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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.V., et al., Persons
Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.V.,

Defendant and Appellant.

B293397

(Los Angeles County

Super. Ct. Nos.

17CCJP01359, 17CCJP01359A,

17CCJP01359B)

APPEAL from an order of the Superior Court of
Los Angeles County, Akemi D. Arakaki, Judge. Affirmed.

Conrad S. Lee, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

This juvenile court case began after a domestic violence incident in which appellant S.V. (father) poured tea and/or water over the head of his wife, M.V. (mother), and father stated that he wanted to buy a gun to shoot mother, himself, and their two children—M., age one, and A., age five. The juvenile court sustained allegations under Welfare and Institutions Code section 300¹ stating that father’s mental and emotional issues placed the children at risk.

Pursuant to the case plan, father attended a domestic violence course, parenting classes, and individual counseling. He maintained consistent monitored visitation with the children, which was generally uneventful. However, he did not progress significantly in addressing his emotional issues, and demonstrated significant difficulties in working with Los Angeles County Department of Children and Family Services (DCFS) on the case. Father filed a petition under section 388 seeking unmonitored visitation, which the court denied after a hearing. The court terminated jurisdiction, and in an exit order pursuant to section 364, awarded mother sole physical and legal custody of the children, with monitored visitation for father.

On appeal, father asserts three errors. First, he contends the juvenile court erred in denying his section 388 petition seeking unmonitored visitation. We find no error, because father

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

did not demonstrate a change in circumstances, nor did he show that unmonitored visitation would be in the children's best interests. Second, father asserts that the court erred in terminating jurisdiction, because father should have been given more time to work on case issues. We find no error, because there was no indication that continued jurisdiction was required to protect the children. Third, father challenges the order awarding mother sole legal custody. Again we find no error. Father's conduct throughout the case made it clear that it would not be in the children's best interest for their parents to share legal custody. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention

The detention report stated that A. and M. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on September 6, 2017, after a domestic violence incident between father and mother. The caller² reported that when mother asked father to wash the dishes, father became enraged and poured tea and water over mother's head. Mother reported that she later heard father speaking to his mother on the phone, and he stated that he wanted to purchase a gun to kill himself, mother, and the children. Mother called police, and father was put on a psychiatric hold pursuant to section 5150.

A children's social worker (CSW) interviewed mother, who confirmed the incident as reported by the caller. Mother also stated that father often tells her that she should throw herself out the window, and that she "does not trust [father] now because

² The record does not make the identity of the reporter clear.

she does not know if one day he will grab her or the minors and throw them out the window.” Mother said that A. was present during the argument and was afraid of father; she did not state whether M. was also present.

Mother stated that she and father met in school when they were both completing their Ph.D. degrees. Mother was employed at a hospital, and father “attempts to look for work but stays home most of the time playing chess on the computer and asks mother to get a second job.” Mother stated that father had always been verbally abusive, but the last incident was a “breaking point,” so she sought a restraining order and initiated divorce proceedings. Mother stated that father did not have a history of psychiatric issues, but in the past she had begged him to get psychiatric help.

The CSW interviewed father on October 11, 2017. Father said that he and mother were in the process of divorcing, and there was a restraining order protecting mother but not the children. Father denied any mental health issues, and said mother is verbally aggressive and can be “uncontrollable toward him.” Father admitted pouring water on mother, and said he did it to calm her down because mother was being emotional. Father said the children were in no danger from him, and before the incident he had been the children’s caregiver while mother worked. Father’s discharge diagnosis from the 5150 hold was adjustment disorder, and it was recommended that he follow up with outpatient care.

Citing mother and father’s reports of verbal altercations, the tea/water pouring incident, and father’s hospitalization, DCFS concluded that “the removal of the children . . . from father . . . is necessary to ensure the children’s safety and to protect the

children from the endangering or detrimental conduct of the father.” DCFS filed a juvenile dependency petition under section 300 on October 26, 2017, recommending that the children be detained from father and placed with mother. It alleged in counts a-1 and b-2 that father “has demonstrated violent and aggressive behavior,” including pouring water over mother’s head and threatening to kill mother and the children, and that this violent and aggressive behavior places the children at risk of serious physical harm and danger. Count b-1 alleged that father has mental and emotional problems, including adjustment disorder, homicidal ideation, and suicidal ideation, which render him incapable of providing regular care and supervision to the children. Count b-1 also alleged that father’s mental and emotional problems placed the children at risk of serious physical harm.

At the detention hearing on October 27, 2017, the court ordered the children detained from father and released them to the home of mother. The court ordered monitored visitation for father, three times per week for three hours per visit.

B. Adjudication

A jurisdiction/disposition report filed on December 6, 2017 stated that a DCFS investigator interviewed mother. Mother stated that father had a history of angry outbursts, beginning just after they were married. She also said that father had a history of “problems at work” and he had lost several jobs as a result. Mother said father did not get along with women “due to, ‘Maybe she’s on her menstrual cycle.’” She said father “could not understand why anyone including the mother got upset with his comments.” Mother reported that recently, father’s “fits of rage and abusive behavior started to occur more frequently” and he

“often suggested that she throw herself out the living room window.” Although father had not been physically abusive, mother became increasingly fearful of him.

Mother confirmed the tea pouring incident that led to DCFS involvement. A. was present and said to mother, “Please don’t cry, mommy.” Father then called his mother (paternal grandmother). On the call he said he wanted to purchase a gun, and if he had one, “I would kill myself, her and the children.”

An addendum report, also filed December 6, 2017 includes a summary of an interview with father in November 2017. Father said his marriage with mother was rocky from the honeymoon, when mother “was on her menstrual cycle” and was “highly emotional.” Afterward, mother and father moved and mother was doing post-doctoral work at an Ivy League university. Mother and father engaged in occasional verbal altercations, which he ascribed to mother’s menstrual cycle. When mother was pregnant with A., father was offered a job in Los Angeles and the couple relocated. Father reported that after A. was born, there were multiple disagreements in the household due to the maternal grandparents interfering in family issues.

Father also reported that mother “abused him by speaking negatively about his parents.” Father said that mother was “vengeful toward him and his friends because she was jealous she had no friends.” Father attributed his father’s death in 2012 to mother and father’s marital problems being “too much for [father’s father] to handle.” Father said that he gave up his career to stay home with the children and to support mother’s career. Father said that it is “very important that attention be paid to the mother’s menstrual cycle and how much her moods are altered when she is on her menstrual cycle.”

Father stated that the allegations in the juvenile court petition were “completely false,” and that he was a victim of domestic violence perpetrated by mother. Father stated that there had been six prior altercations, each of which occurred during mother’s menstrual cycle. In two separate incidents, mother “charged at” father; in one of these incidents, mother also scratched father’s arm. A. was present at the time. Father said that although he was afraid of mother, he had never contacted law enforcement about her, nor had he taken any steps to protect the children from her. Father stated that because he is no longer in the home to protect the children from mother, he wanted to look into having them placed in foster care.

Father discussed the incident that led to DCFS involvement. He stated that mother was angry because father had forgotten to load the dishwasher, and she did not have a clean bottle for M. Mother “attacked him and scratched his neck and upper lip.” Father said he had extensive training in how to de-escalate situations, and “this is the reason why he poured tea and water over the mother’s head as this is what he has been trained to do.” Father “now realizes that it did not have the calming effect he expected.”

When asked about his statements regarding buying a gun and killing his family, father reported that he was having a conversation with paternal grandmother about a television show, mother overheard it, and “in her delusion and paranoia, she thought that he made the threat.” When asked about the psychiatric hold, father said that the police did not think anything was wrong with him, “the only reason why they kept him [at the hospital for 48 hours] was because they were

investigating the mother, and wanted her to come in so she could be evaluated.”

The CSW noted that “the quality of visits between [father] and the children has been good with the exception of” one visit that included paternal grandmother, in which the children “did not respond well” to paternal grandmother. The “assessment/evaluation” section of the addendum report stated in part, “DCFS has serious concerns about [father’s] repeated misrepresentation of facts and distortions including about his interactions with DCFS staff.”

At the adjudication hearing on December 6, 2017, the court sustained count b-1 regarding father’s mental and emotional problems, and dismissed counts a-1 and b-2 regarding father’s “violent and aggressive behavior.” The children were released to the home of mother under the supervision of DCFS. The previous order for monitored visitation remained in place. The court set a disposition hearing for January 17, and later continued the hearing to February 7, 2018.

C. Disposition

A last-minute information dated January 17, 2018 stated that father was uncooperative with a monitor who attempted to address concerns about A.’s behavior. Father claimed that five-year-old A. did not want the monitor there, and rather than working with the monitor, father “has chosen to forfeit his visits on Thursdays and Sundays.”

During a visit, a monitor heard A. say that he wanted to die. A.’s psychologist stated that he was aware A. sometimes makes statements like this, but A. showed no signs of depression and was not a danger to himself. The psychologist suggested that A. was likely repeating statements that he had heard. The

psychologist also stated that A. demonstrated some developmental issues and autistic traits. A last-minute information filed on February 7, 2018 contained detailed logs of several visits by father; father's supervision of the children appeared appropriate.

At the disposition hearing on February 7, 2018, the juvenile court declared A. and M. dependents of the court under section 300. The children were placed in the home of mother. The court ordered monitored visitation for father three times per week, for three hours per visit. The court also ordered father to participate in individual counseling, parenting classes, and domestic violence counseling. The court set a review hearing for August 8, 2018.

D. Interim requests

On March 6 and March 21, 2018, Father filed walk-on requests asking for adjustments to visit locations and for approval of a professional monitor. A last-minute information filed on April 4, 2018 noted that A.'s behavior during visits had improved, and stated that father had improved in his ability to redirect the children when needed.³

A progress report filed on June 4, 2018 stated that a new CSW assigned to the case attempted to have a family engagement meeting with father on April 30. When the CSW noted that the court ordered monitored visitation, "father got upset and raised his voice," stating that DCFS was allowed to liberalize visitation, and the court order was six months old. The CSW explained that it was still an active court order that had to be followed. The discussion continued and "Father kept on yelling" until the CSW terminated the meeting. Father then

³ Additional hearings and reports from this time period that are not at issue on appeal are not summarized here.

refused to leave, and had to be asked by security to leave the room. A second meeting with father on May 16 was more productive.

Father was enrolled in a domestic violence program and had completed 23 sessions of psychotherapy. Father's therapist stated in a letter that father had "maintained a constructive attitude toward his current family circumstances," and he was "motivated in learning new skills." The therapist also stated that father had "shown much overall development and improvement in his skill sets and insights." Father had completed his parenting education course, but in the progress report DCFS stated that father "has failed to demonstrate any newly acquired parenting skills such as de-escalating [A.], redirecting [A.], or setting proper limits and boundaries."

Reports of father's visits with the children showed that father was generally appropriate, but DCFS noted, "Father has difficulty being redirected by DCFS staff. Father gets upset when DCFS gives him suggestions during visits." In the "overall assessment" section of the progress report, DCFS stated that father "has unresolved issues along with the denial and minimizing," and "[f]ather does not recognize the role he . . . played in his family coming to the attention of DCFS and how it affects his children."

E. Father's section 388 request to change court order

On June 20, 2018, father filed a request to change a court order under section 388. Father stated that he had completed 28 domestic violence classes, attended three months of parenting classes, had 24 sessions of individual counseling, and maintained positive and consistent contact with the children. Father asked that the children be placed in his care with a home-of-parent

order, or alternatively, that he receive unmonitored visitation including weekend visits. Father also requested that his 52-week domestic violence program be reduced to 26 weeks. The court set a hearing on the petition for August 8, 2018.

F. July 2018 reports

In a status review report filed on July 16, 2018, DCFS noted that father had requested that the first CSW be removed from the case, and later asked that a second CSW be removed from the case. Father had “requested that a male CSW be assigned.” DCFS noted that A. was in in a summer program at his elementary school and was developmentally on target. M. attended daycare and was a happy child.

Mother attended a domestic violence victims program and individual therapy. Mother’s therapist stated that mother was “invested in her children’s well-being with no safety concerns whatsoever.” The status review report stated that mother was “very affectionate with the children, understanding and kind.” Mother expressed concern that father kept having CSWs removed from the case, and that “each time father requests a new CSW, he gets one.” Mother stated that father is “controlling and he bullies her and the child’s services providers into giving him his way.”

Mother stated that she had concerns that both father and his family law attorney had asked mother to change statements she made to DCFS. Mother gave DCFS a message she had received from father stating, “I will appreciate it if we can please work together to get our kids out of DCFS mess. My humble prayer to you is to please retract all the false statements through your lawyer at DCFS. You will find these statements in the DCFS report. [¶] Kindly request for amended charges against me from your lawyer and provide statements against any

misinformation. This will help us to get our kids out of DCFS.” In addition, father’s family law attorney asked mother to provide “some type of language that [mother] will work or take efforts to get the children out of the Dependency court and that she will work towards 50/50 custody.”

At a medical appointment in May 2018, the doctor noted that A. had a “very mild rash” on his neck. The doctor “recommended observation but also made referral to dermatology at Dad’s insistence.” Father then repeatedly emailed the CSW asking to attend the dermatologist appointment; the CSW stated that if mother was at the appointment, father could not be there. However, father “continues to ask repeatedly about attending the appointment,” and has “issues understanding things when he is not given the answer that he wants.” After A.’s dermatology appointment, father emailed DCFS again, and stated that a physician’s assistant—not a physician—saw A., and “[m]edically it is a case of malpractice for a physician’s assistant to even diagnose the problem.”

DCFS attached several additional emails from father. In an email to the CSW dated April 25, 2018, father stated that there were “issues” in the case. Referring to mother as “kids mom” or “kid’s mom,” father stated that one issue was “Kids mom abusing the kids”; other issues included mother providing “falsified information” to DCFS, the children “being neglected,” and “kid’s mom volatility.” Father also referenced “[f]alsified and misleading statements” to the court by two CSWs and a DCFS investigator. Father stated that these issues were “chronic. . . pending for more than 5 months.”

In an email dated June 6, 2018 to the DCFS assistant regional administrator (ARA), father asked for a meeting “to

discuss problems with the new social worker and wrong information being provided to not only all the therapists and school but also to the court.” (The status review report noted that a CSW gave the incorrect petition to all three therapists in the case, and later provided the therapists with the correct petition.)

On June 11, father emailed three people at DCFS, including the ARA, CSWs, and father’s therapist, asking again to “discuss misinformation being provided by the new social worker and her supervisor to the court.” Father also stated that he had evidence that DCFS had “mismanaged my case” and “misinformed the court about my case.” Father said the social worker “has further alienated me from my son” by providing false information to A.’s school.

On June 21, 2018, father emailed the ARA with the subject line, “Thank you (urgent information to prove [CSW] is mismanaging the case).” Father said that the CSW “is willing to believe anything that kid’s mom says. She has shown time and again that she is biased towards mom and [has] also shown a sexist behavior as she will not listen objectively to what I have to say.” Father asked that the CSW be removed from the case, and “I request you to please appoint a male social worker for my case.”

The status review report noted that father had completed 30 sessions of a domestic violence course, had completed a parenting course, and was continuing individual therapy. The visitation monitors stated that father was reluctant to interact with M. during visits, and was unwilling to change her diaper. A monitor also reported that on June 23, 2018 father got angry when he was asked to park on a different street for exchanges to create distance between him and mother. The same day, father

sent an email to several people at DCFS stating that mother lied about having a restraining order, and continued, "Facts: Kid's mom had got a restraining order by lying and a 6 month restraining until Feb 28th 2018. This was based on my pouring water on her as a reaction to her ranting and attacking me. She was going through an anxiety attack related to her post-partum depression. I accepted my responsibility and know that I should have acted differently." Father also stated in the email that he was afraid of mother, and she "continues to be adamant and doing everything to destroy my credibility and keep the kids away from me. She has continued to use the State departments to attack me. DCFS is abetting her actions." Father stated that mother's control of the monitors and of where father should park was "unacceptable." Father asked, "[P]lease take necessary actions to halt this continuous torture from kid's mom. I also request that DCFS to order a psychiatric evaluation for kid's mom."

The status review report stated that A.'s therapist reported that A. is "very bright and also very sensitive," and that he was "having a hard time with what's going on." A. was very bonded to mother and did not want to discuss father. M. was not receiving services.

DCFS stated that father was in partial compliance with the case plan. Father's visitation was consistent, but he wanted only to play with the children, and did not want to redirect or discipline them. Father was also unwilling to change M.'s diaper. Father "shows a lot of interest in" A., but pays less attention to M.

DCFS observed that father tries "to control everything and when presented with something that he does not agree with[,] he

was quick to say he wanted the CSW changed.” When discussing case issues, “father is unable to focus and concentrate on what the CSW is trying to explain to him. Father wants to change the subject or place blame on the CSW . . . and mother. It is very concerning how father handles stress. He has been explosive with [three DCFS employees]. Father gets upset when he does not get his way or the answer that he wants to hear.” Although the petition was sustained, father “strongly stresses that what was presented to the court was incorrect. . . . Father does not recognize the role he [has] played in his family coming to the attention of DCFS and how it affects his children.” DCFS concluded, “[I]t is DCFS’ assessment that father has not benefitted from his participation in services,” and “the family remains at ‘Very High Risk’ for future abuse and neglect.” DCFS recommended that the court continue services.

In an interim review report filed July 25, 2018, DCFS recommended that the court dismiss father’s section 388 petition. DCFS recommended that the court uphold its order that father complete a 52-week domestic violence program, and that father’s visitation remain monitored. DCFS stated that a meeting on May 31 was “not productive” because “father questioned the validity of the issues that brought him to the attention of DCFS.” DCFS stated that “notwithstanding the partial compliance that the father has demonstrated, there continues to be concerns from DCFS that father is exhibiting the same risk factors [that were] present at [the] onset of this case. This includes his inability to regulate his emotions and engaging in controlling, emotionally abusive behavior toward the mother.”

G. August 2018 reports

In a last-minute information filed on August 6, 2018, DCFS stated that on August 2, father sent an email to the CSW stating, “DCFS has no reason at all to keep this case open and drag this case just on the basis of me being held for a 5150 hold for a short period of time because my wife overreacted, lied to the law enforcement agents and lied about the fact that I have work problems and I am depressed. You clearly are unaware of the facts that my wife did all of this to gain custody for the children and to show her vengeance by misinforming the DCFS.” DCFS noted that father “appears to deny any/all responsibility for risk factors that originally brought this case to the attention of DCFS.” DCFS also stated that father’s behavior was in conflict with father’s therapist’s opinion that father was accepting responsibility for his behavior that necessitated intervention by DCFS and police.

Attached to the last-minute information was a long email chain beginning with the CSW sending father information about approved monitors, noting, “Because of the problems/limitations you are having with your current monitor, please consider the following” alternative monitoring agency. Father responded and thanked the CSW.

The same day, August 1, 2018, father again responded to the CSW, and included 16 other people on the “To” and “CC” lines. Father stated that he wanted “to discuss the current situation to again resolve the issue related to my visitation and transportation of my kids.” Father stated that he has “spent 9 months researching for monitors,” and said the CSW, “just like you[r] previous colleagues, you ignored what I told you when we met about monitors and did not listen to me.” Father continued,

“You and your colleagues are uncompromising, inflexible, uncompromising [*sic*], and demanding. DCFS has constantly impinged and violated my and my kid’s rights.” Father complained that the monitor list the CSW sent had broken links, the monitors charged unreasonable prices, and father had to spend a lot of time reviewing the list which is “a waste of my precious time as I am not getting paid for this.” Father said the CSW gave him references “without doing your homework. You do not know how much do they charge and how effective it will be and whether or not they have time which will be favorable for me and mom.” Father said the CSW was “driving me to financial instability.”

Father also stated in his email that “DCFS has only created roadblocks for me and are alienating me from my kids.” Father complained about the cleanliness of the DCFS meeting rooms, and said that DCFS “refused to be flexible and collaborative” when the “kids were not comfortable with one of the monitors.” Father also said that a CSW “made false allegations” against father’s friend who was approved as a monitor, which made the friend “very scared and he will not monitor my visitation until an apology letter is provided by” the CSW. After several other complaints (set out in numbered paragraphs), father stated, “This brings to you, Joe [current CSW], you are further trying to make it difficult for me and my kids by complicating things. You have misdirected me and closed your eyes and lent deaf ears to this case. . . . I am now being harassed and tortured by you in emails and over the phone which is simply unacceptable.”

Father’s email was peppered with boldface statements in which father characterized himself as calm and patient. For example, father stated, “I am patiently taking this unprofessional

attitude of yours and your colleagues only for my kids,” “I am still patient and working with you to address the concerns,” “I have calmly worked with DCFS . . . during this stressful time,” “I calmly have worked with DCFS even after my only assigned monitor was made to feel uncomfortable,” and “I have shown, flexibility, collaborative attitude and have been compromising.” Father asked the CSW to “[k]indly and most humbly be a servant and not the boss and bully parents and families that you serve,” and “[k]indly and most humbly please try to be professional with your emails.” After imploring the CSW to “Please go through your supervisor before sending any further emails to me,” father asked the CSW to answer specific questions, such as, “How many times have visits been canceled due to inappropriate behavior on your part?” and “Have there been on any occasion, any statements/actions made from the children that they do not feel comfortable or safe with you?” Father asked that the CSW “kindly move forward to closing the case,” because father is a “loving and caring Dad.” Father closed the email with, “Thank you again for your kind attention. [¶] Warm regards.”

The CSW responded in a short email, characterizing father’s email as an “emotionally fueled tirade of 24 paragraphs . . . which you emailed to 16 other parties.” The CSW asked father and his therapist to schedule an appointment to meet with the CSW “so we can best figure out how to support you.” The CSW noted that father’s communication and emotional regulation led to DCFS involvement, and “DCFS will support your efforts to overcome your current difficulty/struggles.”

Father responded with another email stating in part, “Please read my email again. You have again disregarded to read my email and email me back with needless information. This is a

trend between DCFS workers and the leadership to not read the emails or address the requests or questions but only to focus on case-unrelated matters [smiley face]. I am appalled how you are being paid 150k for doing nothing but just emailing parents and bullying them in your emails.”

Father continued, “DCFS is being non-cooperative [*sic*], non-negotiating, non-collaborative, and extremely demanding from me and my kids. DCFS has no reason at all to keep this case open and drag this case just on the basis of me being held for a 5150 hold for a short period of time because my wife overreacted, lied to the law enforcement agents and lied about the fact that I have work problems and I am depressed.” Father insisted that the CSW answer the same questions he posed in his earlier email, and stated, “There are no problems with me taking care of my kids. You are creating problems and where there are none.” Father closed his letter by thanking the CSW for his “kind attention” and stating, “Warm regards and have a nice day.”

H. Hearing on section 388 petition and termination of jurisdiction

At the hearing on father’s section 388 petition on August 8, the court set a contested hearing on the section 388 petition and set a section 364 review hearing for August 15, 2018. At the August 15 hearing, father’s counsel asked that the section 388 petition and section 364 hearing issues be addressed simultaneously. The court accepted multiple DCFS reports as evidence, as well as a letter from father’s therapist.

Father testified that he had attended 35 domestic violence classes. Father said that he knew he was required to attend domestic violence classes because of the “altercation” between him and mother when he poured water on her; “[m]y intention[]

[was] to cool her down.” Father said that from the classes, he had learned to “try to avoid any confrontational situation” and seek outside help when needed. Father also said he had completed all 16 sessions of parenting classes, and learned that the water pouring incident “might have had an effect on [A.]. He was there.” Father testified that domestic violence could affect A. in that he “would be conflicted since both parents love him. He . . . would be stressed out and frankly affect him in terms of whom to love.” Father stated that he had learned to work with his children’s emotions, how to understand them better, and how to redirect them when they are upset. Father also said that he realized how important it is “for parents to provide a safe and secure environment to kids.”

Father testified that he had attended 35 sessions of individual counseling, and he talks on the phone with the therapist when needed. Father talked about the issues he had covered in therapy, including impulse control and anxiety relating to the case and the divorce.

Father testified that he visits with the children two to eight hours per week. He testified that he plays with them, they read together, they watch funny videos, and he cooks for them. Father stated that a visit has never been terminated for any reason. Father testified that he does not have any issues with changing M.’s diaper.

On cross-examination, father confirmed that he asked mother to retract her false statements, stating, “[I]t was a humble request and prayers to my ex-wife because she knows one of the false statement [sic].” When asked what statement was false, father said that he had only been talking to paternal grandmother, “[a]nd I was making a certain statement about

what my fears of what would happen to our family,” but it “was just made into this big elaborate scheme.” Father said he never said he was going to buy a gun and shoot the family. When asked about why he was placed on a section 5150 hold, father said that the police and medical workers wanted to “make sure I am not a danger to anyone.”

Referring to father’s emails, counsel for DCFS asked if father still agreed with his statement that there was no reason to keep the case open. Father said yes, because there are no safety issues, as demonstrated by his release from the 5150 hold, his therapy sessions, and because “I have shown to DCFS that I am safe and secure.” Father said he recognized that he should not have poured water on mother.

Father’s therapist testified that he has been a licensed marriage and family therapist since 1999, but he usually worked with minors, and father was the first parent he had worked with as a therapist. He had been meeting weekly with father since October 2017. The therapist said father was cooperative and calm in sessions, and he had improved in his impulse control. There was still some concern with respect to father’s emails, which reflect that father “feels his needs aren’t being met.” The therapist testified, “I believe [father] can parent his children.” On cross-examination, the therapist confirmed that he had never seen father interact with mother, the social workers, or the children.⁴

⁴ A visitation monitor called by father’s counsel to testify about the visitation exchanges testified that she had monitored five visits, and she had never witnessed father demonstrate any inappropriate contact with mother.

Counsel for DCFS asked the court to deny father's section 388 petition, stating that there was not a change of circumstances warranting a change in visitation or custody, and it would not be in the children's best interest to grant the request. DCFS also asked that the children remain placed in mother's home, and that the case remain open for three months to continue monitoring father's progress. Counsel for the children asked that father's section 388 petition be denied because there were no changed circumstances and a change in visitation or custody was not in the children's best interests. The children's counsel also asked that the case remain open for three more months. Counsel for mother asked that father's petition be denied, and that the case be closed with an order of sole legal and physical custody to mother, with monitored visitation for father. Mother's counsel argued that waiting for father to make progress was "not enough of a reason for the court to continue jurisdiction." Father asked that the section 388 petition be granted and that the court order 50-50 custody, and that the case remain open.

The court stated that the children were placed in the home of the nonoffending parent, "who has by all accounts provided for them appropriately" and has been cooperative and compliant. Regarding father's section 388 petition, the court stated that there was no change in circumstances and no showing that a change would be in the children's best interests. The court stated that although father acknowledged the water pouring incident, "there is no acknowledgement of the threats" or other relationship problems. The court noted that "[t]he therapist completely discounts that the threats were made," and the therapist's lack of acknowledgement "makes this court have to

question the entirety of the treatment that the dad is receiving with regard to that.” The court stated that while there is no doubt that father loves the children, there was no indication that three additional months of services would contribute anything to the family’s situation.

The court denied the section 388 petition, and ordered the parents to participate in mediation regarding an exit order for visitation and monitors. The custody and visitation orders remained in place, and the court set a post-mediation review hearing for October 3, 2018.

On October 3, the court entered an order awarding sole physical and legal custody to mother, and monitored visitation for father. The court found that father had not completed/had not made substantial progress in his domestic violence treatment plan for offenders and individual counseling. The court terminated jurisdiction. Father timely appealed.

DISCUSSION

Father asserts that the trial court erred in denying his section 388 petition, terminating jurisdiction, and awarding sole legal custody to mother. We address each of these contentions.

A. Section 388 petition

Section 388 allows a parent, “upon grounds of change of circumstance or new evidence, [to] petition the court . . . for a hearing to change, modify, or set aside any order of court previously made.” (§ 388, subd. (a).) “To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.] “The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of

a clear abuse of discretion.” (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.)

Although father’s section 388 petition requested several potential changes to custody and visitation, on appeal father challenges only the court’s denial of his request for unmonitored visitation. Father contends that the juvenile court erred because father “established both a change in circumstances and a benefit to the minors.” He asserts that his circumstances were “profoundly different” at the time of the section 388 hearing than they were in 2017, when the juvenile court case was initiated. In 2017, father “was suffering from some mental health difficulty” and “allegedly threatened the safety of himself, his wife and children.” Father asserts that by October 2018, father had completed parenting classes, he completed a significant portion of the domestic violence course, he regularly visited the children with no major issues, and he had been in therapy and making progress for a year. Father also argues that because he and mother were no longer in a relationship, “the situation which gave rise to the domestic troubles” in 2017 “no longer existed.” In addition, father asserts, “While he did threaten to kill himself and his family in fall 2017, there were no indicators that these errant thoughts were present in October 2018.”

Partial compliance with a case plan, “though commendable, is not a substantial change of circumstances.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) The allegations in the substantiated petition stated that father has mental and emotional problems that rendered him incapable of providing regular care and supervision to the children and placed the children at risk of harm. The evidence showed that father’s emotional problems were not in check. Father’s emails to DCFS

and his testimony at the hearing showed that he had not accepted his role in bringing this case to the attention of DCFS. Focusing on the water/tea pouring incident, throughout the case, father alternately accused mother of lying and stated that he was simply reacting to mother's outburst and trying to cool her down. Father also attributed his section 5150 hold to the water/tea pouring incident, ignoring his threat to kill the family. Father never took responsibility for stating that he wanted to kill the family with a gun, and he never addressed mother's statement that father repeatedly told her to throw herself out the living room window. Moreover, it appeared that these statements may have affected five-year-old A., who was heard stating that he wanted to die. A.'s therapist opined that A. might have been repeating statements he had heard. Although father showed some improvement and had completed part of the case plan, he did not show a change in circumstances warranting a change in the visitation order. (See, e.g., *In re S.R.* (2009) 173 Cal.App.4th 864, 870 ["Not every change in circumstance can justify modification of a prior order. The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate."].)

Father contends that he also demonstrated that "unmonitored visits were in the best interests of the children." He points out that his visits with the children went well, and they enjoyed seeing him. Noting that DCFS criticized father for "having a hard time following the Department's directions at visits," father argued that "this is an entirely unfair characterization of the facts, as the record shows that [A.] was

not an entirely normal child” due to his acting out and suspected autism.⁵

The evidence does not support a finding that it would be in the children’s best interests to have unmonitored visitation with father. Although the monitored visits with father generally went well, father presented no evidence that the children’s best interests would be served if no monitor was present at the visits. To the contrary, evidence showed that at times, father had trouble redirecting or disciplining the children without assistance. We therefore find that the trial court did not abuse its discretion by denying father’s section 388 petition.

B. Termination of jurisdiction

Father contends that the juvenile court should have continued the case rather than terminating jurisdiction, to allow father “time to complete the elements of his service plan.” This would have allowed father to be “free from the odious visitation order” that included a “burdensome ‘supervision’ requirement.” We review a juvenile court’s decision to terminate jurisdiction for abuse of discretion, and do not disturb such a ruling unless the court’s determination was arbitrary, capricious, or patently absurd. (*In re C.W.* (2019) 33 Cal.App.5th 835, 863.)

When a child remains in the custody of a parent, at a review hearing “[t]he court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is

⁵ Although an initial assessment of A. suggested autistic traits, later reports stated that A. was developing normally and was not receiving services relating to autism.

withdrawn.” (§ 364, subd. (c).) Thus, a juvenile court has discretion to terminate its jurisdiction “when it finds services and continued court supervision are not necessary to protect the child.” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 208.)

Father has not established that the trial court abused its discretion by terminating jurisdiction. The evidence supported the court’s finding that continued court supervision was not necessary to protect the children. Instead, the evidence showed that the children were thriving in mother’s care and enjoying their monitored visits with father. Father showed little progress in addressing his emotional issues despite the parenting classes, individual counseling, and domestic violence course. The court found the opinion of father’s therapist regarding father’s progress to be unreliable.

“Section 364, subdivision (c) establishes a statutory presumption in favor of terminating jurisdiction and returning the child to the parents’ care without further court supervision.” (*In re Armando L.* (2016) 1 Cal.App.5th 606, 615.) That presumption was not overcome here, and therefore the trial court did not abuse its discretion in terminating jurisdiction.

C. Legal custody

When the juvenile court terminates jurisdiction in a dependency case, it may issue an order for custody and visitation. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203.) This so-called “exit order” is transferred to the family court and remains in effect until modified or terminated by the family law court. (§ 362.4; *Chantal S.*, 13 Cal.4th at p. 203; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) “[T]he court’s power under section 362.4 require[s] it to make an informed decision concerning the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th

961, 972; see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 [in fashioning custody and visitation orders “in any dependency case, the court’s focus and primary consideration must always be the best interests of the child.”].) We review the juvenile court’s exit order for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Father contends that the trial court abused its discretion by awarding “sole custody” to mother; it appears he is challenging only the award of sole *legal* custody to mother.⁶ Father argues that “[a]warding mother sole legal custody . . . unnecessarily and arbitrarily removed [father’s] input from the nurture, education and development of his children.” He also asserts that the record does not show that father was incapable of managing the children’s health, education, and welfare.

Legal custody involves “the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code, § 3006.) As DCFS points out, “joint legal custody requires cooperation.” Here, father made clear that he was not cooperative regarding the health and welfare of the children. For example, when A. had a rash, the doctor recommended observation but referred A. to a dermatologist at father’s insistence. Father contacted the social worker multiple times about attending the dermatologist appointment despite being told he could not go without a monitor present, then accused the physician’s assistant of malpractice for diagnosing A.’s rash. Moreover, it was apparent that father could not get along with the social workers who were trying to manage the

⁶ Father does not include any argument that he was entitled to physical custody of the children, or any authorities in support of such an argument.

case, he blamed other people for making things difficult for him, he complained about not being listened to when he did not get his way, and continued to insist that everyone meet his demands. Father's actions throughout the case demonstrated that he was not capable of taking on the responsibility of working cooperatively with mother and the other adults in the children's lives to manage the children's health, education, and welfare. The trial court did not abuse its discretion in awarding sole legal custody to mother.

DISPOSITION

Affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.