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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.R. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VANESSA D.,

Defendant and Appellant.

B282055

(Los Angeles County
Super. Ct. No. DK19331)

APPEAL from orders of the Superior Court of Los Angeles County. Karin Borzakian, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Vanessa D.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel for Plaintiff and Respondent.

Vanessa D. (mother) appeals from the juvenile court's exit order that granted sole legal and physical custody of her son, nine-year-old M.R., to his father Andre R. (father) with monitored visitation for mother. Mother contends the court abused its discretion in requiring that her visits be supervised. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has three children: N.N., age 13, S.N., age 12, and M.R.¹ In June 2016, mother's boyfriend, Jose F., destroyed property at mother's house "in a rage." Mother obtained a restraining order and told the Department of Children and Family Services (Department) she would not let Jose back in the home.

Mother's promises were not kept as she continued to allow Jose access to her home. On October 10, 2016, mother was at home with Jose and S.N. when Jose started yelling at S.N. Jose then threw a bottle at him. When mother intervened, Jose angrily lunged toward her. S.N. grabbed a knife and Jose was stabbed.

The Sheriff's Department responded to the incident. Mother told a sheriff deputy that Jose came over to the house two or three times a week. She said Jose "physically assaults her regularly" and uses methamphetamine daily. S.N. told the deputy that Jose had assaulted him and his mother on several occasions. The deputy found methamphetamine pipes and bags of methamphetamine in the house.

Jose was taken to the hospital and a sheriff detective instructed mother that she should not allow Jose back in the home. However, four days after the stabbing, on October 14,

¹ Neither N.N. nor S.N. is a party to this appeal.

2016, mother picked Jose up from the hospital and brought him home. M.R. says that Jose was still at the house five days later, and had argued with mother for several hours.

When a social worker from the Department interviewed mother, she denied domestic violence. However, several other witnesses described violent behavior by Jose. M.R.'s father, Andre, had received text messages in the past from mother asking for help when Jose "slap[p]ed" her around." Father also said that Jose had destroyed property in mother's home, and in the process had cut himself and written on the walls with his blood. Jose's ex-wife said that mother had told her Jose had assaulted her. The ex-wife's children had witnessed a domestic violence incident between mother and Jose several years prior. S.N. said Jose had put him in a headlock and choked him.

Mother also told the Department she did not know if Jose used illicit drugs. However, mother's children attested to Jose's abuse of drugs and alcohol. M.R. said Jose tends to get upset when he drinks alcohol and will throw things. S.N. said Jose smoked "something from a pipe." N.N. said Jose often drinks alcohol and smokes "something" out of a glass pipe.

A petition was filed alleging that mother and Jose's domestic violence placed the children at risk of harm. The petition further alleged that mother knew Jose abused methamphetamine, and she endangered the children by allowing Jose unlimited access to the home. On November 4, 2016, M.R. and his brothers were detained and placed with relatives.

In January 2017, the Department reported that mother had not attended her biweekly visits with M.R. The following month, mother started to attend weekly monitored visits with M.R.

At the adjudication hearing in March 2017, the court sustained the petition's allegations of neglect. At the subsequent disposition hearing, the court terminated jurisdiction over M.R., granting sole legal and physical custody to father with monitored visitation for mother. Mother timely appealed.

DISCUSSION

Mother's sole contention on appeal is the juvenile court abused its discretion in ordering that her visits with M.R. be monitored. We conclude the court's order was reasonable.

The Department's initial position on appeal is that mother has forfeited her claim that the trial court erred in requiring monitored visits. Not so. Although the Department quotes extensively from the disposition hearing, it inexplicably omits the passage in which mother brings her disagreement with monitored visitation to the trial court:

“MOTHER'S COUNSEL: My client would ask for the court to grant some type of joint physical custody with the child, at least giving mother overnight visits with [M.R.] She would object to the closing of the case and would ask that it stay open so he can continue to have visits. And if the court does not order that, she would at least ask for joint legal with the father as well as unmonitored visits.”

Mother's counsel's clear and concise request that visits be unmonitored belies the Department's forfeiture claim. We turn now to the merits of mother's arguments on appeal.

“[I]f a parent retains or regains custody of a dependent child, the juvenile court may terminate its jurisdiction and issue custody, visitation or protective orders (exit orders).” (*In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) When

fashioning an exit order, the court has broad discretion to determine what best serves a child's interests. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4.) A court abuses its discretion when it “ ‘ ‘ ‘mak[es] an arbitrary, capricious, or patently absurd determination [citations].’ ” ’ [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300–301.)

Mother contends that the court should have imposed a less onerous restriction on her visits with M.R. She suggests the court could have simply ordered that M.R. not have any contact with Jose. Our view of the record does not support mother's assertion that unmonitored visits would have been appropriate. Rather it shows that mother could not be relied on to protect M.R. from Jose, and a simple stay-away admonition by the court would likely have been futile. After mother obtained a restraining order against Jose, she did not follow through with her promise to the Department not to allow Jose in her home. Even after S.N. and Jose had a violent altercation and despite the sheriff's instruction not to let Jose into the home, mother permitted Jose to stay there several days later. When the Department investigated the incident, mother contradicted her previous statements to the sheriff, professing ignorance of Jose's drug use and violent behavior.

Mother also argues that supervision was unnecessary because M.R. could protect himself: he had a cell phone and, at nine years old, was old enough that he could call for help if he needed it. It would have been unreasonable for the court to rely on M.R. to protect himself in lieu of taking precautions to prevent him from being placed in a dangerous situation. Mother had been attending monitored visits with M.R. for only one month

when the court fashioned its exit order. The evidence suggested that mother had for years allowed M.R. to be exposed to domestic violence in the home and to Jose's abuse of drugs and alcohol. It was reasonable for the court to order that mother's visits remain monitored to protect M.R. from being subjected to those dangers again.

DISPOSITION

The order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.