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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.A., a Person Coming
Under the Juvenile Court Law.

B278315

(Los Angeles County
Super. Ct. No.DK13780)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

ANGEL M.,

Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal,
for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Julia Roberson, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

J.A. was born in August 2014 to father Angel M. (father) and mother Rosa A. (mother). In a previous opinion, we affirmed the juvenile court's exercise of jurisdiction over J.A. pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ (*In re J.A.* (Mar. 24, 2017, B271121 [nonpub. opn.]) Father now appeals the court's exit order, which, pursuant to a recommendation by the Los Angeles Department of Children and Family Services, granted joint legal custody, physical custody to mother, and monitored visitation to father. Father did not object to the DCFS recommendation or the court's order below, and we find that father has forfeited his appellate arguments. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We discussed the underlying facts of this case in our previous unpublished decision, *In re J.A.* (Mar. 24, 2017, B271121 [nonpub. opn.]). We will not repeat a full recitation of the facts here. In short, father is a special-needs adult who lives with several of his family members. Mother also is a special-needs adult, and she and J.A. live with her family members. The juvenile court found jurisdiction over J.A. under section 300, subdivision (b) because father's family members were involved with drugs, gangs, firearms, and violence, and father's home was not an appropriate place for J.A. to visit. In addition, father's

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

family members intimidated mother's family and suggested that father was interested in exercising physical custody rights. We affirmed the court's finding of jurisdiction.

The jurisdiction/disposition hearing at issue in the previous appeal was held January 15, 2016. In this appeal, we focus on facts that arose after that date.

A status review report dated July 15, 2016 stated that J.A. remained living with mother, maternal grandmother, maternal grandfather, and a maternal aunt. J.A. interacted happily with all family members. Because J.A.'s physician noted some developmental delays, J.A. had begun receiving services through the regional center. Mother had been attending parenting classes, where she "demonstrates a great willingness and eagerness to learn."

Father had weekly monitored visitation with J.A. He never cancelled any visits, and he stayed for the entire duration of each visit. The social worker who monitored the visits observed that father was "not fully engaged" with J.A. Father "fails to show any genuine interest in interacting with [J.A.]. He fails to offer any verbal or non-verbal forms of encouragement to [J.A.] and is completely quiet throughout the visit." J.A. babbled at father and looked to him for responses, but father did not respond verbally or non-verbally, despite the social worker's encouragement and explanation that his responses would help J.A. learn to speak. Father brought J.A. toys, and supervised her by following her around to ensure she did not bump into hazardous objects. Father said he likes seeing J.A., but when asked what he liked about the visits, father shrugged and said, "I don't know." Although the court gave DCFS discretion to

liberalize visitation, it was “not able to . . . due to father’s inconsistent engagement during visits.”

Father was compliant with the requirement that he engage in individual counseling. Father was not compliant with the requirement that he take parenting classes. When assessed by one parenting class provider, father appeared “unmotivated” and “expressed his lack of desire to participate in parenting classes.” In addition, father told a social worker that he was not interested in taking parenting classes. Father also was not compliant with his drug testing requirement because he had multiple no-shows. Father and his mother (paternal grandmother) said that father does not use drugs, and the three tests father took were negative. Paternal grandmother said that father often forgot to call the hotline to check to see if he was required to test. Paternal grandmother said she would start calling, and “[s]ince [paternal grandmother] took over calling for father’s tests, father has not missed a test.”

At a review hearing on July 15, 2016, the court noted that DCFS’s recommendation was to terminate jurisdiction with a family law order granting joint legal custody, sole physical custody to mother, and continued monitored visitation for father. Mother’s counsel stated that mother wanted sole legal and sole physical custody. Father’s counsel opposed mother’s request, saying there was no indication “that father can’t participate in making decisions regarding the child’s medical or religious upbringing or education.” Based on mother’s request, the court set a date for a contested hearing.

At the contested hearing on August 25, 2016, the court noted again that the recommendation was for “joint legal and sole physical to mom.” Mother’s counsel stated that mother wanted

sole legal custody. Mother's counsel said that due to father's limitations, it might not be in J.A.'s best interests to have father make educational and medical decisions. J.A.'s counsel joined this argument. Father's counsel responded that both parents "have limitations," but father always had been involved with J.A. and there was no reason to limit father from being a part of important decisions. DCFS joined father's argument.

The court said it did not see a reason to deny joint legal custody. The court terminated jurisdiction, finding that "conditions which would justify jurisdiction under section 300 no longer exist[]." The court granted joint legal custody to mother and father, sole physical custody to mother, and ordered that "visits for father continue to be monitored."²

Father timely appealed.

DISCUSSION

Father asserts two arguments on appeal: the court abused its discretion by granting sole physical custody to mother, and the court abused its discretion by ordering father's visits to be monitored. Respondent DCFS points out that father never objected to these recommendations or rulings below, and argues that as a result father has forfeited any challenge to the court's rulings as to physical custody and monitored visitation. Father did not file a reply brief, and therefore he has not responded to the argument that his appellate arguments have been forfeited.

² "When the juvenile court terminates its jurisdiction over a dependent child, 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 Roger S.* (1992) 4 Cal.App.4th 25, 30 (*Roger S.*)).

“In dependency litigation, non-jurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal.” (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.) “Many dependency cases have held that a parent’s failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.)

Father offered no indication to the court below that he had any interest in gaining physical custody of J.A. or participating in unmonitored visitation. The contested hearing was set because mother sought sole legal custody—not because father wanted joint physical custody or unmonitored visitation. At the hearings, no party raised questions as to whether sole physical custody with mother was appropriate, or whether father’s visits should be monitored. Father was free to challenge DCFS’s recommendations as to physical custody or visitation by objecting or presenting evidence. (See *Roger S.*, *supra*, 4 Cal.App.4th at p. 30 [“[W]hen making an order to be transferred to the family court, the juvenile court has the power to hear evidence relevant to that order under section 362.4”]; see also *In re Michael W.* (1997) 54 Cal.App.4th 190, 195 [same].) However, father did not do so.

Father’s silence on these issues deprived the juvenile court of the opportunity to consider father’s arguments in light of the facts before it. We will not decide these fact-based questions for the first time on appeal, and find that father’s arguments have been forfeited.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.