

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

In re E.G., Jr. et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES et al.,

Plaintiffs and Respondents,

v.

E.G.,

Defendant and Appellant.

B283627

(Los Angeles County  
Super. Ct. No. CK91913)

APPEAL from orders of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed in part, reversed in part with directions.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiffs and Respondents.

---

## INTRODUCTION

Father, Emiliano G., appeals from orders of the juvenile court terminating its jurisdiction over E.G. (age 12), I.G. (age 8), and S.G. (age 2) and issuing exit orders (Welf. & Inst. Code, § 364).<sup>1</sup> He contends he was not given notice of the hearings at which these two orders were issued. We hold the juvenile court did not err in terminating its jurisdiction or in granting sole legal and physical custody of the children to mother, Jessica G.-R., and fixing father's monitored visitation schedule. However, we reverse the matter for the limited purpose of allowing the juvenile court to re-examine only the portion of the exit orders under which mother chooses the supervisor for father's visits. In all other respects, the orders appealed from are affirmed.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *The petitions*

The parents have an extremely contentious and violent relationship. E.G. and I.G.<sup>2</sup> were dependents of the juvenile court in 2012 based on the parents' violent physical altercations, father's threat to kill mother, and father's substance abuse. Father has a long criminal history including assault with a deadly weapon, robbery, battery, and possession of controlled substances. The court terminated its jurisdiction in 2013 and granted sole legal and physical custody of the children to mother and monitored visits to father.

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> Mother has an older child, J.R., with a different father. J.R. is not at issue in this appeal.

In 2015, the juvenile court again took jurisdiction over E.G. and I.G., and later newborn S.G. According to the sustained petitions, mother allowed father unlimited access to the children leading to new incidents of physical violence. The petitions also alleged father's physical abuse of E.G. (§ 300, subds. (a), (b), & (j).) The court removed the children from the parents' custody, but released S.G. to mother, and devised a reunification plan for the family. The court granted father six hours of visitation per week to be supervised by a monitor approved by the Department of Children and Family Services (the Department). Mother has a restraining order against father which expires in August 2020. The court directed the parents to comply with the restraining order.

In early 2016 S.G., who was then five months old, was removed from mother's custody by the juvenile court after it sustained a subsequent petition (§ 342) based on mother's alcohol abuse (§ 300, subd. (b)).

*2. Mother regains custody of the children after completing her case plan; father refuses to participate in court-ordered services.*

For visits, the parents exchanged the children at the Lakewood Sheriff's Station and the Norwalk Sheriff's Station. The Department approved father's girlfriend Nancy G. to act as supervisor for father's visits and fixed a visitation schedule for him. While visitation was routine, the parents had trouble communicating, and timing the visits was difficult.

Following the subsequent petition, mother complied with her case plan and produced negative drug and alcohol test results on a weekly basis. She also voluntarily completed an anger management program and remained gainfully employed. Mother

had stable housing and an extended family-support system. Father, however, has persisted throughout the dependency in denying the allegations in the sustained petitions. Believing he did nothing wrong, father never complied with his court-ordered reunification plan as he refused to enroll or participate in services.

At the 12-month review hearing (§ 366.21, subd. (f)) in September 2016, the juvenile court returned E.G., I.G., and S.G. to mother's custody because she had complied with her case plan. The court had copies of letters from the children asking to be returned to mother's care. The children told the Department that they felt safe living with mother who protects them. The court reiterated that father was to have six hours of supervised visitation per week.

In February 2017, father conveyed to the Department his concerns that mother was communicating with him through a fake Facebook profile, which contact might be a violation of the restraining order. He had received anonymous text messages that he believed mother sent. He felt mother was harassing him, and cited an incident when, upon learning that father's girlfriend was pregnant, mother yelled "congratulations on a new 'tax deduction.'" Upset, father spoke loudly and interrupted the social worker, describing mother, the Department, and the juvenile court in vulgar language, and announcing again that he would not participate in any classes. The Department recommended that the juvenile court terminate its jurisdiction and issue exit orders granting mother full legal and physical custody and father monitored visits, with the exchange of the children to occur in a neutral location.

## 2. *The March 13, 2017 hearing – section 364*

The parties were notified that the juvenile court would conduct a section 364 hearing on March 13, 2017. Father requested a contest because, in his attorney's words, he "is objecting that the case be [sic] terminated at this time *because of a variety of violations by the mother.*" (Italics added.) If the court decided to terminate its jurisdiction, however, counsel intended to schedule a mediation because *visitation was "one of the big issues,"* and father wanted "to make it known to all parties that when we do *set a visitation schedule*, those visits are going to have to be followed." (Italics added.) Father asserted there was a lot of conflict during the exchange of children and he was not getting his visits. The court ordered the Department to interview both parents about father's allegations of harassment on social media, and to submit screen shots, if available, with its report. The court also ordered the social worker to discuss with the parents a visitation plan "upon termination of the case," and suggested the parents use the Talking Parents or Family Wizard websites to communicate with each other. The court explained that it "want[ed] the parents to understand I need to be able to find that I can safely terminate the case; that there's not going to immediately be conflict right after it's closed and then you end up right back here again." The court then ordered all parties present, which included father, to return to court for the contested hearing on May 9, 2017.

At a hearing on May 2, 2017 to receive the Department's report of its investigation of unauthorized communications, the court continued the hearing to May 9, 2017 and ordered the Department to give notice. The Department mailed notice of the

May 9, 2017 hearing to father with a copy of its recommendation for termination of juvenile court jurisdiction.

### *3. The May 9, 2017 hearing*

In its investigatory report for the contested hearing, the Department related father's quotes from messages he believed mother sent. Father admitted to the social worker he could not prove that mother was the sender. Mother denied the allegations. She did not have father's telephone number.

As for visitation, the Department tried unsuccessfully to have the parents coordinate the exchange of children. Mother's work and father's soccer coaching schedules made arranging a schedule difficult. Although mother created a profile on TalkingParents.com, father wanted no communication with her. Also, issues arose during father's visits, including child safety, and disagreements about clothing and the children's cell phone use.

At the May 9, 2017 hearing, the juvenile court found that notices were given. Father did not appear. His counsel was ill and so a substitute attorney requested a brief continuance. Counsel understood that father was seeking at least joint legal custody. The court granted father a continuance and rescheduled the contest for May 26, 2017 after the May 16, 2017 mediation. The court instructed as the "framework" for the mediation, that it was disinclined to order joint custody because "as the report for today makes clear" the parents did "not get along in any way, shape, or form. . . . [t]hey will fight over the smallest little matter. So I don't think joint legal custody is really going to work." The court then ordered "that counsel for parents give notice to their clients."

Father did not attend the mediation. He explained by email to the social worker that the reason he did not attend was that he would only participate if mother agreed to “be honest” and if he could “clear his name and prior allegations.” Father wanted full rights and shared custody. He declared he has “‘had enough’ in attempting to clear his name” and “‘refuse[d] to be pushed or ordered around by them [the juvenile court] . . . I’m not going to nor will I ever take responsibility for things I didn’t do and that’s a fact.’” (Italics omitted.) Meanwhile, the Department reported that the two most recent visits occurred without Departmental assistance and they went well.

#### 4. *The May 26, 2017 hearing*

Father did not appear for the section 364 review hearing scheduled to hear his evidence. Asked whether father wanted to maintain his contest, his attorney replied that she “*tried to call the father at the phone number I had*. It would ring, and then it sort of made a strange sound.” The phone would ring and then “would just go off. And that was the same number I had contacted him before previously to come to court.” Counsel repeated that she “kept calling him.” She did not send father a letter. Counsel then made “one last ditch effort to have [father] come to mediation” because the “mediation agreement would just be for the visitation for the father so we have it set out.” The juvenile court replied that father had his chance to mediate. Father’s attorney then asked the court to “get a visitation schedule so the father would know because there really is no contact with him, I wouldn’t object because he is not here.” The court confirmed that the most recent arrangement was going well. The parents’ counsel agreed to meet to finalize details such

as holiday and birthday visits so that mother would not have to return for another mediation date.

Stating it had considered the May 26, 2017 Last Minute Information, the May 9, 2017 addendum report, which included the Delivered Service Log, and the May 13, 2017 report, the juvenile court found that the conditions that justified initial assumption of jurisdiction no longer existed and that continued supervision of the children was no longer necessary. (§ 364, subd. (c).) The court terminated its jurisdiction. It stayed that order pending receipt of the exit orders.

#### *5. The June 1, 2017 hearing*

At the June 1, 2017 hearing, father's counsel appeared but father did not. There is no indication that anyone provided father with notice of that hearing. The juvenile court received the exit orders that awarded mother sole legal and physical custody and father visitation. The orders provided that father's visits would alternate, Saturday one weekend and Sunday the next weekend, from 2:00 p.m. to 8:00 p.m. Drop-off of the children would occur at the Norwalk Sheriff's Station and pick-up at the Lakewood Sheriff's Station. The visit supervisor was to be chosen by mother. The court lifted the stay of its order terminating jurisdiction. Father appealed. Neither the Department nor mother filed a brief in this appeal.

### **CONTENTIONS**

Father assigns as juvenile court error, (1) failing to ensure he was given proper notice of the May 26, 2017 and June 1, 2017 hearings, and (2) failing to grant a continuance of the May 26, 2017 hearing. Father also contends he was denied effective



assistance of counsel because his attorney allowed a material change in the exit orders.

## DISCUSSION

1. *The juvenile court did not err in terminating its jurisdiction and granting mother sole legal and physical custody of the children.*

“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.* (2016) 1 Cal.App.5th 606, 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 the findings under the sufficiency of the evidence standard. “[W]e look to the entire record for substantial evidence to support the findings of the juvenile court.” (*In re N. S.* (2002) 97 Cal.App.4th 167, 172.)

Jurisdiction over E.G., I.G., and S.G. was based on domestic violence, father's drug and alcohol abuse, his physical abuse of E.G., mother's failure to protect the children from father, and mother's alcohol abuse. By the May 26, 2017 hearing, mother, who has custody of the children, had resolved her problems that led to jurisdiction. She no longer engages in physical altercations with father; they are not speaking to one another. Mother is not allowing father unmonitored access to the children. Also, she completed her case plan, regularly and consistently produces negative drug or alcohol tests, has a stable home and an extended support network, and the children feel safe and protected in her care.

Father wanted to contest termination at the section 364 hearing because he believed mother was violating court orders, visitation was problematic, and because he wanted joint legal custody. As directed by the juvenile court, the Department investigated the violations father's counsel alluded to. The ensuing report quoted the taunting texts and emails that father believed mother sent and mother's denial. The court had all of father's information by the time of the section 364 hearing and impliedly believed mother. As for custody, the record shows father steadfastly refuses to address his causes for the dependency. There is nothing in the record to indicate that the conditions that caused the court to take jurisdiction of E.G., I.G., and S.G., still exist or would exist if jurisdiction were terminated and mother had legal and physical custody of the children.

More important, even if the messages did come from mother and were a violation of court orders, they do not affect the health, safety, or well-being of the children. The messages reflect a contentious relationship between the parents, which is more properly addressed in the family law court. Whereas the juvenile court “provides the state a forum to ‘restrict parental behavior regarding children, . . . and . . . to remove children from the custody of their parents or guardians’ [citation],” the family law court “provide[s] parents a forum in which to resolve . . . private issues relating to the custody of and visitation with children. In that setting, parents are presumed to be fit and capable of raising their children.” (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) The messages father sought to present to the court on May 26, 2017 did not concern parental fitness and ability. They show only that the parents’ disagreements are about parental communication and visitation, which issues more properly belong in the family law court. Therefore, the juvenile court did not err in finding that its supervision was no longer necessary and terminating its jurisdiction. (§ 364, subd. (c).)

## 2. Notice

Father claims in his appellate brief that it was mother who did not attend the mediation. He relies on the minute order of May 16, 2017, which states that mother did not appear. However, two days later, father emailed the social worker explaining the rationale for *father’s failure* to attend the mediation. Father’s email prompted the social worker, in the May 26, 2017 Last Minute Information for the court, to point out the error in the May 16, 2017 minute order. Furthermore, according to the reporter’s transcript from May 26, 2017, which will prevail when there is a conflict with the clerk’s transcript

(*In re A.C.* (2011) 197 Cal.App.4th 796, 799–800), mother’s attorney did not want mother to have to “come back” for another mediation, to which the court replied, “I know she came here the last time.” Accordingly, the record indicates that *father was the parent who opted not to attend mediation*, his assertion to the contrary notwithstanding.

As for notice, father contends that he was denied due process because he was not given notice of the May 26, 2017 hearing at which the juvenile court terminated jurisdiction, or the June 1, 2017 hearing at which the court entered the exit orders. Father was well aware that termination of jurisdiction was at issue. He was given notice of the May 9, 2017 hearing originally set for his contest, but did not appear. He was also aware of the May 16, 2017 mediation concerning visitation but chose not to attend. Despite numerous attempts to notify father of the May 26th hearing, counsel was unable to reach him by telephone.

Notice of a hearing, especially where the juvenile court was considering terminating its jurisdiction, is required. (§ 292; see *In re Michael W.* (1997) 54 Cal.App.4th 190, 194.) “A defect in notice . . . is a most serious issue, potentially jeopardizing the integrity of the entire judicial process.” (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.) Errors in notice, however, do not trigger automatic reversal, where as here, counsel made numerous attempts to give notice of the May 26, 2017 hearing. In dependency cases, “[u]nless there is no attempt to serve notice on a parent, in which case the error has been held to be reversible per se [citations], errors in notice do not automatically require reversal but are subject to the harmless beyond a reasonable doubt standard of prejudice. [Citations.]” (*In re J.H.* (2007)

158 Cal.App.4th 174, 183; *In re James F.* (2008) 42 Cal.4th 901, 918; see *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1116 [complete failure to attempt notice of § 366.26 hearing was structural error].)<sup>3</sup> Father has the burden to show prejudice. (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 945.)

Father argues the lack of notice of the May 26, 2017 and June 1, 2017 hearings was prejudicial because the juvenile court was not fully informed. The evidence he claims the court lacked consisted of a full explanation of his relationship with the children, their needs and requirements, his relationship with mother, mother's violations of the restraining order, the quality and duration of his visits, and his need for more visits. He has not carried his burden.

We have no doubt that the result would have been the same had the court held an evidentiary hearing on May 26, 2017. All of the evidence father wanted to present at that hearing was contained in the record considered by the juvenile court. It shows that father steadfastly refuses to address his responsibility for the dependency. No amount of evidence about his relationship with the children would change that result. Additionally, father did have notice of the mediation where he could have addressed visitation terms. He opted not to attend. With all of this evidence before it, as analyzed, the juvenile court properly terminated its jurisdiction. (§ 364.) In fact, it entered the same orders it had entered the first time it terminated jurisdiction in 2013. Meanwhile, the Department conducted an investigation of father's allegations of improper communications. The

---

<sup>3</sup> *Chapman v. California* (1967) 386 U.S. 18, 24.

communications do not require maintenance of *dependency court* jurisdiction. The parents' difficulty in communicating is a matter more properly handled in the family law court. Therefore, the outcome would have been the same even had the court held an evidentiary hearing.

Citing *In re Michael W.*, father argues that prejudice is inherent. *In re Michael W.* "presume[d] some prejudice from the simple fact that a family law court will naturally defer to a recent order of the dependency court concerning custody and visitation." (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 196.) *In re Michael W.* does not control because that court found that a different result would likely have been reached had an evidentiary hearing been held. (*Ibid.*) We do not. Even if some prejudice were presumed from the court's failure to delay the May 26, 2017 hearing, that prejudice would not rise to the level necessary for reversal because the court was fully informed of father's evidence relevant to termination of jurisdiction.

### 3. *Continuance*

Father contends that the juvenile court "abused its discretion in that it failed to grant a continuance on May 26, 2017."

Continuances are discouraged in dependency cases. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) They are granted at the discretion of the court as long as it is not contrary to the interest of the minor, and "only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (§ 352, subd. (a).) The court must give "substantial weight" to, among other things, the children's "need for prompt resolution of [their] custody status, [and] stable environments." (*Ibid.*) We

reverse an order denying a continuance only for abuse of discretion. (*In re Elijah V.*, at p. 585.)

A fair reading of this record shows that father's counsel did not request a continuance of the May 26, 2017 hearing under section 364. Instead, counsel asked to make "one last ditch effort to have him [father] come to mediation," which was about visitation. The juvenile court asked his attorney whether father intended to proceed with the contest. Counsel repeatedly explained that she could not get in touch with father. The court did not abuse its discretion in failing to grant a continuance of the May 26, 2017 hearing that was not requested, for an unidentified period of time,<sup>4</sup> particularly where counsel stated, "there really is no contact with him."

Although his counsel did ask for an additional chance to mediate visitation issues, the juvenile court did not abuse its discretion in denying another mediation. Although he had notice of the mediation, father deliberately refused to attend. In view of his repudiation of it, father could not have demonstrated good cause why the court should grant him another shot at mediation and delay prompt resolution of the children's status. (§ 352.) Moreover, the visits in the period before the May 26, 2017 hearing went well by all accounts. At father's attorney's request, that successful schedule was set out in the exit orders. Therefore, the juvenile court did not abuse its discretion in denying father a continuance in the hopes that he would mediate visitation.

---

<sup>4</sup> Father argues in his brief that a "short continuance of a few days or weeks represents very little time in the totality of their [the children's] lives." But, father did not request a continuance let alone specify how much time he needed. In any event, the juvenile court had already *twice* continued this hearing for father.

#### 4. *Exit orders*

Father contends he was denied effective assistance of counsel when his attorney failed at the June 1, 2017 hearing to object to the portion of the exit orders concerning the visitation monitor. When it orally fashioned the exit orders on May 26, 2017 the juvenile court did not discuss the visitation monitor. However, as entered on June 1, 2017 after counsel met to finalize visitation details, the exit orders allows mother to choose the monitor.

Indigent parents in dependency proceedings have the right to appointed counsel. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1659.) All parties who are represented by counsel at dependency proceedings are entitled to competent counsel (§ 317.5) and to effective assistance of counsel. (*In re Kristin H.*, at p. 1659.) To show counsel was ineffective, a party must demonstrate “that counsel failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law.” (*Id.* at pp. 1667–1668.) The parent must also establish that the claimed error was prejudicial, i.e. “that it is ‘reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citation.]” (*Id.* at p. 1668, quoting from *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Here, the record contains no discussion about who would choose the visitation monitor or whether a change in monitor was necessary for the exit orders. As father notes and the juvenile court knew, the parents are unable to communicate with each other to resolve even minor disagreements about scheduling or the children’s clothing and electronic equipment, let alone who should monitor the visits. The portion of the exit orders allowing



mother to choose the monitor is unexpected. Father's attorney was present at the June 1, 2017 hearing but inexplicably failed to object to that new provision. Father is prejudiced because it is reasonably probable that had counsel objected, the court would have designated a neutral monitor. The order as entered leaves father at the mercy of mother's choice for monitor.

### **DISPOSITION**

That portion of the exit orders entered on June 1, 2017 under which mother is to choose the visitation monitor is reversed and the matter is remanded to the juvenile court to reconsider that provision only. In all other respects, the orders appealed from are affirmed.

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

KALRA, J.\*

We concur:

LAVIN, Acting P. J.

EGERTON, J.

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.