd. (b); *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163; see also *In re Marriage of Carney* (1979) 24 Cal.3d 725, 730–731 [noting general rule for modification of custody orders issued by family courts].)

Although a juvenile court enjoys broad discretion in fashioning an exit order regarding custody and visitation (e.g., *In re M.R.* (2017) 7 Cal.App.5th 886, 902), that discretion has limits. An exit order cannot restrict the family court’s power to modify the exit order’s custody or visitation provisions should the prerequisites for such a modification exist (that is, should the modification be in the best interests of the child based on changed circumstances). (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455–1457; *John W.*, *supra*, 41 Cal.App.4th at pp. 972–973.) Thus, an exit order is invalid if it restricts a family court’s power to modify visitation unless and until a parent completes certain programs and obtains counseling. (*In re Cole Y.*, at pp. 1451, 1456–1457.)

In this case, the juvenile court’s exit order was set out in the custody order issued on April 23, 2018. Said judgment provides: “Mother to have therapeutic visits with Emily one time per week after completing a psychological evaluation. Mother to

follow regimen of evaluation including services and taking prescribed medication before visits are liberalized.” Mother argues the court placed “unreasonable limitations on [her] right to visit with her daughter.” She contends she could not afford the referrals provided to her for the psychological evaluation, and that her “poverty should not have been used against her by the juvenile court.” Mother also contends the wording of the court’s order and the limitations on her visitation rights were “unworkably vague as to which services [M]other was to participate in other than the psychological evaluation.” She argues that “[t]here is nothing in the juvenile court’s order to give the family court any indication what a ‘regimen of evaluation’ would consist of” and “what ‘services’ [M]other is supposed to participate in prior to being allowed more time with her daughter.”

Although we disagree with Mother’s reasoning as to why the juvenile court’s exit order placed unreasonable limitations on her visitation rights with Emily, we agree that the court’s exit order is overbroad and invalid because it impermissibly restricts the family court’s power to modify custody and/or visitation. As explained herein above, family courts have the authority to modify custody or visitation if there has been “‘a significant change of circumstances’” and the modification is “‘in the best interests of the child.’” (*In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1456.) However, the juvenile court’s exit order restricts the family court’s ability to “liberalize” visitation until after Mother “follow[s] [a] regimen of evaluation including services and taking prescribed medication.” The court stated Mother “will have visits in a therapeutic setting only after she has had a psych eval” and after she “completes her therapy and anything else that’s

prescribed or recommended by the person who does the psych evaluation.”

The juvenile court does not have the authority to condition the family court’s modification of an exit order upon the completion of programs, counseling, or—as in this case—a regimen of evaluation including services and medication compliance. (*In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1456.) The April 23, 2018 custody order is reversed to the extent it conditioned modification of the family court’s visitation order until after Mother’s completion of various evaluation services and medication compliance. In all other respects, the April 23, 2018 custody and visitation orders are affirmed.

DISPOSITION

The juvenile court’s order that Mother’s visitation cannot be modified until after her completion of a psychological evaluation and regimen of services is reversed. All other orders are affirmed.

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.