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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JASMINE J. et al.,  
Persons Coming Under the  
Juvenile Court Law.

B297611  
(Los Angeles County  
Super. Ct.  
No. 18CCJP04738)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Reversed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Navid Nakhjavani, Principal Deputy County Counsel, for Plaintiff and Respondent.

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M.L. (Mother) appeals from the visitation order entered by the juvenile court when it terminated jurisdiction over her two daughters, Jasmine and A.J. The visitation order allowed Mother monitored visits in Los Angeles County once a month for four hours and monitored telephone visits once a week. Mother contends, the Los Angeles County Department of Children and Family Services (Department) concedes, and we agree the written visitation order must be modified to conform with the juvenile court's order made at the Welfare and Institutions Code<sup>1</sup> section 364 hearing, granting Mother unmonitored phone calls with her children. Mother also argues the juvenile court abused its discretion by restricting her visitation to monitored visits. We agree and reverse. On remand, the juvenile court shall modify the visitation order to allow Mother unsupervised telephone calls and visitation.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. The Referral and Investigation*

On July 6, 2018 the Department received a referral alleging Jermaine J., the children's father (Father), hit Jasmine on her

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

forearm, thigh, leg, and buttocks with a jump rope. The investigating social worker was unable to contact Jasmine at her home or school. On July 10 the social worker received a call from the maternal grandmother who reported a week earlier Jasmine had texted her stating Father hit her with a jump rope and left several marks. The social worker interviewed Jasmine, who stated every time she and her sister misbehaved, Father disciplined them by hitting them with belts, a jump rope, or a coat hanger.

On July 10, 2018 the social worker spoke by telephone with Mother, who lived in Texas. Mother last saw Jasmine and A.J. in February 2018. Mother stated she had regular phone contact with her daughters and was aware Father hit them. Mother did not report the “whooping” of Jasmine and A.J. because the children were afraid they would get into more trouble. In addition, Father had full custody of the children, and Mother was concerned Father would not allow her and her parents to communicate with the children if Mother disclosed Father’s methods of discipline. Mother refused to provide details about why Father had full custody, stating “it was a very long time ago.” The maternal grandmother said Mother’s “irresponsible behavior” resulted in Mother’s loss of custody, but she did not provide any further details. Father stated he had full custody of the children, but he did not provide any details.

On July 26 the social worker spoke with Mother by telephone to provide her with information about the detention hearing. That day the Department removed the children from Father’s physical custody and placed them with the maternal grandparents.

B. *The Petition and Detention*

On July 30, 2018 the Department filed a petition alleging then 12-year-old Jasmine and then 11-year-old A.J. came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b)(1), and (j). The petition alleged Father physically abused Jasmine and A.J. by striking them with belts, hangers, and a jump rope. The petition further alleged Mother failed to protect the children when she became aware of Father's physical abuse.

At the July 31 detention hearing, the juvenile court noted there was a family law order declaring Father the presumed father and giving him full custody of the children, but the court did not have the case number. At the request of Father and children's counsel, the court released the children to Father over the Department's objection. The children's counsel stated she "[thought] the children could be safely released to the Father's care with services in place," and "[t]here's also a good amount of family support . . . ." Father's counsel added that Father understood he was not to use any physical discipline with the children and intended to comply with that requirement. The minors agreed at the hearing they would tell the maternal grandmother or the social worker if Father physically disciplined them.

The court ordered Father not to use corporal punishment "at all for any reason." The court also ordered Father to enroll in anger management and parenting classes, the children to receive individual counseling, and the Department to make unannounced home visits. In response to an inquiry from the Department's counsel, the juvenile court stated it would not appoint counsel for

Mother “until she calls in,” and the court set a hearing date for Mother to call in.

On August 8, 2018 the juvenile court appointed counsel for Mother. The court signed an order allowing the maternal grandparents to have visits twice a month, and Mother to have unmonitored visits, including daily telephone calls. The court also ordered the Department to assess Mother, so the children could have extended visits with her in Texas during school holidays. The court permitted Mother to appear telephonically for the September 12, 2018 jurisdiction and disposition hearing.

C. *The Jurisdiction and Disposition Report*

The August 31, 2018 jurisdiction and disposition report stated the Department continued “to have serious concerns regarding the children being in the care of Father.” Dependency investigator Elizabeth Canup explained, “The conduct of [Father], which includes, but is not limited to [p]hysical [a]buse as evidenced by child Jasmine’s statements of [F]ather’s inappropriate disciplining methods, such as hitting with [a] belt, jump rope or with a coat hanger and [M]other’s confirming statements of ongoing whooping and kids being afraid to disclose it, as well as [F]ather’s unwillingness to make himself available, endangers the children’s physical health and safety and creates a detrimental home environment, placing the children at risk of physical harm, damage and danger.”

Canup reported Father had been investigated previously for physical abuse of the children. In 2008 Mother brought then two-year-old Jasmine and then one-year-old A.J. to the hospital for an exam to assess whether Father had physically abused the children while they were in his care and Mother was out of town.

The 2008 dependency case was dismissed because there was insufficient evidence to determine how the children's injuries occurred. On February 8, 2018 the Department received a referral alleging Father physically abused A.J. On May 18, 2018 the Department received another referral alleging Father's physical abuse of Jasmine. The Department found the February and May 2018 referrals were inconclusive.

Canup reported she was unable to contact Mother. On August 30, 2018 Mother texted Canup stating she worked from 6:00 p.m. to 6:00 a.m. and would like to talk with Canup about her concerns regarding Father and the children. Canup attempted to contact Mother twice by telephone and once by a text message.

A September 10, 2018 last minute information for the court report from Canup stated she had made multiple attempts to contact Mother, but Mother did not return her phone calls.

*D. The Jurisdiction and Disposition Hearing*

At the September 12, 2018 jurisdiction and disposition hearing, Mother's counsel stated Mother was available by telephone. Father pleaded no contest to the amended allegations in the petition that he used inappropriate discipline on Jasmine and A.J. by striking them with belts, hangers, and a jump rope. The juvenile court granted Mother's request to amend the allegations against her to reflect an "inability to protect" rather than a "failure to protect" the children. The amended allegations against Mother as to both Jasmine and A.J. stated: "[Mother] was unable to protect the child when she knew of the father's physical discipline of the child. Such physical discipline of the child by the father, and the mother's inability to protect the child, endangers

the child's physical health and safety, and places the child, and the child's sibling . . . at risk of serious physical harm, damage, danger, physical abuse and failure to protect."

At the disposition hearing, the juvenile court declared Jasmine and A.J. dependents of the court pursuant to section 300, subdivisions (a), (b)(1), and (j). The court continued to place the children with Father but ordered he not use corporal punishment. The court ordered the Department to provide Father and the children with family maintenance services. The court ordered Father to participate in family preservation services, conjoint counseling with the children, parenting for teens classes, and individual counseling to address case issues, if available through family preservation. Because Mother was the noncustodial parent and did not desire custody, the court did not provide her family reunification services, which pursuant to section 361.2 were not required. At the hearing, the court ordered, "Mother's visit will be allowed in California. Monitored. Discretion to liberalize after she meets with [the Department]." The court-ordered case plan for Mother granted her telephone contact with the children and monitored visits, with the Department having discretion to liberalize visitation "after [a Department] interview (in County of Los Angeles only)."

E. *The Section 364 Review Report*

In the February 22, 2019 status review report, the Department recommended the juvenile court terminate jurisdiction over the children because there were no longer any safety concerns. Social worker Frances Echeverria reported Father had attended 10 of 12 parenting classes and would complete the program in two weeks. Father had not started

individual counseling, but he was searching for a therapist. Father and the children were participating in family preservation services but had not started conjoint counseling. Echeverria acknowledged Father was not in full compliance with the case plan, but “he has shown his efforts in attempting to engage in counseling services,” was cooperative with Echeverria and the family preservation counselor, was “attempting to talk with his children instead of using physical discipline,” and “demonstrated some growth and insight.” The Department concluded “no child safety concerns have been observed.”

Echeverria reported Mother had “not reached out to [Echeverria] with any questions or concerns during this reporting period.” Mother had not visited the children in California, but she had spoken with them frequently by telephone. The children reported the conversations were generally short, and Mother did not call every week.

*F. The Section 364 Review Hearing*

At the March 13, 2019 hearing, the juvenile court found there was “no further need for judicial oversight and intervention,” and it terminated jurisdiction over Jasmine and A.J. The court stayed termination of jurisdiction pending receipt of the juvenile custody order. The court granted Father sole legal and physical custody, with “Mother having unmonitored telephone calls and monitored calls face-to-face here in LA County, four hours per month.” Mother was not present at the hearing, but she was represented by counsel. Her attorney objected to monitored visitation, contending there was no basis “to put a monitored visitation order in the actual family law order.” The court overruled Mother’s objection, explaining,



“Mother was given an opportunity to see anybody at the [Department] to be assessed during the course of the administration of the case. There’s no evidence that she did so. And for that reason, the court is not changing the visitation orders.”

On March 15, 2019 the juvenile court entered the juvenile custody order granting Father sole legal and physical custody of Jasmine and A.J. The attached visitation order provided, “Mother shall have monitored visits in Los Angeles County once a month for four hours. Mother shall have monitored telephone calls once a week. The monitor shall be mutually agreed to or a professional monitor paid for by mother.” There was no reason listed for why Mother was limited to monitored visitation. The visitation order stated the court denied services to Mother on September 12, 2018 because she was noncustodial and resided in Texas.

Mother timely appealed.

## DISCUSSION

When the juvenile court terminates jurisdiction, “section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*In re Chantal S.* (1996) 13 Cal.4th 196, 203; accord, *In re J.T.* (2014) 228 Cal.App.4th 953, 960.) In determining custody or visitation, the court’s primary consideration is the best interests of the child. (*Chantal S.*, at p. 206; *In re John M.* (2013) 217 Cal.App.4th 410, 421; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review a visitation order for an abuse of discretion. (*In re J.P.*

(2019) 37 Cal.App.5th 1111, 1119; *In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1158 [“dependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason”].) “[W]hen a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citation].”” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; accord, *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.)

Mother contends, the Department concedes, and we agree the visitation order must be modified to conform to the juvenile court’s oral order at the section 364 hearing. At the hearing, the juvenile court allowed Mother to have unmonitored telephone calls with Jasmine and A.J. However, the written visitation order limited Mother’s telephonic contact with the children to “monitored telephone calls once a week.” The written visitation order must be corrected to reflect the oral pronouncement of the juvenile court. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1260, fn. 9; *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1241 & fn. 5; *In re Maribel T.* (2002) 96 Cal.App.4th 82, 86 [modifying “custody order to conform to the juvenile court’s oral ruling” where “the written custody order does not embody the terms contemplated by the juvenile court”].)

Mother also challenges the juvenile court’s order requiring her visits to be monitored by a mutually agreed upon monitor or a professional monitor paid by Mother. At the disposition hearing, the juvenile court ordered monitored visits for Mother with the Department having “[d]iscretion to liberalize after she

meets with [the Department].” Mother’s court-ordered case plan specified Mother was allowed monitored visitation with the children, with the Department having discretion to liberalize “after [a Department] interview (in County of Los Angeles only).” At the section 364 hearing, the juvenile court overruled Mother’s objection to monitored visitation, explaining, “Mother was given an opportunity to see anybody at the [Department] to be assessed during the course of the administration of the case. There’s no evidence that she did so. And for that reason, the court is not changing the visitation orders.” Although the court stated its rationale for monitored visitation at the section 364 hearing, the written visitation order did not list any reason for why Mother only had monitored visits with the children.

There is no evidence the children would be unsafe if they had unmonitored visits with Mother. Although the Department initially objected to placement of the children with Father, as of the February 22, 2019 status review report, the Department reported Father “is attempting to talk with his children instead of using physical discipline,” he “has demonstrated some growth and insight,” and “no child safety concerns have been observed.” Requiring Mother to interview with the Department in person before she could have unsupervised visits was unduly burdensome because Mother lived in Texas. And there was no reason for the Department to assess Mother for safety risks where the sustained allegations against Mother only concerned her inability to protect the children from Father’s inappropriate physical discipline, which the Department and the court had determined had been resolved.

In addition, as Mother argues, the juvenile court’s order will limit her ability to obtain modification of the monitored

visitation order in family court. Under section 302, subdivision (d), the family court cannot modify a custody or visitation order “unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.” (See *In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1456; *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163.) Here, Mother can no longer meet with a Department social worker for an assessment because the dependency case has terminated.

The Department contends Mother can show changed circumstances by increasing her communication with her children and demonstrating her contact is appropriate. But the visitation order limits Mother’s contact with the children to telephone calls once a week and monitored visits in Los Angeles County once a month for four hours. Moreover, there is no evidence her telephone conversations with the children were ever inappropriate. Thus, a showing that Mother’s conversations with the children continue to be appropriate would not demonstrate a change of circumstance.

The Department also argues Mother could seek modification of the visitation order in family court by completing a parenting class to address “her failure to intervene when she knew her children were being inappropriately physically disciplined.” But the juvenile court did not restrict Mother’s visitation because she failed to attend parenting classes. In fact, the court did not order Mother to participate in parenting classes because she was not given any family reunification services as a noncustodial parent. The sole reason the court ordered monitored visitation was because Mother failed “to see anybody at the [Department] to be assessed during the course of the

administration of the case.” On this record the trial court abused its discretion in allowing Mother only monitored visitation.

### **DISPOSITION**

We reverse the visitation order. On remand, the juvenile court shall modify the visitation order to allow Mother unmonitored telephone calls and visitation.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.