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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re AIMEE R., a Person Coming
Under the Juvenile Court Law.

B276760

(Los Angeles County
Super. Ct. No. DK12656)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

LILIANA P.,

Defendant and Appellant.

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

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Senior Associate County Counsel for Plaintiff and Respondent.

Liliana P. (mother) appeals from a May 2, 2016, custody order regarding her child, Aimee R. Mother argues the juvenile court erred in granting Jose C. (father) sole physical custody of the child. Mother points to the fact that the juvenile court awarded her physical custody of her other two children (fathered by different men), and contends she should have similarly been granted joint physical custody of Aimee.

We affirm the judgment. It was reasonable for the juvenile court to determine the best interest of the child required sole physical custody of Aimee be awarded to father because the record establishes (a) prior to the issuance of the custody order, Aimee thrived under father's temporary care, and (b) father offered a more stable environment than mother.

BACKGROUND

The Section 300 Petition and Detention

On July 25, 2015, the Los Angeles County Department of Children and Family Services (the department) received a referral concerning a domestic abuse incident that occurred between mother and her boyfriend Juan R. According to the reporting party, Juan punched mother in the face with a closed

fist and bruised mother's arm. The physical assault occurred in the presence of two-year-old Aimee and her half-sister, three-year-old Sophia P. Aimee's one-month-old half-brother, Jordan R., was asleep inside the residence.¹ Juan fled the scene after mother called the police. Mother had an active restraining order against Juan.

A social worker interviewed mother at her residence. Mother claimed she and Juan were no longer together. Mother stated Juan came to her house and saw her talking to friends. Juan yelled at mother and hit her several times with a closed fist. Juan was very jealous as he did not want her to talk to other men. Mother had been assaulted by Juan on other occasions, but mother did not call the police because she did not want "any problems."

The social worker also interviewed mother's family. The maternal grandfather reported Juan had broken doors and windows of the family home. He indicated the family could not control Juan.

Maternal aunt, Aide P., expressed concern for the children while in mother's care. According to Aide, Juan visited mother and Jordan on a daily basis. Juan was volatile and fought with mother, often in the presence of the children. Family members called the police several times but maternal aunt believed law enforcement stopped responding because mother refused to testify against Juan.

Another maternal aunt, Rosa P., stated Juan hit mother often. She described an incident where Juan entered the family

¹ According to the detention report, mother stated the three children were fathered by different men; Juan R. was the father of Jordan, Jose B. was Sophia's father.

home by breaking windows and doors. He attempted to take the children but the maternal grandparents were able to stop him from doing so. Rosa believed Juan took medication for a mental illness and used illicit drugs.

Juan and mother had a history with the department. In October 2014, a caller reported Juan punched mother twice in the face with a closed fist in the presence of a child. Juan was arrested for domestic violence. Mother and Juan were unwilling to provide information about the incident. The department's case was "closed as inconclusive," with the notation that Juan's whereabouts were unknown and mother had an active restraining order.

A second domestic violence incident occurred in November 2014. According to law enforcement, Juan pushed mother to the ground causing abrasions to her right arm. Juan was arrested for domestic violence. The second case was closed by the department because mother was not in a relationship with Juan and had the support of her family. The social worker again noted Juan's whereabouts were unknown and there existed an active restraining order.

On July 29, 2015, the department filed a Welfare and Institutions Code² section 300 petition on behalf of Aimee, Sophia and Jordan. The petition alleged, based on Juan's systematic domestic violence and mother's inability to protect her children, the children were at risk of suffering serious physical harm. (See § 300, subds. (a) & (b).)

At the detention hearing, Aimee's father, Jose C., was found to be Aimee's presumed father. Aimee was detained from

² Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

her parents. Both parents were granted visits with Aimee—mother was allowed only monitored visits while father was permitted to have unmonitored visits during the daytime.

Jurisdiction and Disposition Report and Hearing

The August 26, 2015, jurisdiction and disposition report indicated the children were placed in foster homes. Jordan's foster mother reported that, on two occasions, Juan called her and demanded to meet with Jordan. During the first conversation, Juan stated mother was sitting next to him and that he was present with mother when the foster mother previously called mother. At some point in the second conversation, the foster mother heard a female voice in the background that sounded like mother's voice.

A social worker visited Aimee at her foster home on August 11, 2015. The child was non-verbal and cried almost the entire time. Aimee clung to her foster mother and did not like being alone. The foster mother reported the child was scared of men. When Aimee was first placed at her home, the child could not tolerate the sight of the foster mother's husband. Since then, Aimee had warmed up to the foster mother's husband and was "getting used to" the foster mother's son-in-law.

Mother, father, and maternal grandmother were interviewed regarding the allegations in the section 300 petition. Mother reported she knew Juan since elementary school and had been in a romantic relationship with him for two years. Prior to her relationship with Juan, mother had a brief three-month relationship with father. While pregnant with Aimee, mother dated Juan. Mother attempted to end her relationship with Juan

several times but Juan's mother would call and convince mother to give him another chance. On December 2, 2014, Juan was charged with willful cruelty to a child and spousal battery—he was convicted of the latter offense.

Mother explained she and Juan argued on July 25, 2015, outside the maternal grandmother's house. Juan hit mother as she covered herself with her hands. Mother stated Juan broke the back door but did not break any windows. Mother did not know who called the police but Juan had left by the time officers arrived at the residence. Mother reported Juan hit her another time, outside of a Payless shoe store. Mother stated, "I would tell him that we could not be fighting in the outside, but he didn't care."

Juan made attempts to contact mother despite the existence of the restraining order. On one occasion, Juan was across the street from the maternal grandmother's house. When mother stepped outside, Juan said he wanted to speak with mother. Mother refused to do so. In response, Juan told mother she would "never" get her children back because of what he had told a social worker. The following day, she saw him outside a "98 cent[s] store." Mother was afraid of Juan because "he will do anything in front of people."

Mother stated father, Jose C., could take care of Aimee. Father was already caring for the child on the weekends he did not work. Mother did not allow Aimee to stay overnight with father because he lived with two people she did not know.

Father indicated he was unaware of the domestic violence between Juan and mother. When he picked up Aimee on the weekends, he did not see any bruises on mother. Father stated he was able to take care of Aimee but no one had called him to

ask him about caring for the child. Father was planning to move in with his sister, who agreed to help him with childcare.

The maternal grandmother was aware of Juan's physical abuse of mother. The maternal grandmother reported the July 25, 2015, domestic violence to the police. On other occasions of Juan's violence, family members called the police and filed police reports but law enforcement was not able to locate Juan. She said Juan did not physically abuse the children or other family members. The maternal grandmother characterized Jose C. as a "good father" who visited Aimee on the weekends.

At the August 26, 2015 jurisdiction and disposition hearing, mother filed a waiver of rights and submitted to the petition based on the social worker's report. The juvenile court sustained the counts alleging Juan's domestic violence against mother, and mother's inability to protect the children.

Aimee was placed in father's custody under the department's supervision. Father was ordered to complete random or on-demand drug testing. If any test was missed or "dirty," or "if levels increase[d]," he was to participate in a full drug rehabilitation program with random testing.

Mother was granted enhancement services. She was ordered to attend counseling for domestic abuse, a domestic violence program, and parenting classes. Mother was granted monitored visits with her children with the department having discretion to liberalize the visits.

Review Reports

The March 21, 2016, status review report indicated mother had completed six domestic violence classes with Project Impact.

However, Project Impact transferred mother to Shields for Families because she attended classes with Juan. According to a facilitator at Shields for Families, mother completed 9 of the 12 required classes in the domestic violence for victims course.

Mother provided the social worker with a certificate of completion for parenting education classes. On March 10, 2016, the department liberalized visitation by allowing mother to have unmonitored visits with her children. Mother indicated she had moved so Juan could not find her.

Aimee's placement with father was going well. The child was able to say six-word sentences in Spanish. Aimee was "consistently happy, smiling, and giggling when [the social worker] visit[ed]" Father was complying with the court order for drug testing. He took Aimee to medical and dental appointments, and made the child available for visits with the social worker. The department recommended the juvenile court terminate jurisdiction of Aimee with a family law order giving joint legal custody to the parents, and sole physical custody to father with unmonitored visits for mother.

The April 21, 2016, interim review report stated mother was attending her domestic violence program. Mother wanted nothing to do with Juan now that she was six-months pregnant by another man. Mother lived with her parents and brother in a two-bedroom apartment. The social worker assessed the apartment and found no safety concerns.

Contested Hearing

On April 21, 2016, the juvenile court held a contested hearing pursuant to section 366.21, subdivision (e) and section

364. Mother requested joint legal and physical custody of Aimee should the juvenile court terminate jurisdiction over the child. Father was supportive of mother's relationship with Aimee. But he was concerned about mother's stability given her new relationship, pregnancy, and current housing. He pointed out that, if the juvenile court returned all children to mother, it would place three children (ages four and younger) in her care, with another baby on the way. Father argued he could provide Aimee with a more stable home environment than mother.

The juvenile court terminated jurisdiction over Aimee, giving joint legal custody to the parents. Father was granted sole physical custody, with mother having unmonitored day and overnight visits. The court stayed the orders pending receipt of the custody order.

The juvenile court returned Sophia and Jordan to mother's custody over the department's objection. The juvenile court made the following findings: mother was in compliance with the case plan; the department "[had] not articulated any risk"; and Juan "[did] not appear to be in the picture."

After the custody order was filed on May 2, 2016, the juvenile court terminated jurisdiction over Aimee. A visitation order was included as an attachment to the custody order. The visitation order specified mother's unmonitored day and overnight visits with Aimee would be "at least three (3) times per week for at least three (3) hours or as otherwise arranged by the parents." Mother filed a timely notice of appeal.

DISCUSSION

“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 Chantal S.* (1996) 13 Cal.4th 196, 203, quoting *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) In a dependency case, the juvenile court’s custody and visitation orders focus on the best interest of the child. (*Chantal S., supra*, 13 Cal.4th at p. 206.)

We review the custody order for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In other words, “when a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.] . . . “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. 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 trial court.’ [Citations.]” (*Id.* at pp. 318-319.)

The juvenile court reasonably determined Aimee’s best interest was served by granting father sole physical custody. When a social worker visited Aimee at her foster home, the child was withdrawn and sad. About two weeks later, she was placed with father and her spirits soon changed. The social worker visited Aimee while she was under father’s care and, on each

occasion, found Aimee was cheerful and sometimes even “giggling.” Aimee was content and thriving under father’s care.

In addition, the record supports a finding that father would provide Aimee with more stability. Mother had two young children returned to her care while six-months pregnant. If mother had joint physical custody of Aimee, mother would be sharing a two-bedroom apartment with her brother and parents, while caring for three young children and a newborn baby (once she gives birth). On the other hand, father had a plan to move in with someone who would help him with childcare (his sister) and he had already demonstrated a certain level of parental responsibility by taking Aimee to medical and dental appointments, and making her available for visits with the social worker.

In her opening brief, mother appears to argue it was nonsensical for the juvenile court to award her custody of Sophia and Jordan and unmonitored overnight visits with Aimee, yet reject her request for joint physical custody of Aimee. Mother states, “Obviously, the court did not see a risk to Aimee being in mother’s custody during those visits.”

Mother’s “parity of reasoning” analysis is flawed because it fails to consider the best interest of the child. “[A] finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child’s best interest for a variety of reasons. [Citation.] By the same token, a finding that the parent from whom custody was removed no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not

necessarily determinative of, the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)³

In her reply brief, mother acknowledges the best interest of the child must be considered when making a custody determination. Mother argues joint physical custody is in Aimee’s best interest because it would allow the child to have a continuing relationship with her half-siblings. But the record does not give the impression that father’s physical custody of Aimee would sever the child’s relationship with Sophia and Jordan. To the contrary, father has a history of nurturing Aimee’s relationship with her half-siblings—while Sophia and Jordan were in foster care, father took Aimee to weekly visits with her half-siblings. There is nothing in the record to suggest father (a person described by the maternal grandmother as a “good father”) would change course and deprive Aimee of an enduring relationship with her half-siblings simply because he

³ Even if we were to apply the rule proffered by mother, the result would not favor her. The key component distinguishing the children is the capability of their respective fathers to accommodate the best interests of the children. Jordan’s father (Juan R.) was a volatile individual who broke doors and windows and was convicted of spousal abuse in 2014. Despite the existence of a restraining order shielding mother and Aimee from his contact, the record suggests he periodically stalked mother. There was a warrant out for Juan’s arrest, and he could not be located. Sophia’s father (Jose B.) had a relationship with mother that spanned approximately one year and ended when he was deported to Mexico. The jurisdiction and disposition report indicated Jose B.’s whereabouts was unknown and that mother had “no[] current contact” with Jose. B. Father was unlike Juan R. and Jose B. He was present, cared for Aimee, and had no criminal record.

was awarded sole physical custody or the half-siblings were under mother's care. Also, the visitation order does not prohibit mother from having Sophia and Jordan join her when she visits Aimee.

The juvenile court did not act arbitrarily or capriciously when it ordered sole physical custody of Aimee to father. There was no abuse of discretion.

DISPOSITION

The May 2, 2016, custody order is affirmed.

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KUMAR, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.