Filed 12/14/17 In re M.M. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.M., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B283340 (Super. Ct. No. J070995) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. GABRIELA M., Objector and Appellant.	

Gabriela M. appeals a juvenile court exit order (Welf. & Inst. Code, § 362.4)[1] terminating dependency jurisdiction over

[1]All statutory references are to the Welfare and Institutions Code, unless otherwise stated. "Section 362.4 provides that when the juvenile court terminates jurisdiction over a dependent child, and there is a pending family court case, the juvenile court may

appellant's three-year old daughter, M.M., and awarding sole physical custody to M.M.'s father, Ova C., with joint legal custody to father and appellant. We affirm.

Facts and Procedural History

Appellant has a history of abusing pain medication and suffers from depression, anxiety attacks, and Munchausen Syndrome. On May 17, 2016, Ventura County Human Services Agency (HSA) detained M.M. because appellant was addicted to pain pills, obtained narcotic prescriptions from different doctors for 324 Oxycontin pills within a 30 day period, and suffered from mental health issues that impaired appellant's ability to safely care for M.M. A petition was filed for failure to protect (§ 300, subd. (b)) and no provision for support (§ 300, subd. (g)).

Sustaining the petition, the trial court found that appellant's substance abuse and mental health issues put M.M. at a significant risk of harm and neglect. M.M. was placed with father who moved from Arizona to Oxnard to care for M.M. and live with the paternal aunt. The trial court ordered family maintenance services for father and reunification services for appellant.

Appellant made nominal progress on her case plan but denied opiate dependency, missed mental health appointments, missed drug tests, and tested positive for drugs on

---

issue an order determining the custody of, or visitation with, the minor, which order 'shall' become part of the family court file and 'shall continue' unless 'modified' or 'terminated' by that court. [Citation.] An order entered pursuant to section 362.4 is commonly referred to as an "'exit'" order. [Citations.]" (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455.)

several occasions. Appellant suffered anxiety attacks when M.M. was not in her care, falsely accused father of domestic violence, and falsely reported that M.M. had been physically abused by father. After M.M. was placed in father's care, appellant called a 24-Hour Child Abuse Hotline nine times and said that father was neglecting M.M. HSA evaluated each referral and determined that no safety concerns were present. Appellant's supervised visits, however, were a concern. Appellant told M.M. to give "daddy" certain messages and fed the child food high in sugar content even though M.M. suffered severe dental decay and weight problems.

The record reflects that father filed a family law petition for sole custody of the child (Ventura County Sup. Ct., case no. D358958) three weeks before HSA filed the dependency petition. During the one-year dependency proceeding, father provided M.M. a loving home and met all the child's emotional and physical needs. HSA recommended that the trial court dismiss the dependency proceeding and grant sole physical custody of the child to father. HSA reported that without extensive mental heath treatment and consistent sobriety, appellant should not have unsupervised visits with M.M.

Following a contested hearing, the trial court dismissed the dependency proceeding and awarded father sole physical custody, with joint legal custody to appellant and father. The nine-page exit order details the custody arrangements, the terms of monitored visitation, and travel restrictions.

Abuse of Discretion

Where a juvenile court terminates dependency jurisdiction over a child, it is empowered to make exit orders regarding custody and visitation that carry over to ongoing

family court proceedings. (§ 362.4; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1122; *In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1455.) Appellant argues that the trial court erred in awarding sole physical custody of M.M. to father. In deciding custody and visitation, the trial court has "'broad discretion to decide what means will best serve the child's interest . . . .' [Citation.]" (*In re Cole Y.* at p. 1456.) We will only reverse if the trial court made an arbitrary, capricious, or patently absurd decision. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Substantial evidence supports the finding that appellant's substance abuse and mental health issues render appellant unable to share physical custody of M.M. The trial court found that appellant has a serious substance-abuse problem, that appellant's sobriety is recent, and that appellant's family has turned a blind eye to appellant's substance abuse and parenting problems.

Appellant complains that the exit order is a "final" custody order and is prejudicial because a higher burden of proof is required to modify custody. In order to modify custody, appellant will have to demonstrate a significant change of circumstances and that the modification is in the best interests of the child. (See Welf. & Inst. Code, § 302, subd. (d); *In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1456.) But this is true of any exit order and is not a due process violation because dependency proceedings are different than family law proceedings.[2] (*In re*

[2] Should circumstances change in the future, appellant is free to seek joint physical custody in the family court. Appellant will be required to show (1) a substantial change of circumstances since the exit order was made, and (2) that the proposed modification would be in the best interest of M.M. (§ 302, subd.

Jennifer R. (1993) 14 Cal.App.4th 704, 712.) In a dependency proceeding, the parent's ability to protect and care for the child is the central issue. (*Ibid.*) "The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions." (*Ibid.*)

When a non-custodial parent reaches the family court by way of a section 362.4 exit order, the parent brings with him or her, history, e.g., a recent court finding that the parent poses a substantial risk of serious future physical or emotional injury to the child. (*In re Chantel S.* (1996) 13 Cal.4th 196, 209.) "In many cases, the parent's recent history also includes a finding by clear and convincing evidence that there is 'substantial danger to the physical health of the minor,' justifying removal of the minor from parental custody (§ 361, subd. (b)(1)), and repeated findings by a preponderance of the evidence that return of the minor to [the parent] 'would create a substantial risk of detriment to the physical or emotional well being of the minor' [citations].)" (*Id.* at pp. 209-210.) Because of the distinguishing features of juvenile court and family court litigation, the non-custodial parent's substantial due process rights are not implicated or prejudiced by an exit order awarding sole physical custody to one parent. (*Id.* at p. 210.)

Appellant argues that a parent who has sole physical custody of a child has the presumptive right to change the child's

---

(d).) Appellant has not explained why the exit order would adversely affect appellant's ability to make either of these showings, if and when the showings can be made.

residence and need only show that the move is in the child's best interest. (See *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31-32.) Appellant claims that father planned to move back to Arizona once the juvenile court proceedings concluded. This misstates the record. Father plans to travel to Arizona for weekend visits so that M.M. can visit father's family.

This is not a "move-away case" (see, e.g., *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1088-1089) and there is no plan to move M.M. to Arizona. The exit order provides that father may travel to Arizona to visit family one weekend a month but must give appellant two weeks advance notice. The travel notice provision assures that appellant has monitored visits on Sundays and Tuesdays. If father takes M.M. to Arizona for a weekend, the exit order requires that father provide appellant an eight hour "make-up" visit.

Although appellant was not awarded joint physical custody, the exit order provides that appellant will share in parenting decisions. The order requires that father and appellant agree on M.M.'s enrollment in school or daycare, on whether M.M. should begin or end mental health counseling, on M.M.'s participation in extracurricular activities, and on the selection of M.M.'s doctor and dentist.

"In making 'exit' orders, . . . it is the best interests of the child, in the context of the [particular] facts of the case before the court, which are paramount." (*In re John W.* (1996) 41 Cal.App.4th 961, 965.) The record clearly shows that the award of sole physical custody to father is the best interest of the child and is supported by substantial evidence. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 706.) It is not our function to reweigh

the evidence or to substitute our judgment for that of the trial court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Judicial Council Form

Appellant argues that the trial court erred in not using Judicial Council family law form FL-341(D) to provide the family court guidance. Appellant did not object to the exit order or request that the trial court use form FL-341(D), thereby waiving the issue on appeal. (*In re Joshua G.* (2005) 129 Cal.App.4th 189 197.) Form FL-341(D) states on its face that it is optional and appellant cites no authority that the trial court was required to use the form. The trial court did, however, have a mandatory duty to use form JV-200 ("Custody Order - Juvenile - Final Judgment") which was used here. (See Cal. Rules of Ct., rule 5.700(b) [exit order "must be prepared" on JV-200 Form]; see Cal. Juvenile Dependency Practice (Cont.Ed.Bar 3d. ed. 2017) Postdisposition Proceedings, § 6.20, p. 513.)

Appellant argues that the exit order lacks clarity but the order clearly states that father is awarded sole physical custody, that appellant shall have monitored visits, and sets forth when and how visitation will occur. The exit order is so detailed that requiring the trial court to fill out an optional form would be redundant. "The law neither does nor requires idle acts." (Civ. Code, § 3532.)

Disposition

The judgment (order terminating dependency jurisdiction and awarding sole physical custody of the child to father, with joint legal custody to appellant and father) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Janette Freeman Cochran, under appointment by the Court of Appeal for Objector and Appellant.

Leroy Smith, County Counsel, Ronda J. McKaig, Assistant County Counsel, for Plaintiff and Respondent.