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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.C., a Person Coming Under
the Juvenile Court Law.

B295804

(Los Angeles County
Super. Ct. No. DK24394)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

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

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and

Timothy M. O’Crowley, Senior Deputy County Counsel, for
Plaintiff and Respondent.

V.G. (Mother) appeals a juvenile court child custody order made in connection with termination of dependency jurisdiction over her then-nine-year-old daughter (V.C.). The court ruled Mother and I.C. (Father) would share legal and physical custody of V.C., with physical custody divided so V.C. would be in Father’s custody during the week (which meant she would continue to live with her paternal grandmother in Visalia) and in Mother’s custody every weekend. We consider whether, as Mother claims, the juvenile court’s custody order was contrary to V.C.’s best interest and an abuse of the court’s discretion.

I. BACKGROUND

We summarized the initial proceedings in this dependency matter in a prior opinion. (*In re V.C.* (Jan. 4, 2019, B287595) [nonpub. opn.].) We shall recite this background verbatim and then describe the subsequent events that led to the custody order challenged on appeal.

A. *Initial Assumption of Jurisdiction*

“Mother and [F]ather met in 2003 while they were undergoing rehabilitation for methamphetamine use. V.C. was born in November 2009. Mother and [F]ather separated in 2011. By July 2017, seven-year-old V.C. lived with [M]other and maternal grandmother in Pasadena, California. Father worked a lot and V.C. saw him as much as she could.

“On July 22, 2017, at the end of a visit, [F]ather took V.C. to [M]other’s home. While [F]ather was in [M]other’s home, he

observed methamphetamine in powder form inside the child's room, out in the open and accessible to the child. Father also saw bottles of liquor, beer and wine and cigarette butts all over the room. Although [M]other denied the methamphetamine belonged to her, [F]ather suspected [M]other was under the influence of methamphetamine. A few months earlier, [M]other had admitted to [F]ather that she was using methamphetamine. Father suspected that [M]other's boyfriend, who lived in the home, also used methamphetamine. Father called law enforcement. The officer who came to the home did not find methamphetamine because [M]other removed it.

"That same day, [M]other slapped, scratched, and poked the maternal grandmother's face and threw food at her. V.C. witnessed the incident.

"Rather than leaving V.C. with [M]other, [F]ather brought her to the home of the paternal grandmother in Visalia, in Tulare County. V.C. arrived at paternal grandmother's home with soiled clothing, lice, and wearing diapers. She appeared nervous or anxious. Although she was given her own bedroom, she chose to sleep with paternal grandmother.

"Father contacted the Los Angeles County Department of Children and Family Services (Department) and reported on the family's situation. He asked that a Department social worker contact him so V.C. could meet with a social worker. Father said he would pick up V.C. from paternal grandmother's home whenever the social worker was willing to meet with the family.

"On August 1, a social worker spoke with [M]other. Mother initially said she had not used 'crystal' in over a year, but she subsequently admitted she had used 'meth' the day before, when she was partying with friends. The social worker also reported:

'Mother stated that she has a history of [domestic violence] with [Father] who hit her. She stated that she has been choked in front of her daughter.' According to [M]other, she and maternal grandmother had had some disputes and she had thrown food on the floor in front of maternal grandmother but not at her.

"The next day, [M]other submitted to an on-demand drug test and the results were positive for amphetamine and methamphetamine.

"On August 3, [F]ather told the social worker that he and [M]other separated six years earlier because [M]other was aggressive and he was afraid he would hit her.[] Father said he would have V.C. live with him but he had two jobs, including one at night, he had a roommate, and he did not have adequate space. He believed the safest place for his daughter was the home of paternal grandmother in Visalia.

"The social worker also interviewed maternal grandmother, who said she was scared of [M]other and suspected [M]other was using drugs. Maternal grandmother stated [M]other had a boyfriend who smoked marijuana and both [M]other and the boyfriend were drinking. Maternal grandmother reported that [M]other had pulled her hair in the past because maternal grandmother intervened when [M]other was pulling V.C.'s hair. Maternal grandmother called [F]ather when the incidents happened.

"On August 14, social workers interviewed V.C. at school in Visalia and found her clean, healthy, and appropriately dressed for the weather. V.C. told the social workers a "gangster guy" had moved in with [M]other and [M]other "hangs out with gangsters." She said that one day when [F]ather dropped her off at [M]other's house, the bedroom door was locked and "the guy"

was in there. When V.C. banged on the door, [M]other opened the door, “pushed her,” and shut the door. Mother then came out of the room with “a guy.” Father told [M]other not to push V.C. Mother and [F]ather argued and “the guy tried to fight” [F]ather. Father did not want to argue in front of V.C. and instead called the police. When the police came they did not find drugs in the home because [M]other “hid everything.”

“V.C. also told the social workers that [M]other had slapped V.C., ‘scratched at her head,’ pulled her hair, and left her and her friend home alone one night. V.C. described seeing [M]other and maternal grandmother fight at least two times.

“V.C. said [F]ather always checks on her, always covers her with a blanket when she is at his house, and puts music on while she sleeps. She liked living at paternal grandmother’s house and she was not using diapers there.

“In a meeting with the parents and social worker on August 15, [M]other admitted that she had been under the influence while caring for V.C. The social worker asked the parents if they consented to V.C.’s detention or if they would like the social worker to seek a removal order from the juvenile court. Mother and [F]ather consented to detention. Father said he preferred not to have the Department and court intervene but he wanted whatever was in V.C.’s best interest. Mother stated she wanted to visit V.C. and would contact outpatient rehabilitation centers to obtain treatment.

“On August 18, the Department filed a juvenile dependency petition alleging [M]other and [F]ather violated section 300, subdivisions (a) and (b)(1), because they had a ‘history of engaging in violent altercations in the child’s presence’ and because, ‘[o]n

prior occasions, the father choked the mother and struck the mother's body in the child's presence.' In addition, with respect to [M]other, the petition alleged:

- Mother had a history of substance abuse and was a current abuser of methamphetamine, amphetamine, and marijuana; had a positive toxicology screen for methamphetamine and amphetamine on August 2, 2017; and on prior occasions possessed, used, and was under the influence of illicit drugs while caring for and supervising V.C.
- Mother physically abused V.C. on prior occasions by hitting her face and pulling her hair.
- Mother had a history of violent and aggressive behavior, including hitting and scratching maternal grandmother's face in V.C.'s presence, poking and throwing food at maternal grandmother's face, pulling maternal grandmother's hair, and hitting maternal grandmother with shoes and other objects in V.C.'s presence.

"At the initial hearing on August 18, the juvenile court detained V.C. from [M]other and [F]ather and placed her with paternal grandmother. The court denied [F]ather's request (which V.C. joined) for unmonitored visits and granted monitored visits.

"On September 27, V.C. told a social worker that [M]other was abusive toward her. As V.C. spoke, she drew a picture of what appeared to be a crack pipe. V.C. said [M]other smoked this thing in the closet with her gangster boyfriend Willy and another guy named Danny. At times, [M]other smoked something that

smelled like skunk and caused V.C. to cough, preventing her from sleeping.

“By September 27, [F]ather had visited V.C. four times at paternal grandmother’s home in Visalia. Mother had not contacted the social worker so her visits had not begun.

“At the adjudication on October 25, [F]ather’s counsel asked the court to dismiss the domestic violence claims, arguing the only evidence supporting the claims was [M]other’s statement that [F]ather once hit her. [¶] . . . [¶] The juvenile court received exhibits in evidence, accepted [M]other’s waiver of rights form, and sustained as amended the counts against [M]other involving drug use and physical abuse of V.C. under section 300, subdivision (b). [¶] The court also sustained the domestic violence count against [F]ather under section 300, subdivision (b).” (*In re V.C.*, *supra*, B287595.) The juvenile court ordered monitored visits for both parents two times per week.

B. Reversal of the Adverse Finding against Father and Subsequent Proceedings in the Juvenile Court

Father appealed the domestic violence jurisdiction finding against him and we reversed that finding,¹ concluding there was no substantial evidence V.C. was at substantial risk of serious physical harm from any domestic violence that may have occurred between Mother and Father some six years prior. (*In re V.C.*, *supra*, B287595 [slip opn. at 17].)

¹ Mother did not appeal the jurisdiction findings against her, so V.C. continued to remain a dependent child as a result of those findings.

Back in the juvenile court, the Department submitted status update reports in preparation for the six-month review hearing that would be held to assess V.C.'s welfare and the parents' participation in court-ordered services. V.C. continued to reside with her paternal grandmother in Visalia (her placement as ordered at the initial detention hearing), and she liked the new school she was attending in that city, where she had made new friends.² Father was opposed to the idea of changing V.C.'s placement to live with her maternal grandmother in Pasadena because he felt the maternal grandmother allowed Mother "to get away with too much" in the past.³

According to the Department's reporting, both parents were doing well in reunification programs. Mother had missed a number of drug tests, but overall she maintained consistent contact with the social worker, she had completed a 90-day substance abuse treatment program, she was attending 12-step program meetings, and she was participating in therapy. Father likewise remained in contact with the social worker and he had enrolled in counseling with good initial results. Owing to the long distance between Visalia and the places where both parents were (separately) living, in-person visitation between the parents

² Because Father lived with roommates, he believed V.C. was better off staying with her paternal grandmother.

³ Relatedly, the maternal grandmother told the Department she continued to have some issues with Mother, who recently came to her workplace and had "caused a scene" by arguing, talking loudly, and accusing the maternal grandmother of not helping Mother with money or allowing her to move in to her apartment.

and V.C. was sporadic.⁴ But Father called V.C. every night (often reading books to her over the phone) and Mother had phone contact with V.C. as well, albeit not quite as frequent.

At the six-month review hearing, the juvenile court changed its prior placement order and released V.C. to Father's custody. This did not result in a practical change, however, as Father continued to arrange for V.C. to live with his mother in Visalia. The court also ordered the Department to provide family maintenance services to the parents.

In advance of the next status review hearing, the Department again reported on V.C.'s welfare, the parents' visitation, and the parents' progress in services.

Staff at the school V.C. was attending in Visalia told the Department her attendance was excellent and she was doing well. V.C. repeatedly told Department personnel she enjoyed living in Visalia, had made many friends in school, loved her paternal grandmother, and wanted to remain living in Visalia. When specifically asked about the possibility of living with Mother, V.C. said she was not in favor of a change because she thought Visalia was better—being a more stable and calm environment.⁵ In the same vein, V.C. additionally mentioned she

⁴ The Department liberalized Father's visits to unmonitored in February 2018, and to overnight visits the following month. Mother's visits remained monitored.

⁵ V.C. explained that when staying in Los Angeles "there was always trouble at home . . . , the family [i.e., Mother's family] was always arguing[,] and . . . it was loud, noisy[,] and she had a hard time focusing on her school work." Father complained to the Department that when V.C. stayed with Mother in the maternal grandfather's home around Christmas, V.C. was not taking

enjoyed having her own room in the paternal grandmother's home.

Regarding visitation, Father had V.C. stay with him in Los Angeles for three months over the summer (before she later returned to Visalia for the start of school). During the summer, V.C. also went to stay with her maternal relatives for a few days and spent monitored time with Mother. In early October 2018, the Department liberalized Mother's visits to unmonitored, and V.C. spent a weekend with Mother the following month, as well as time during her Thanksgiving break.⁶ Throughout this time, Father continued to have consistent phone contact with V.C. and visited with her in person whenever possible.

As to services, Father had completed his course of individual counseling. Mother had completed most but not quite all of the parenting program she had been attending. Mother had also enrolled in an in-patient drug treatment program (she was homeless at the time she enrolled) and was doing "excellent" according to her counselor; she was also testing negative for drug use in weekly tests. But the Department learned Mother had shouted profanities on one occasion after she was not tested when she first arrived at a testing site, which resulted in a request by that testing center that she no longer test there.

showers daily and all of her clothing was dirty (such that he had to buy her new clothes).

⁶ During one of these visits, Mother smoked many cigarettes and "would sometimes snap angrily" at others around her, but V.C. told the Department she still thought the visit with Mother "went okay."

The Department’s recommendation for the upcoming status hearing was that the juvenile court terminate jurisdiction over V.C. with an order splitting legal and physical custody of V.C. between the parents—with Father determining V.C.’s primary residence (allowing V.C. to remain in Visalia with the paternal grandmother) and Mother being entitled to unmonitored overnight visits.

At that status hearing in February 2019, the juvenile court received the Department’s reports in evidence and noted the Department’s recommendation was to “clos[e] the case, joint legal [custody], joint physical [custody], [and] primary physical [custody] for [Father], which . . . means Father has [V.C.] during the week and Mother has her during the weekends.” Mother asked the court to give her, not Father, primary physical custody of V.C. and testified in support of her request. Mother testified she had been sober (abstaining from drug use) for six months, understood family conflict was one of her “triggers” but had learned to overcome it, and wanted V.C. to come live with her (Mother) at the maternal grandmother’s home in Pasadena to avoid the three-hour drive required to visit V.C. in Visalia.⁷

The juvenile court ordered dependency jurisdiction over V.C. terminated. On the sole contested issue, division of physical custody of V.C. between the parents, the court ruled there would

⁷ When asked to respond to V.C.’s articulated preference to remain with the paternal grandmother in Visalia, Mother testified: “I know [V.C.’s] upset with me right now, and I understand that it takes time for a child to—we haven’t had that time with each other; so I know that right now we haven’t bonded as much as we should. But I’m willing to do my best I can to get that time with her again.”

be joint legal and physical custody—with primary physical custody to Father. The court articulated its reasons on the record as follows: “I think [V.C.] . . . has been in a stable placement. She says it’s calm, she’s able to focus there, she notes that she enjoys going to school, she has friends. [¶] And that in her prior place in Los Angeles there was always drama, trouble. And the court finds importantly she had a hard time focusing on her school work. This is a child who is almost ten, entering the middle school age years, entering the high school age years. I do think it is in her best interest that she remain stable with her schooling in Visalia with a plan of care with [Father]. [¶] But this is not to undercut the importance of having time with [Mother] as well; so I will order that [Mother] have weekend visits every weekend. And I’ll order that [Father] and [Mother] make arrangements to meet at a halfway point, so that [Mother] can maximize her time with [V.C.]” The juvenile court also made orders for visitation during summertime and on holidays, and with those orders made, closed the case.

II. DISCUSSION

The child custody order from which Mother appeals is reviewed under the deferential abuse of discretion standard. Under that standard, the question is not a close one: the juvenile court’s order is soundly grounded in the record. V.C.’s best interests, whether articulated in terms of stability, educational achievement, social interaction, or avoidance of future “drama,” were better served by giving Father custody of her during the week, which would allow her to maintain her residence and school in Visalia.

A. *Standard of Review*

A juvenile court's orders regarding custody and visitation will not be disturbed on appeal absent an abuse of discretion. (*In re M.R.* (2017) 7 Cal.App.5th 886, 902; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*)) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) Where substantial evidence supports an order, there is no abuse of discretion and we uphold the order even if other evidence supports a contrary conclusion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

B. *The Juvenile Court's Custody Order Is Not an Abuse of Discretion*

A "juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4 (*Nicholas H.*)) In making such orders, the juvenile court's primary concern must be a determination of "what would best serve and protect the child's interest." (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652; see also *Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268; *In re Chantal S.* (1996) 13 Cal.4th 196, 206.) A "primary consideration in determining the child's best interests is the goal of assuring stability and continuity. [Citation.] "When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child."

[Citation.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505; *Ragghanti v. Reyes* (2004) 123 Cal.App.4th 989, 999.)

The record amply supports the juvenile court’s determination that the custody schedule it ordered is in V.C.’s best interest, and certainly more so than an order that would have uprooted V.C. from her current Visalia school and living arrangements. V.C. had been in her Visalia placement for a year and a half by the time of the February 2019 hearing at which jurisdiction was terminated, and preserving that stability alone was likely reason enough to sustain the court’s order. (*In re Brittany K.*, *supra*, 127 Cal.App.4th at p. 1505.) But there was more. V.C. herself, at an age where the court could properly take account of her own wishes, repeatedly articulated a desire to remain with the paternal grandmother in Visalia rather than returning to Mother. And there were good reasons for her preference: she explained she loved the paternal grandmother, liked being with her extended family, enjoyed having her own room, wanted to remain with the many school friends she had made, and—most important of all—found it easier to focus on her school work in the calm environment she had in Visalia instead of the noisy and argumentative atmosphere she experienced when staying with Mother. Moreover, the record reveals justifiable concern that giving primary custody to Mother rather than Father would expose V.C. to a comparatively greater risk of harm: Mother had been sober for only six months, she identified familial conflict as one of her triggers for drug use, and there were several indications in the record that she continued to have some difficulty managing her anger. On the full record presented, the court’s custody arrangement was therefore well within its discretion.

Mother resists this conclusion with a handful of arguments that are all unavailing. She claims the juvenile court's custody order unwisely made V.C. "a commuter child," but we are convinced the order the court fashioned was the best it could do under the circumstances to acknowledge the role of both parents in V.C.'s life; the alternative may well have been a custody order that gave Mother even less time with her daughter. Mother also argues the term physical custody does not appear in the Family Code and so "has no legal meaning," but we are unconcerned with the Family Code when it comes to this dependency court custody order. (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1098; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) Regardless of labels, the juvenile court was perfectly clear in what it was ordering: physical custody of V.C. with Father during the week and with Mother on weekends. Finally, Mother argues there was insufficient evidence in the Department's reports about what V.C.'s life might look like if she were returned to Mother's custody and ordered to live in Pasadena rather than Visalia. Mother made no objection to the Department's reporting on this ground below, and the point is therefore forfeited. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) It also lacks any force. The Department cannot be faulted for not analyzing a counterfactual custody scenario that ran contrary to its own recommendation of the custody order the juvenile court should make. If Mother wanted that evidence (speculative as it may be) before the juvenile court, she could have—but did not—adduce it herself.

DISPOSITION

The juvenile court's order is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.