

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**DIVISION EIGHT**

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

---

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.B.,

---

Defendant and Appellant.

B287205

(Los Angeles County  
Super. Ct. No. DK20337)

APPEAL from orders of the Superior Court of Los Angeles  
County, Kristen Byrdsong, Commissioner. Affirmed.

Suzanne Davidson, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Acting Assistant County Counsel, and Jessica S. Mitchell, Deputy  
County Counsel, for Plaintiff and Respondent.

---

## ***INTRODUCTION***

Mother appeals the juvenile court's orders terminating jurisdiction and giving father full custody of their two children. Mother contends the juvenile court relied on the wrong statute when it terminated jurisdiction and abused its discretion when it ordered father to have full custody. We conclude mother forfeited her challenge because she failed to object to the court's reliance on Welfare and Institutions Code section 364 when terminating jurisdiction.<sup>1</sup> The juvenile court did not abuse its discretion in awarding father full custody. We affirm on all grounds.

## ***FACTS AND PROCEDURAL BACKGROUND***

Mother and father previously dated and have two children together, a son born March 2007 and a daughter born January 2014. They have a history of domestic violence. After they ended their relationship, mother took the children. At the inception of this dependency case, father had not seen the children for nine months.

### **1. Mother Left the Children Unsupervised at a Hotel, Where She Lived with the Children in Squalid Conditions**

On November 12, 2016, mother left her then two-year-old daughter and then nine-year-old son alone and unsupervised for hours in a hotel room, while mother went shopping with her cousin. Police responded to the hotel when daughter was found wandering the halls by herself. Daughter was wearing a saggy wet diaper and did not have on pants. Son was discovered in the hotel room by himself, without any food or water. The room was dirty, foul-smelling, and in disarray, with trash and food

---

<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code.

containers on the floor. Son told police that his sister must have left the room when he dozed off. Mother told police that she had left the children with a friend named Eric, who was also a guest at the hotel. Police contacted the friend, who denied that mother asked him to watch the children. A Department of Children and Family Services (DCFS) social worker responded to the hotel, witnessed the poor living conditions, and collected the children. When interviewed by the social worker, son stated that mother often left him and his sister unsupervised. Police arrested mother for felony child endangerment.

Mother admitted to the social worker that a similar incident previously happened with the children after she had arranged for a friend named Kevin to watch them. Mother's criminal history included a 2016 arrest for child cruelty: possible injury/death. Mother did not have a job, a permanent home, or family nearby. Mother and the children had been living in hotels for months. Mother's grief over the maternal grandmother's March 2015 death appears to have precipitated mother's transiency and unemployment. Son had missed the last two months of school in the third grade and four months of school in the fourth grade. Daughter exhibited developmental delays.

Mother and the children had not been in contact with father since March 2016. Mother accused father and his girlfriend of attacking her and stated she had a restraining order against him for domestic violence.

## **2. The Children Were Detained with Father**

DCFS investigated father's home for placement. Father resided with his girlfriend, their infant child, and the girlfriend's six-year-old child from another relationship. The home appeared appropriate and father stated he had bunk beds for son and

daughter. Father was employed, and had the support of his relatives and girlfriend. He was able and willing to care for the children and felt concerned about the children remaining in mother's care.

Prior to the inception of this dependency case, father had filed for full custody of the children through family court. He appeared in family court in June, August, and October 2016, but mother failed to appear at each hearing.

Father admitted that he and mother had a domestic violence incident three or four years earlier, where they threw things at each other and the police were called. Father stated that the children did not witness the incident. Statements by son indicated otherwise. Father was convicted in 2011 and 2014 of inflicting corporal injury to a spouse or cohabitant, and in 2014 for violating a court order in place to prevent domestic violence. Father reported he had successfully completed a parenting class and two 52-week domestic violence courses, the most recent one in 2015. He was in compliance with his probation officer. Father and his girlfriend denied any domestic violence or use of physical force on the children.

On November 13, 2016, DCFS detained the children with father. Upon their arrival at father's home, the children were happy to see father.

### **3. Dependency Petition and Detention of the Children**

On November 16, 2016, DCFS filed a petition alleging the children were at risk of harm under section 300, subdivisions (a), (b)(1), and (j) due to mother leaving the children without supervision for extended periods of time, father hitting son with a

belt,<sup>2</sup> and the parents engaging in domestic violence in the children's presence.

That same day, the juvenile court found a prima facie case for detaining the children, and detained them from mother's custody. The children were released to father. Mother was ordered monitored visitation for four hours per week. The court ordered referrals for parenting classes and individual counseling for mother.

A month later, DCFS filed a first amended petition omitting the allegations about father hitting son with a belt. The court dismissed the original petition.

#### **4. Jurisdiction and Disposition Hearing**

On January 24, 2017, the court sustained the section 300, subdivision (b) count alleging mother left the children without adult supervision. The juvenile court found true the allegations that mother placed the children in an endangering and detrimental situation by leaving them unsupervised in a hotel room on November 12, 2016, that the two year old was found wandering the halls of the hotel alone, and that on prior occasions, the children were found alone without adult supervision for extended periods of time. The court dismissed the remaining counts, including the allegations about domestic violence.

The court declared the children dependents of the court and removed them from mother's custody pursuant to section 361, subdivision (c). The children were placed with father. Father was ordered co-parenting classes and individual counseling. Mother was given monitored visitation, daily monitored

---

<sup>2</sup> During an early interview with DCFS, son alleged that father had previously "whooped" him with a belt.

telephonic contact with the children, and permission to attend school programs and events for the children. The court ordered mother to participate in 10 random drug tests, a co-parenting course, and individual counseling.

## **5. Father's Care of the Children**

The children appeared comfortable and well cared for in father's home. Father ensured the children received services for their medical, dental, and mental health needs. He also ensured they attended school and participated in court-ordered services. Although mother delayed giving her consent, the children eventually obtained health services. Son received an individualized education plan and attended individual counseling. Daughter was assessed for and diagnosed with autism in July 2017.<sup>3</sup> In November, Father sought regional center services for her autism. Father was compliant with his own case plan, attending the parenting program and individual counseling. Father made sure the children had monitored visits with mother every Saturday from noon until 6:00 p.m.

In late June 2017, DCFS received a referral indicating father engaged in an argument with his girlfriend that resulted in police being summoned to their home. Father acknowledged that they had an argument, which the children overheard. There was no physical violence involved. DCFS determined the referral to be unfounded. Father and his girlfriend agreed to participate in couples counseling.

---

<sup>3</sup> It appears that mother delayed daughter's autism evaluation for months by not signing the paperwork required for her assessment.

## **6. Mother's Visitation and Case Plan Noncompliance**

During visits, mother was not appropriate with the children. On one visit, she had the children open and consume sodas inside a store, and leave without paying for them. When the social worker pointed out that this was stealing, son shrugged his shoulders and pointed at mother. Mother did not respond. Although she purchased toys for the children at the visit, she did not provide them food.

During a subsequent visit, mother brought the children to a water park but did not bring towels, and ended the visit early to pay for her rental car. During that visit, mother questioned son about his conversations with his attorney. When the child responded that he could not discuss it with her, mother became mad and said she would no longer visit him. Mother threatened to leave the boy in his father's custody. She told him she would take only daughter to live with her, and not allow him to visit. Mother later denied talking to the child about the pending dependency case. Following this incident, the child told the social worker that he feared being left alone with mother and asked the social worker to stay with him so that he was not alone with mother.

At a later visit, mother took the children to a movie theater. There, she lied about daughter's age to gain free admittance for her. She explained to the children that as long as she does not have to show a birth certificate, the girl's age did not matter. Son told mother, "Wow, you can just lie." Mother failed to bring diapers for daughter at this visit. She also privately threatened to hit and slap son. Following the visit, the child reported the threat and told the social worker that he wanted to

live with father, and not with mother. Mother subsequently denied threatening the child.

DCFS then moved mother's visits to a community center because of mother's inappropriate behavior. On the first visit there, mother showed up to the community center without the food, drink, books, and supplies that the social worker instructed her to bring to entertain the children. Mother became upset when she realized she could not leave with the children. Mother decided to end the visit at 1:30 p.m. although the visit was supposed to go until 4:00 p.m. Son communicated his disappointment in mother for not spending time with him and his sister.

Mother also failed to comply with the court-ordered case plan. Although mother reported she was enrolled in the court-ordered mental health program, the social worker was unable to verify her enrollment as of late September 2017. Mother had not signed a release form for the social worker to confirm her receipt of mental health services. Mother reportedly was participating in individual counseling with another vendor, but only completed three sessions. Mother was doing well in her group therapy sessions for bereavement. Mother failed to submit to scheduled drug tests on five dates, but tested negative on two dates in September 2017.

She did not provide DCFS with her home address and said she was staying with various friends. In June 2016, mother started a new job. In a conversation with a social worker, she admitted she was homeless and was considering quitting her job to take care of her grandmother, who has Alzheimer's, which would provide her a \$3,000 monthly income. Mother did not



appear to consider the difficulties associated with caring for a disabled elderly person while parenting two young children.

DCFS had serious concerns about mother's ability to parent. Mother easily became frustrated with daughter and her behavior. She was in denial about daughter's autism diagnosis, asserting that it was fabricated by father. Mother continued to discuss the dependency case with son despite repeated warnings from social workers to desist. In addition to threatening son, she also yelled and cursed in front of son and daughter. Son began refusing to see mother at visits. Just prior to the review hearing, DCFS recommended termination of mother's services, joint legal custody to the parents, and sole physical custody to father.

## **7. Contested Review Hearing**

On August 8, 2017, the juvenile court held a section 354 review hearing and set a contested hearing for termination of jurisdiction. On October 17, 2017, the court held a contested hearing for termination of jurisdiction. The court heard testimony from mother and then argument from counsel.

Mother testified that she wanted the children back in her custody, or in the alternative, unmonitored visitation. She acknowledged missing some drug tests but otherwise claimed to be compliant with the case plan. When her failures to satisfy the case plan were raised, mother provided excuses. When examined about incidents that had occurred during visitation, mother denied talking to son about the case and failing to bring food and diapers to visits. Mother denied delaying daughter's evaluation for autism and denied ever saying the child did not have autism.

Counsel made closing arguments. Father asked the court to follow DCFS's recommendation that the case be terminated with a family law order granting joint legal custody and sole

physical custody to him, with monitored visitation for mother. Father argued that the children were doing well in his care and mother failed to comply with her case plan despite court orders. Father acknowledged the importance of regional center services to daughter and wanted her to receive as much help as possible. Father asserted that termination of jurisdiction was proper because the juvenile court does not keep a case open solely to give the other parent additional chances to reunify.

Mother asserted that jurisdiction should not be terminated. Mother requested the court order the children into her custody or alternatively, give her unmonitored visitation. Mother opined that she was not regularly receiving her court-ordered visitation, and that it was not in the children's best interest for the court to close the case.

Children's counsel asked the court to maintain jurisdiction over the children to ensure daughter's receipt of services from the regional center. Counsel mentioned the preexisting domestic violence allegations against father and stated that she recommended three more months of jurisdiction to ensure the family's stability. Counsel requested the court maintain monitored visitation for mother.

DCFS asserted that the conditions that brought the children under the court's jurisdiction no longer existed. DCFS stated that there was no basis for continuing jurisdiction because DCFS had serviced the family to the full extent necessary.

#### **8. Termination of Jurisdiction and Custody Order**

The juvenile court found that DCFS provided the family with all reasonable services and made efforts to ensure the case did not need to remain open. The court found the conditions that justified initial assumption of jurisdiction no longer existed. The

court decided to terminate jurisdiction, and stated: “In listening to all of mom’s testimony, the court did not find her explanation for her missed [drug] test[s], for not enrolling in [daughter’s] services, [for] not responding to [DCFS], plausible. She seems to have a lot of excuses. She was not accountable for anything. She blamed every issue on someone else.”

Although DCFS, children’s counsel, and father advocated for joint legal custody to the parents and sole physical custody to father, the court awarded father sole legal and physical custody with mother to have monitored visitation. The court explained that it was concerned that joint legal custody would result in an interruption of services for daughter when mother cannot be reached. This was of particular concern to the court because the parents lived far apart. The court stayed the termination of jurisdiction pending the receipt of the juvenile custody order. On October 24, 2017, the juvenile court received, signed, and filed the final custody order granting father sole legal and physical custody. The order gave mother at minimum, one hour of supervised weekly visitation by a professional monitor paid by mother. The court lifted the stay and terminated jurisdiction.

### ***DISCUSSION***

Mother appeals the juvenile court’s orders terminating jurisdiction and awarding father sole custody. Mother makes two arguments: (1) the court applied the wrong statute to terminate jurisdiction, and (2) the court abused its discretion in awarding father sole custody. We address each in turn.

#### **1. Mother Forfeited Her Right to Challenge the Court’s Reliance on Section 364**

Mother argues that the juvenile court improperly applied section 364 when it terminated jurisdiction over the children.

Mother failed to object the application of section 364 at the review hearing. “An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the [trial] court by some appropriate method. . . . The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver. . . . Often, however, the explanation is simply that it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.” (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501 (internal quotation marks and citations omitted).)

Mother has forfeited this issue. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 197 [“when a parent does not raise an issue in the trial court, he or she is precluded from raising the issue on appeal”].) “Had appellant’s objection been raised in the superior court, the court may well have entered a different order. [Citation.] It would be unfair to the trial court and the DCFS to consider this issue for the first time on appeal.” (*In re Kevin S.* (1996) 41 Cal.App.4th 882, 886.)

In her reply brief, mother asserts that we should exercise our discretion to address her argument because it is an important legal issue. Mother argues the court should have applied section 366.21, subdivision (e)(6), and not section 364, to terminate jurisdiction because the children were placed with a non-custodial parent at the inception of the dependency case. Mother is correct that Section 366.21, subdivision (e)(6) provides the standard for termination of jurisdiction when a child is placed

with a noncustodial parent pursuant to section 361.2, as the children were in the present case.

We observe that the standards for terminating jurisdiction under sections 364 and 366.21 are similar and the juvenile court's factual basis for terminating jurisdiction was strong. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 99 [“[U]nder section 366.21, subdivision (e), the standards applicable to a six-month review hearing for a child placed with a noncustodial parent are similar to the standards applicable to a section 364 six-month review hearing for a child who was not removed from a custodial parent. In both instances, the court must ‘determine whether continued supervision is necessary.’”].) Thus, any error would have been harmless.

Mother argues the critical difference between the statutes is the discretion afforded the court by each. Section 366.21, subdivision (e)(6) gives the court discretion to terminate jurisdiction, stating the court “may terminate” where supervision is no longer necessary. In contrast, section 364, subdivision (c) states the juvenile court “shall terminate its jurisdiction” unless the initial conditions justifying jurisdiction still exist. Mother contends that if the court had applied section 366.21, it would have exercised its discretion to maintain jurisdiction.

We observe that this conjecture is not supported by the record, which clearly shows the juvenile court exercised discretion throughout the hearing. Over the recommendations of DCFS and children's counsel, the juvenile court utilized its discretion to award father sole custody. In addition, nothing in the record suggests the juvenile court considered “shall” in the mandatory sense of the word when relying on section 364 to terminate jurisdiction.

## **2. The Court Did Not Abuse its Discretion in Awarding Father Sole Legal Custody**

Mother contends the juvenile court erred by granting father sole legal custody of the children, rather than according her joint legal custody. In terminating jurisdiction over a dependent child, the juvenile court is empowered to make “exit orders” regarding custody and visitation. (§§ 304; 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) “[I]n making exit orders, the juvenile court must look at the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) The court must be guided by the totality of the circumstances and issue orders that are in the child’s best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30–31.) Section 362.4 also provides that any juvenile court order issued pursuant to that statute shall continue until modified or terminated by a subsequent order of the superior court. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

We review a juvenile court’s custody determination in a dependency proceeding for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) We will not disturb the juvenile court’s determination unless it is arbitrary, capricious, or patently absurd. (*Ibid.*)

Mother contends that the court did not have to terminate mother’s rights in order to ensure daughter received services. She asserts the court could have restricted her educational or medical rights to the children to ensure services were not interrupted. Despite having court-ordered visitation, mother contends that she will be shut out of her children’s lives given her

lack of custodial rights due to the contentious relationship between the parents.

We conclude the record discloses no abuse of discretion by the juvenile court. In according father sole legal and physical custody of the children, the juvenile court considered mother's failure to adhere to the case plan, repeated inappropriate behavior during visitation, and sluggishness in signing off on much-needed services for the children. The court rightfully considered mother's months-long delay in acquiescing to services for her non-verbal, nearly-four-year-old child,<sup>4</sup> who she refused to believe was autistic. Before DCFS's involvement, son missed a substantial amount of school and daughter exhibited developmental delays. The record establishes that mother was not capable of managing the children's health, education, and welfare. At the time the juvenile court terminated jurisdiction, mother had not progressed sufficiently in overcoming the problems that led to the children's removal from her custody.

The juvenile court must look at the best interests of the child in issuing an exit order. (*In re John W.*, *supra*, 41 Cal.App.4th at p. 973.) In view of the facts described above, we conclude that the juvenile court did not abuse its discretion in granting father sole legal and physical custody of the children.

---

<sup>4</sup> Daughter was three years and ten months old when the court terminated jurisdiction.

**DISPOSITION**

The orders are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.