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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B243106

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK79034)

Plaintiff and Respondent,

v.

C. S.,

Defendant and Appellant.

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

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant C.S.

No appearance for Respondent.

C.S. (mother) appeals from a juvenile court order terminating dependency jurisdiction and granting father sole legal and physical custody of R. A. Mother contends the juvenile court abused its discretion in denying joint legal and physical custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns R.A., the youngest child of C.S. (mother) and Rogelio A. (father). Mother and father have three children: Christian A., Anthony A., and R. In 2009, the juvenile court declared the children dependents of the juvenile court based on findings that mother and her male companion engaged in violent altercations in the presence of the children and mother physically abused Anthony. In October 2010, the court terminated dependency jurisdiction and granted father sole physical custody of the children. The court awarded the parents joint legal custody, and allowed mother reasonable visits with the two boys, with their consent, and overnight weekend visits with R. Christian and Anthony refused to visit mother.

In March 2011, the Los Angeles County Department of Children and Family Services (DCFS) received a report of emotional abuse. According to the referral, R. did not want to visit mother because she had repeatedly witnessed mother yelling and arguing with her boyfriend. At one visit, R. heard mother and the boyfriend arguing. Frightened, she ran and hid under a bed. She heard the boyfriend break down a door, and heard mother say, “don’t touch me,” to the boyfriend. Eventually, the police came and arrested the boyfriend. R. told a DCFS social worker she did not want to visit mother anymore. She admitted she bit herself because she was feeling anxious about going to mother’s house.

R.’s appointed attorney in an ongoing family law proceeding told DCFS mother had requested a change in custody orders in the family court. Mother sought custody of R. R.’s attorney believed more restrictive visitation would be appropriate. The attorney also reported that following an earlier psychological evaluation, mother was diagnosed as “partially schizophrenic.”

Christian and Anthony told a DCFS social worker they did not have contact with mother and did not want to see her. They recounted mother used physical discipline, yelled at them, and fought with her boyfriend in their presence.

Mother denied the incident with her boyfriend occurred as R. described. She indicated the altercation happened in November 2010, R. was not present, no doors were broken, and mother now had a restraining order against the boyfriend. Mother admitted a doctor had prescribed her a psychotropic medication, but she claimed she was no longer required to take it. She denied any mental health issues. Mother also denied drug use. Yet, in April 2011, mother's on-demand drug test returned positive results for methamphetamines and amphetamines. Mother eventually admitted using methamphetamine six times since DCFS had detained R. in March. DCFS subsequently filed an amended dependency petition alleging mother created a home environment that put the children at risk of harm, and mother's substance abuse endangered the children's physical and emotional health and safety.

At the May 2011 jurisdiction and disposition hearing, mother entered a no contest plea. The juvenile court asserted jurisdiction over the children. At that time Christian was fourteen years old, Anthony was twelve years old, and R. was six years old. The court ordered family maintenance services for father and family reunification services for mother. The court ordered mother to submit to weekly random drug tests. The court also ordered mother to participate in a drug rehabilitation program, parenting education classes, and individual counseling. Mother was to have monitored visitation with R.

From May to July 2011, mother submitted multiple positive and "no show" drug tests. In August 2011, mother enrolled in an inpatient drug treatment program, but left after only one day. She enrolled in an outpatient program, but was discharged shortly thereafter. For a few months, R. resisted visiting mother, or drastically reduced the

duration of the visits by asking to leave soon after the visit began. Yet by October 2011, visits were going well. R. requested longer visits.¹

Christian and Anthony refused to visit mother or have any contact with her. In addition to recounting physical abuse from mother, they also recalled mother took them to parties and left them unattended while she did drugs with friends. Anthony reported mother made him hold drugs she was selling, and she showed him pornographic videos. Both boys wrote letters to the court indicating they did not want to have contact with mother.

By December 2011, mother was still unable to consistently submit negative random drug tests. She missed several tests. On one occasion in early December, a case manager from mother's drug rehabilitation program suspected mother was under the influence. The case manager asked mother to submit a drug test. Mother claimed to be unable to provide a urine sample. The case manager also reported mother was spending time with another person in the treatment group who was using drugs and testing positive. Mother had missed 13 Alcoholics Anonymous meetings. The case manager later disclosed mother had relapsed and was now drinking alcohol. In late December, mother tested positive for amphetamines and methamphetamines. Mother explained she did not think her alcohol use mattered because it was not her drug of choice. During group sessions and "mommy and me" classes, mother did not follow direction and, in response to the case manager's comments, remarked: "What are you going to do about it? Tell my social worker?" When the case manager confronted mother about her alcohol use, mother requested a new case manager.

DCFS reported mother continued to deny some of Christian and Anthony's reports of her prior behavior. Mother was upset because her visits with R. had progressed slowly. Further, DCFS observed mother had difficulty accepting that the children had a closer bond with father's family than with mother's family. When the social worker

¹ R. told a DCFS social worker she had resisted visiting mother because she feared she was missing out on fun activities with father and her brothers. Father said he had never scheduled family activities on days R. was visiting mother.

attempted to discuss these matters with her, mother became upset and asserted the social worker was working against her.

In January 2012, mother enrolled in individual counseling. Between January and late June 2012, she missed only one drug test, and otherwise submitted negative tests. Her rehabilitation program reported her attitude and participation had greatly improved. Mother completed parenting courses and was an active participant in Narcotics Anonymous and Alcoholics Anonymous meetings. She also began taking prescribed psychotropic medication.

Mother and R. had regular monitored visits twice a week. In April 2012, R. told the DCFS social worker she wanted to have unmonitored weekend visits with mother. Beginning in June 2012, they had four-hour-long monitored visits on Saturdays. R. enjoyed the visits. In July 2012, R. indicated she was happy spending time with both parents and wanted to live with them both. Christian and Anthony continued to refuse to have any contact with mother.

Father fully complied with the juvenile court's orders. The children reported they were happy and safe living with father. Father expressed concern about mother having unmonitored visits with R., explaining he feared mother would return to old habits once the case was closed. In May 2012, father reported mother's neighbors had informed him she was still using drugs. In July 2012, father expressed the same concerns, noting he had recently seen mother at a place known for narcotics sales, and at Narcotics/Alcoholics Anonymous meetings he observed her socializing with "the same kind of people" who could influence her to use drugs again. Nonetheless, in July 2012, DCFS recommended the court grant mother unmonitored visits and that father be given discretion to allow mother overnight and weekend visits with R. DCFS recommended the court terminate jurisdiction, grant father sole physical custody of the children, and award the parents joint legal custody. In late July 2012, DCFS changed its recommendation, suggesting the court grant the parents joint physical and legal custody of R.

At a late July 2012 hearing pursuant to Welfare and Institutions Code section 364,² the juvenile court concluded dependency jurisdiction was no longer needed over Christian and Anthony. The court granted the parents joint legal custody of the two boys, but awarded father sole physical custody. The court ordered weekly monitored visits for mother in a therapeutic setting. At a subsequent hearing regarding R., father testified there were problems after R. visited mother. Father reported R. was disobedient following visits, and she hit herself with her hand. Father asked that mother's visits continue to be monitored. Mother's counsel asked the court to award the parents joint legal and physical custody, with R. spending alternate weeks with each parent. R.'s counsel explained R. wanted to be "shared by mommy and daddy," and described R.'s face lighting up as she described unmonitored visits with mother. R.'s counsel asked the court to enter a home-of-parents order and delay terminating jurisdiction for three months since mother had not yet had any overnight visits and only two unmonitored visits had taken place. DCFS's counsel also recommended a home-of-parents order.

The court terminated dependency jurisdiction over R. and granted father sole legal and physical custody. The court also issued a visitation order awarding mother unmonitored visits every Wednesday evening for two hours, and every other Saturday for four hours. The court did not grant mother overnight visits. The following colloquy ensued between the court and mother's counsel:

"[Mother's counsel]: Please note mother's objection, and I am going to ask is the court ordering father sole legal custody when –

Court: I am. They don't get along. I'm not having them agree on – him have to have her agree with him on things.

[Mother's counsel]: Well, the court ordered joint legal custody as to the other two children.

Court: I did, and I didn't want to, and I did anyway. It's bizarre that I gave joint legal custody to the mother for two boys who want to have no contact with her. So she's

² All further statutory references are to the Welfare and Institutions Code.

going to have ability to make education decisions for them to block the dad on education decisions. [¶] It's hard to make education and medical decisions for kids who refuse to talk with you and give you input. So if the parents got along better, I would be considering joint legal. But with them having this ongoing conflict, it's legal to father."

Mother timely appealed.

DISCUSSION

I. The Juvenile Court's Custody Order Was Not an Abuse of Discretion

Mother contends the trial court erred in granting father sole legal and physical custody of R.³ We disagree.

Under section 364, when a juvenile court terminates jurisdiction over a dependent child, it may make orders regarding custody and visitation that become part of any family court proceeding concerning the same child. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1123.) We review "the juvenile court's decision to terminate dependency jurisdiction and to issue a custody (or 'exit') order pursuant to section 362.4 for abuse of discretion [citation] and may not disturb the order unless the court " "exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].' " ' [Citations.]" (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

We cannot agree with mother that the juvenile court's decision in this case was arbitrary, capricious, or patently absurd. It was undisputed that mother made significant improvements to her life in the seven months preceding the section 364 review hearing. But for nine months before that, mother abused drugs and alcohol, did not enroll in individual counseling, and failed to acknowledge her behavior gave the children a legitimate reason to resist unlimited contact with her. Mother had a history of significant drug use and untreated mental illness. (*In re Jennifer W.* (1993) 14 Cal.App.4th 704, 713 (*Jennifer W.*)) There was evidence that despite mother's success in staying clean for

³ Mother does not challenge the court's order as to Christian and Anthony. Father has not filed an appeal in this matter. Respondent DCFS informed this court it takes no position on mother's appeal.

seven months and complying with court orders, father observed her with people and in places associated with drug use. Mother had apparently had previous periods of sobriety, followed by relapses. Mother had also engaged in a series of relationships that involved domestic violence, some of which was carried out in the children's presence. The juvenile court also noted significant animosity between the parents and reasoned it would be difficult for them to cooperate in making decisions regarding R.⁴ (*In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1344 [considering as relevant factor in custody issue that "parents' attitudes and actions towards each other indicated that the joint custody arrangement was not working"].) Further, mother had not had any overnight visits with R. since the initial detention. Only two unmonitored visits had taken place.

When terminating jurisdiction and making a custody order, the juvenile court must consider the best interests of the child. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) And "just because custody with neither parent [is] held to pose any danger to the child does not mean that both parents are equally entitled to half custody." (*Id.* at p. 974.) Under the circumstances described above, the court did not exceed the limits of legal discretion in concluding it would not be in R.'s best interests for the parents to have joint legal and physical custody of her.

Mother asserts the juvenile court failed to consider mother's success in "turning her life around," R.'s love for mother and her expressed desire to be "shared by" the parents, and evidence that father and his relatives attempted to undermine R.'s relationship with mother in the past. We disagree. Under the relevant principles of appellate review, we presume the juvenile court considered all of the evidence before it. Mother has identified nothing in the record that overcomes this presumption. Merely because the juvenile court did not *mention* mother's compliance with the case plan does not indicate the court failed to consider mother's efforts as a factor in its custody

⁴ For example, a clinical social worker from R.'s school reported that on one occasion, mother and father argued at school, in R.'s presence. R. ran out of the room and hid behind a bush. Father also told DCFS he and mother only communicated by e-mail because they argued if they spoke by telephone.

determination. (*In re Zamer G.* (2007) 153 Cal.App.4th 1253, 1271 [on appeal we indulge all presumptions to support lower court order on which record is silent; review is of ruling, not reasons].) The same is true of evidence of R.'s desire to live with both parents, and evidence that in 2009, father's family made disparaging comments about mother.⁵ Despite mother's progress and R.'s preferences, it was not arbitrary, capricious, or patently absurd for the juvenile court to also weigh the relative brevity of mother's sobriety, her history of relapse and failure to take prescribed psychotropic medication, the lack of unmonitored visits, and discord between the parents, in concluding sole physical and legal custody to father, with visitation to mother, was the best option for R. at that time. Should circumstances change in the future, mother is free to seek a change in the custody order in the family law court. (*Jennifer W.*, *supra*, 14 Cal.App.4th at p. 714.)

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.

⁵ The DCFS logs recounting these comments dated from a previous dependency proceeding involving the children. There were no reports of similar comments in the dependency proceedings at issue in this appeal. Indeed, while father expressed concern to DCFS and the court about mother having unmonitored visits with R., there was no evidence father or his relatives took any direct or indirect steps to impair R.'s relationship with mother.