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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re O.C., a Person Coming Under the Juvenile Court Law.	B295761
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ANGELA M., Defendant and Appellant.	Los Angeles County Super. Ct. No. 18CCJP01490B

APPEAL from a judgment of the Superior Court of Los Angeles County, Pete R. Navarro, Juvenile Court Referee.
Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Angela M. (mother) appeals from the juvenile court's judgment terminating dependency jurisdiction over her daughter O.C. (minor) at the six-month review hearing under Welfare and Institutions Code section 364¹ and giving the minor's father (father) legal and physical custody of her under section 362.4. Mother contends the court erred in denying her request for a continuance of the six-month review hearing, denying her request to set the hearing for a contest, terminating jurisdiction, and giving sole legal and physical custody of the minor to her father with monitored visitation for mother.² Finding no error in the court's rulings, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother has two children. Only the minor, who is now seven years old, is involved in this appeal. Mother and father had been living together but separated in December 2017.

The Department of Children and Family Services (Department) became aware of the minor in early March 2018, after receiving a referral alleging mother had neglected the minor

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

² Father is not a party to this appeal.

by leaving her in the care of an unrelated adult who was under the influence of marijuana and methamphetamine. At the time of the referral, mother had full custody of the minor.

As pertinent here, the Department filed a petition to declare the minor a dependent child under section 300, subdivision (b), citing a substantial risk of harm to the minor due to mother's substance abuse, her alcohol abuse, the parents' prior domestic violence, and the incident in which mother left the minor with a caretaker who was under the influence of drugs. On March 7, 2018, the court detained the minor from mother and placed her with father. The court ordered Department-monitored visitation for mother and issued a temporary restraining order prohibiting mother from having any contact with father.³ The court subsequently ordered weekly drug testing for mother. Mother failed to comply.

The adjudication took place on June 19, 2018. Mother failed to appear at the hearing and her counsel's request for a continuance was denied. Based on the evidence submitted, the court found true the following jurisdictional allegations:

"The [child's] mother, ... has a history of substance abuse and is a current abuser of marijuana and alcohol which limits the mother's ability [to provide] regular care of the [child]. On prior occasions, the mother was under the influence of marijuana and alcohol while the [child was] in the mother's care and supervision. The [child's] father ... knew of the mother's substance abuse and failed to protect the child. The ... father allowed the mother to reside in the child's home and have

³ Mother and father have a history of domestic violence with mother as the aggressor.

unlimited access to the child. Such substance abuse on the part of the mother and the ... father's failure to protect the child ... endanger the [child's] physical health and safety and place the [child] at risk of serious physical harm, damage, danger and failure to protect."

"The [child]'s mother, ... and the mother's former male companion, ... father of the child ... , have a history of engaging in violent altercations, in the [child's] presence. On a prior occasion, the mother pushed the ... father's face with the mother's hand and struck the ... father's neck. The ... father failed to protect the child. The ... father allowed the mother to reside in the child's home and have unlimited access to the child. Such violent conduct on the part of the mother against the ... father and the ... father's failure to protect the child ... endanger the [child]'s physical health and safety and place the [child] at risk of serious physical harm, damage, danger and failure to protect."

"On prior occasions, the [child]'s mother, ... placed the [child] in a detrimental and endangering situation in that the mother drove a vehicle while under the influence of alcohol with the [child] as [a] passenger[] in the vehicle. The mother has a criminal history of a conviction of DUI: Alcohol/Drugs. Such a detrimental and endangering situation established for the [child] on the part of the mother endangers the [child's] physical health and safety and place the [child] at risk of serious physical harm, damage, and danger."

"On 03/01/2018, the [child]'s mother, ... placed the child in a detrimental and endangering situation in that the mother left the child in the care of an unrelated adult, ... who was under the influence of methamphetamine and marijuana and demonstrated

anxiety. Such a detrimental and endangering situation established for the child on the part of the mother endangers the child's physical health and safety and places the child ... at risk of serious physical harm, damage and danger."

As requested by the Department, the minor was removed from mother's custody and released to father. Mother's visits with the minor were to be monitored by a Department-approved monitor; father was not to monitor the visits.⁴ At father's request, the court also issued a three-year restraining order that requires mother to stay away from father and prohibits her from contacting him until June 2021.

Mother's case plan required her to enroll in and attend a full drug and alcohol rehabilitation program with aftercare, submit to weekly drug and alcohol testing, attend a domestic violence program, and participate in individual counseling to address case issues including domestic violence. Father's case plan required him to attend parenting classes and seek individual counseling to address case issues including co-parenting and domestic violence.

Six months later, and in preparation for the court's upcoming review hearing, the Department reported that the minor had adjusted well to living with father and his extended family members. For his part, father had complied with the court's case plan by participating in parenting classes and individual counseling. He cooperated fully with the Department and facilitated the minor's visits and telephone calls with mother as requested.

⁴ Mother did not appeal the jurisdictional findings or the dispositional order.

Mother, however, had not complied with her case plan in any respect. She failed to report for drug testing, had not enrolled in a drug or alcohol treatment program, and had not attempted to participate in the classes and counseling ordered by the court. Mother's visitation with the minor following the adjudication was positive and appropriate when mother attended the scheduled visitation sessions, which was inconsistent. But mother had no visits with the minor after August 23, 2018, because mother failed to attend the scheduled appointments. And in late October 2018, mother advised the Department that she was in Minnesota staying with family members in order to avoid an ex-boyfriend who she said was stalking her and planned to kill her. When the Department contacted mother in mid-November, she said she was staying with her grandmother but refused to provide a current address. She also said she "need[ed] a break" and did not know when she would return to Los Angeles. On the basis of these facts, the Department recommended that the court terminate jurisdiction over the minor and issue a family law order (exit order) giving father sole legal and physical custody of the minor with monitored visitation for mother.

On December 18, 2018, the court conducted a review hearing under section 364 (six-month review hearing). Mother failed to appear and her counsel requested a continuance so that she could attend the hearing on a future date. Counsel provided no explanation for mother's absence. Father, minor's counsel, and the Department all objected to a continuance, noting that mother had received proper notice of the hearing and no evidence suggested that good cause for a continuance existed. The court denied the request for a continuance.

In the alternative, mother's counsel asked that the court set the matter for a contested hearing at a future date. Counsel for father, the minor, and the Department all objected to a further delay. The court indicated that in light of mother's failure to comply with any aspect of the case plan, it would not be inclined to grant mother's request for joint legal and physical custody with unmonitored visitation, even if she testified at a future contested hearing. The court therefore denied the request for a contested hearing and granted father sole legal and physical custody of the minor, with weekly, two-hour monitored visitation for mother. This timely appeal followed.

DISCUSSION

Mother contends the court erred in denying her request for a continuance of the six-month review hearing, denying her the opportunity to present evidence at that hearing, terminating dependency jurisdiction over the minor, and giving father sole legal and physical custody of the minor. We address these arguments in turn.

1. The court did not abuse its discretion in denying mother's request for a continuance.

Mother asserts the court erred in denying her counsel's request for a continuance so that she could be present for the six-month review hearing. We disagree.

A juvenile court may continue a dependency hearing at the request of a parent upon a showing of good cause and only for the time shown to be necessary. (§ 352, subd. (a); Cal. Rules of Court, rule 5.550(a).) Courts have interpreted this policy to be an express discouragement of continuances. (See, e.g., *In re Karla C.* (2003) 113 Cal.App.4th 166, 179–180; *In re Emily L.* (1989) 212

Cal.App.3d 734, 743.) We review the denial of a request for a continuance for an abuse of discretion. (See *In re Karla C.*, at p. 180.) “ ‘ “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

“When a parent is absent without good cause at a properly noticed hearing, the court is entitled to proceed in the parent’s absence. (*In re Christopher A.* (1991) 226 Cal.App.3d 1154, 1162.) A parent’s failure to appear will not normally constitute the good cause necessary to justify a continuance (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187), because substantial importance is attached to ‘the child’s need for a prompt resolution of the matter’ (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2005 ed.) § 2.104[5], p. 2–169, citing § 352, subd. (a)). An unjustified failure to appear at a duly noticed hearing reflects a parent’s choice not to attend. (*In re Gerald J.*, at p. 1187.) A court may properly treat this choice as a waiver of the right to be present at that hearing and of the benefits of being present.” (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1131–1132, italics omitted.)

This is such a case. Notice of the hearing was provided in writing to mother at her last known address and the Department also told her about the hearing during a telephone call, at which time mother confirmed that she planned to attend the six-month review hearing. As noted, when mother’s counsel requested a continuance at the outset of the review hearing, he explained that he had just learned mother was in Minnesota and was

unsure why she was there. He offered no other explanation or evidence to support the request for a continuance.

In light of these facts, and the apparent absence of any good cause for mother's failure to appear, the court did not abuse its discretion in denying the request for a continuance and proceeding with the six-month review hearing in mother's absence.

2. Any error in denying mother's request for a contested hearing was not prejudicial.

Mother claims the court "violated [her] due process rights by denying her an evidentiary hearing at the section 364 hearing to challenge [the] dismissal of the dependency action and to present relevant evidence as to the exit orders." Mother cites two cases, *In re Michael W.* (1997) 54 Cal.App.4th 190 and *In re Armando L.* (2016) 1 Cal.App.5th 606, she contends required the court to grant her request for an evidentiary hearing at which time she would request joint custody and unmonitored visitation. Neither case supports her position.

In *In re Michael W.*, *supra*, 54 Cal.App.4th 190, as here, the juvenile court entered an order awarding physical and legal custody to the father with only monitored visits by the mother, terminating its jurisdiction, and transferring the matter to the family court. (*Id.* at p. 193.) The Court of Appeal reversed and remanded with directions, holding the juvenile court erred in entering the orders without first holding an evidentiary hearing as requested by the mother to hear evidence concerning her progress in overcoming depression. (*Id.* at p. 196.) In addition, the appellate court concluded that prejudice was presumed from the simple fact that a family law court will naturally defer to a recent order of the juvenile court concerning custody and

visitation. (*Ibid.*) And on the specific facts before the court, it was probable that the result would have been different had the hearing been held and the testimony of the mother's doctor concerning her progress fairly considered. (*Id.* at pp. 196–197.)

The present case is distinguishable from *In re Michael W.* in two important ways. First, in that case, the mother's request for a continuance was supported by a declaration from her doctor who stated that he had current and relevant information regarding mother's progress and that he strongly recommended that unmonitored visitation be reinstated. (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 196.) Thus, in considering the request for a continuance, the court had evidence before it suggesting that additional, relevant evidence supporting the mother's visitation request could be presented at a contested hearing. Here, by contrast, mother's counsel stated that mother's custody and visitation request would be "based on her visitation with the child" and that mother "has maintained consistent contact with her"—evidence that was already summarized in the Department's reports and which indicated that mother's interactions with the minor were positive and appropriate. Second, in *In re Michael W.*, the court's custody decision hinged mainly on whether the mother's mental health status had improved to the point that the mother could safely transition to unmonitored visitation. The court's refusal to allow the mother to present testimony by her treating doctor on that precise point was plainly prejudicial. (*Id.* at p. 196.) Here, by contrast, counsel said that mother could testify about her visitation with the minor. But the court's custody and visitation analysis did not turn on that point. Instead, the court based its custody and visitation order on mother's undisputed failure to comply with

any aspect of her case plan, including her failure to participate in either drug and alcohol testing or a drug and alcohol rehabilitation program. The court noted that even if mother had been present to testify about her prior visitation with the minor, it would still have awarded sole legal and physical custody to father due to mother's failure to comply with the case plan.

In re Armando L., *supra*, 1 Cal.App.5th 606, also cited by mother, is similarly inapposite. There, the minor was ultimately removed from both parents' custody due to the father's violent behavior toward the minor and both parents' inability to control the minor's behavior. (*Id.* at pp. 611–613.) Prior to the 18-month review hearing, the agency unilaterally placed the minor in the father's sole custody. Then, at the 18-month review hearing, the court terminated dependency jurisdiction and issued an exit order giving sole physical custody to the father. The mother's request to contest the termination of jurisdiction and the custody order was denied, apparently based on the court's mistaken conclusion that the mother lacked standing. (*Id.* at p. 613.) The Court of Appeal reversed, noting that the mother had standing to contest the dismissal of dependency jurisdiction as well as the exit order. Further, the court noted, the agency's decision to place the minor with the father had never been the subject of a court hearing; the agency summarily gave the father sole custody of the minor and the mother never had any judicial determination on the issue. (*Id.* at p. 618.) Because the mother never had the opportunity to challenge the custody order, the appellate court reversed and remanded for a contested hearing under section 364. (*Id.* at p. 620.)

This case does not present the questions considered in *In re Armando L.* Here, unlike *In re Armando L.*, the court placed the

minor with father at the adjudication stage. Mother had the opportunity to challenge that decision at the dispositional hearing and, had she been dissatisfied with the result, she could have appealed the dispositional order. She did not. Moreover, and again unlike *In re Armando L.*, mother's failure to present evidence she deemed relevant to the custody order was due to her failure to appear at the six-month review hearing—not to a court determination that she lacked standing to participate in the proceeding.

In any event, mother now contends that if she had been able to testify at the six-month review hearing, she would have provided “important information about the current nature of mother and father's domestic violence relationship, particularly as it continued to impact [the] minor” But given that the court issued a permanent restraining order prohibiting mother from contacting father—which we affirmed in mother's appeal from that order—her testimony regarding the possibility of future domestic violence would not have impacted the court's analysis.

In sum, the court had ample evidence before it regarding the family's prior history, current custody arrangement, compliance with the court's case plans, and other matters. Even if we were to assume that the court erred in refusing to delay the review hearing so that mother could testify at a future hearing, that error would not be prejudicial because, as noted, mother's testimony about ongoing domestic violence would not have influenced the court's decision to place the minor with father. (Cal. Const., art. VI, § 13 [reversal warranted only where judgment is both erroneous and prejudicial, i.e., results in a miscarriage of justice].)

3. The court did not err in terminating dependency jurisdiction.

Mother contends the court erred in terminating dependency jurisdiction over the minor. We disagree.

Section 364 applies where, as here, a dependent child is not removed from the physical custody of a parent or guardian. “Section 364, subdivision (c) establishes a statutory presumption in favor of terminating jurisdiction and returning the child to the parents’ care without further court supervision.” (*In re Armando L.*, *supra*, 1 Cal.App.5th at p. 615.) The statute provides that the court “shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300” (§ 364, subd. (c).) When the juvenile court terminates jurisdiction, it may fashion exit orders. (*In re Armando L.*, at p. 616.) Such orders include custody and visitation, and remain in effect until they are modified or terminated by the family law court. (*Ibid.*)

The juvenile court makes its determination under section 364 “based on the totality of the evidence before it, including reports of the social worker who is required to make a recommendation concerning the necessity of continued supervision.” (*In re Armando L.*, *supra*, 1 Cal.App.5th at p. 615.) We review these findings under the sufficiency of the evidence standard. (*In re N.S.* (2002) 97 Cal.App.4th 167, 172 [“[W]e look to the entire record for substantial evidence to support the findings of the juvenile court”].)

Jurisdiction over the minor was based on mother's substance abuse, her alcohol abuse, the parents' prior domestic violence, and the incident in which mother left the minor with a caretaker who was under the influence of drugs. By placing the minor with father, issuing a domestic violence restraining order prohibiting mother from being in contact with father, and requiring mother's visitation to be monitored by someone other than father, the court alleviated the circumstances which led to the jurisdictional findings. Further, father had fully complied with his case plan by participating in parenting classes and individual counseling. He also cooperated with the Department by making himself available to meet with social workers and others supporting the minor, and by facilitating mother's visitation before she went to Minnesota. For her part, the minor had adapted well to living with father and his relatives, who assisted father in providing for the minor's daily needs. On that basis, the Department recommended terminating jurisdiction over the minor.

At the six-month review hearing, mother's counsel did not indicate that she opposed terminating jurisdiction over the minor. But she argues the court should not have terminated jurisdiction because "[t]he dependency matter was initiated in large part due to domestic violence between the parents that spanned over many years" and "many unresolved issues of domestic violence between the parents remained." We reject her argument for several reasons. First, domestic violence was not the primary reason the Department initiated these proceedings. The Department's primary concern for the minor was the fact that mother had sole custody of her but continually neglected her due to substance abuse and alcohol abuse. Second, the domestic

violence issue has been addressed. As noted *ante*, by the time the Department became aware of this family, father had already moved away from mother to avoid her aggressive behavior and had initiated a proceeding to obtain a domestic violence restraining order against her. The court's issuance of a three-year restraining order prohibiting mother from contacting father should protect the minor from harm due to future domestic violence incidents. In short, to the extent dependency jurisdiction was predicated on the risk of future harm to the minor caused by domestic violence between her parents, that circumstance has been sufficiently addressed. And there is nothing in the record to indicate that the other conditions that caused the court to take jurisdiction of the minor still exist or would exist if jurisdiction were terminated and father had legal and physical custody of the minor. We therefore conclude the court did not err in terminating dependency jurisdiction.

4. The court did not abuse its discretion in formulating its custody and visitation order.

Finally, mother contends the court abused its discretion by giving sole legal and physical custody of the minor to father and denying mother's request for unmonitored visitation. Again, we disagree.

The court's focus in crafting an exit order under section 362.4, subdivision (a), is on the best interests of the child. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 ["When making a custody determination in any dependency case, the court's focus and primary consideration must always be the best interests of the child"].) Accordingly, when fashioning exit orders, juvenile courts have broad discretion to decide what would best serve and protect the child's interests, and we will not disturb an exit order

unless the court abuses that discretion. (*In re I.G.* (2014) 226 Cal.App.4th 380, 386–387.) “ ‘ “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318–319; *In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.)

As noted, the court gave father sole legal and physical custody of the minor because mother failed to comply with any aspect of her case plan. In other words, mother had not taken *any* steps to alleviate the circumstances that warranted the minor’s removal from her custody. Making matters worse, mother had left the state, refused to provide a current address, changed her phone number multiple times (making it nearly impossible for the Department to maintain contact with her,) and had no specific plans to return to Los Angeles at the time of the six-month review hearing. These facts are more than adequate to support the court’s decision to give father sole legal and physical custody of the minor, which decision was consistent with the recommendation of both the Department and minor’s counsel. In addition, mother’s failure to take any steps to comply with her case plan or address her substance abuse and alcohol abuse, together with her aggressive and erratic behavior toward Department social workers as well as visit monitors during the pendency of the dependency case, support the court’s decision to order monitored visitation.

In support of her challenge to the court’s custody and visitation order, mother cites evidence in the record indicating that she and the minor are bonded and have an affectionate

relationship, that she behaved appropriately during visitation, and that she engaged the minor in a positive manner during their visits. But these facts do not demonstrate that the minor would be better served by a different custody order, let alone that the court abused its discretion here. We presume the court considered mother's positive contact with the minor and balanced that against the risk of future harm to the minor posed by mother's failure to take any action to address her substance and alcohol abuse or otherwise comply with her case plan, as well as father's compliance with his case plan and the support the minor received from father's extended family once father took custody of the minor. And on the record before us, we find no abuse of discretion in the court's custody and visitation order.

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.