

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re HANNAH W., a Person  
Coming Under the Juvenile  
Court Law.

B283267

(Los Angeles County  
Super. Ct. No. CK90173)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JENNIFER W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Veronica McBeth, Judge. Affirmed as modified.

Neale B. Gold, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Karen B. Stalter, under appointment by the Court of Appeal, for  
Respondent Timothy D.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant  
County Counsel, and Jeanette Cauble, Principal Deputy County  
Counsel for Plaintiff and Respondent Los Angeles Department of  
Children and Family Services.

---

The juvenile court awarded legal and physical custody of dependent child Hannah W. to her father, Timothy D., and terminated dependency court jurisdiction. Mother Jennifer W. appeals the court's orders. We affirm the orders as modified.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On July 20, 2016, the Department of Children and Family Services filed a petition alleging that Hannah came within the jurisdiction of the juvenile court under Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b). The petition contained a single count asserting that Jennifer had “mental and emotional problems, including auditory hallucinations and delusions” that placed Hannah at substantial risk of harm. The count also alleged Timothy “knew of the mental and emotional problems of mother and failed to protect the child.” After a contested hearing, the juvenile court in September 2016 sustained the allegations regarding Jennifer and struck the allegations concerning Timothy. The court ordered Hannah removed from Jennifer's custody and placed with Timothy. Jennifer appealed, and we affirmed the judgment. (*In re Hannah W.* (Sept. 12, 2017, B278258) [nonpub. opn.] )

DCFS recommended that Timothy have sole legal and physical custody of Hannah and that dependency court jurisdiction be terminated. Jennifer did not oppose the termination of jurisdiction; she requested joint legal and physical custody, or at least unmonitored or overnight visits, with Hannah. On May 8, 2017, the court entered a family law order

---

<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

awarding Timothy sole physical and legal custody of Hannah and terminated dependency court jurisdiction over her. Jennifer was granted monitored visitation.

At the hearing, the court advised the parties, “Mother, it’s clear from . . . the evaluation, as well as all of the reports . . . is having psychiatric problems. And it’s not her fault that she does, but she does. She’s in denial about most of it. Although, everyone else is able to observe and her child is aware of it also given the behavior described in the reports. Even in the most recent report, Mother said she saw a demon figure. And although she’s trying to control all those things, she’s not able to. It’s not her fault. [¶] She’s taking her—whatever she needs to be taking. She is in therapy. But based on everything that’s contained in the reports from the beginning of the case through now, it would not be safe for Hanna[h] to have unmonitored visits nor do I believe it’s possible for Father to be able to make all the decisions and do everything he needs if there were joint legal [custody]. [¶] So it will be sole legal [custody], sole physical [custody] and it will be monitored visits. Mother is to continue taking her medication and seeing her psychiatrist. And when we have a psychiatrist report that indicates she [ha]s gotten over all the psychiatric problems, including the visions and hallucinations, then they will be monitored,<sup>[2]</sup> all right? [¶] So—and there would have to be a full evaluation saying that she’s dealing with and not suffering with these problems that we’ve seen throughout the entire case.”

Counsel for Timothy asked the court, “So it will be take medication and a full psychiatric evaluation?” The court responded, “Yes. Indicating that all the behaviors, the

---

<sup>2</sup> Based on context, it appears that the court meant “unmonitored” here.

hallucinatory, and the allegations, all of that, I mean, that needs to be clarified and a doctor needs to say she's not suffering from any of it before I would allow the child to have unmonitored visits." The court continued, "And like I said, I don't think Mother is a bad person. But I think she's suffering from a disease that requires her visits to be monitored with the child. And I don't think her disease will allow her to participate in what would be needed for joint legal [custody]."

The custody order included a form upon which the juvenile court was required to enter the reason for awarding only supervised visitation. The court marked the box stating that mother "has not made substantial progress in the following court-ordered programs:" and then filled in, under "Other," "Mother to continue to attend psychiatric and psychological appointments and take all prescribed medication. Mother to get full psychiatric/psychological evaluation stating that mother's mental health issues and hallucinations have been stabilized."

Jennifer appeals.

## **DISCUSSION**

### **I. Custody Award**

Section 361.2 states, in pertinent part, that when a juvenile court orders the removal of a child from a parent, the court shall first determine whether there is a non-custodial parent who desires to assume custody. (§ 361.2, subd. (a).) If so, the court shall place the child with that parent absent a finding that the placement would be detrimental to the child's safety, protection, or physical or emotional well-being. (*Ibid.*) Once the court places the child with the previously non-custodial parent, it may order

that the parent become the legal and physical custodian of the child and terminate its dependency jurisdiction. (§ 361.2, subd. (b)(1).)

Section 362.4 authorizes the juvenile court to determine issues of custody and visitation when it terminates its jurisdiction. It provides, in relevant part, that when the juvenile court “terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (§ 362.4.) Section 362.4 accordingly vests the juvenile court with broad discretionary authority to make a custody and visitation order in conjunction with terminating its jurisdiction. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203-204; *In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455-1456.) Such an order commonly is referred to as an “exit order” and remains in effect until modified or terminated by the family court. (*In re Cole Y.*, at p. 1455.)

When deciding custody and visitation in any dependency case, the juvenile court’s primary consideration must always be the best interest of the child. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The court is not restrained by “any preferences or presumptions” in fashioning its exit order. (*In re Jennifer R.*, at p. 712; *In re Nicholas H.*, at p. 268.) Rather, the court must be guided by the totality of the circumstances and issue an order that is in the child’s best interest. (*In re Chantal S.*, at p. 201; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) The concept of best interest “is an elusive guideline that belies rigid definition. Its purpose is to

maximize a child's opportunity to develop into a stable, well-adjusted adult.' [Citation.]" (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) A primary consideration in determining a child's best interest is the goal of assuring stability and continuity of care. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

We ordinarily review the juvenile court's decision to terminate dependency jurisdiction and to issue an exit order for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) When a juvenile court has made a custody determination in a dependency proceeding, ""a reviewing court will not disturb that decision unless the . . . court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." [Citations.]" (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.) Additionally, when the sufficiency of the evidence to support a juvenile court's factual findings is challenged on appeal, we must determine if there is substantial evidence, contradicted or uncontradicted, to support the court's order. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) We review the entire record in a light most favorable to the findings, drawing all reasonable inferences in support of the court's determination and deferring to it on issues of credibility of the evidence and witnesses. (*Ibid.*)

Jennifer argues that the court erred when it awarded sole legal and physical custody of Hannah to Timothy and terminated jurisdiction. She contends that Timothy posed a risk to Hannah and that giving him full legal and physical custody was not in Hannah's best interest. Instead, Jennifer argues, the court should have continued to provide supervision and services to the family so that she could continue to "work on her mental health" and gain shared custody of Hannah or at least unmonitored

visitation; and so that Timothy could enter a substance abuse program and continue drug testing. She describes herself as “a parent on the right path to being safe but [who] simply needed more time.”

Jennifer has forfeited any objection to the termination of jurisdiction or to the appropriateness of Timothy as a custodial parent. In the juvenile court, Jennifer did not oppose the termination of jurisdiction, request additional periods of supervision and services, or contend that Timothy presented a danger to Hannah. When DCFS recommended termination of jurisdiction, Jennifer asked to set the matter for contest only “in regards to the terms of the family law order, specifically for joint legal and for unmonitored overnight visits.” At the subsequent hearing, she sought only joint legal and physical custody, or, in the alternative, unmonitored or overnight visits with Hannah. Jennifer’s failure to seek continued jurisdiction and services, and her request for joint custody, preclude her from challenging the termination of jurisdiction or Timothy’s suitability to provide care to Hannah. (See, e.g., *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-503.)

Even if Jennifer had not forfeited this issue, however, we would not find any error here. Jennifer’s argument that Timothy posed a risk to Hannah is based on her assertion that Timothy “struggled with substance abuse.” The juvenile court placed Hannah in Timothy’s custody in July 2016. Between July 2016 and May 2017, Timothy underwent court-ordered parent education, conjoint counseling, and drug testing. As Jennifer notes, Timothy had not completed 10 random consecutive negative drug tests as he had been ordered to do, but he had produced 13 negative tests. DCFS accepted Timothy’s

explanation that he missed some drug tests due to travel for work and that his two tests indicating the use of hydrocodone were due to a prescribed medication. Timothy produced a doctor's prescription for hydrocodone and then tested negative for drugs four times after his two positive tests. DCFS had no concerns about Hannah living with Timothy. There was also abundant evidence that Hannah was doing well in her father's care.

At core, Jennifer's argument that there was insufficient evidence to support the court's determination that living with Timothy was in Hannah's best interest is an invitation to this court to reweigh the evidence and make a different decision than the juvenile court did. Our role on appeal is not to second-guess credibility determinations or reweigh the evidence considered by the juvenile court. (See *In re Cole Y.*, *supra*, 233 Cal.App.4th at pp. 1451-1452.) When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the juvenile court. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 319.)

## **II. Conditions for Modification of the Exit Order**

Section 302, subdivision (d), provides that exit orders "shall not be modified in a proceeding or action described in Section 3021 of the Family Code [regarding dissolution or nullity of a marriage, legal separation, and specified custody issues] 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." (§ 302, subd. (d).)

A juvenile court issuing an exit order acts beyond its authority when it places conditions on the family court's ability to



modify the order that differ from the conditions in section 302, subdivision (d). (*In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1456.) Here, the juvenile court stated that Jennifer would have to obtain a full psychiatric evaluation stating that her “mental health issues and hallucinations have been stabilized,” and demonstrate that she had “gotten over all the psychiatric and psychological problems” and that she was “dealing with and not suffering with these problems” before she received unmonitored visitation. The exit order must be clarified to establish that the statements made by the juvenile court do not bind the family court in the future or impose prerequisites for the order’s modification beyond those established in section 302, subdivision (b).

### **DISPOSITION**

The May 8, 2017 orders of the court are modified to clarify that they do not impose conditions on the future modification of the custody and visitation order beyond the requirement set forth in Welfare and Institutions Code section 302, subdivision (d) that there has been a significant change of circumstances and the modification is in the best interest of the child. In all other respects, the May 8, 2017 orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.