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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re KAYLA W., a Person Coming Under the Juvenile Court Law.	B287320
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Y.Q. and J.W., Objectors and Appellants.	Los Angeles County Super. Ct. No. CK85916

APPEALS from an order of the Superior Court of
Los Angeles County, Robert S. Draper, Judge. Reversed and
remanded with directions.

Patti L. Dikes, under appointment by the Court of Appeal,
for Objector and Appellant Mother.

Andre F. Toscano, under appointment by the Court of
Appeal, for Objector and Appellant Father.

No appearance for Respondent.

INTRODUCTION

This is the second appeal involving the same family. In the first appeal, we reversed the juvenile court's disposition orders after the court excluded Y.Q., Kayla W.'s mother (mother), from the child's disposition hearing because mother had placed the child in a voluntary legal guardianship with the child's grandparents before the dependency proceedings were initiated. (See *In re Kayla W.* (2017) 16 Cal.App.5th 409 (*Kayla I.*)) We remanded the matter for the court to conduct a new disposition hearing at which mother could appear with appointed counsel.

At the new disposition hearing, mother and Kayla's father, J.W. (father), were represented by counsel. The court terminated dependency jurisdiction and released Kayla to her guardians' custody. Although it had previously awarded mother and father monitored visitation with Kayla, the court refused to address their requests for continued visitation when it terminated dependency jurisdiction: "The court does not make any visitation orders as to parents." Mother and father appeal. We conclude the court abused its discretion by affirmatively refusing to address the parents' requests for visitation with their child. We therefore reverse the court's order terminating dependency jurisdiction and remand for further proceedings in the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

1. The Probate Guardianship and the Initiation of Kayla's Dependency Proceedings

Kayla was born in November 2014. In August 2015, when Kayla was nine months old, her parents petitioned the probate

court to appoint Maria, Kayla's maternal grandmother, and Kevin, Maria's husband, to be the child's legal guardians. In November 2015, the probate court granted the guardianship petition.

In March 2016, Kevin physically assaulted Maria. The criminal court issued a two-year protective order prohibiting Kevin from having any contact with Maria and Kayla.

In April 2016, the Los Angeles County Department of Children and Family Services (Department) filed a dependency petition under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b), alleging that Maria and Kevin had endangered Kayla by engaging in domestic violence (a-1 and b-1 allegations). The Department named mother as one of Kayla's parents in the petition, but it did not allege she engaged in any wrongful conduct with respect to the child.

In June 2016, the Department filed a first amended petition, adding allegations that Maria and Kevin failed to protect Kayla by continuing to have contact with each other in violation of Kevin's criminal protective order (b-2 allegation) and by maintaining an unsafe and unsanitary home environment for Kayla (b-3 allegation). In July 2016, Maria and Kevin entered pleas of no contest to amended versions of the a-1, b-2, and b-3 allegations in the first amended petition. The court continued the disposition hearing to August 2016.

On August 2, 2016, mother obtained from the probate court an order terminating Maria and Kevin's legal guardianship over Kayla. The next day, the Department interviewed Maria. She

¹ All undesignated statutory references are to the Welfare and Institutions Code.

requested that her new address remain confidential because she had received threatening phone calls from mother and father.

2. The Disposition Hearing

On August 5, 2016, the date of the disposition hearing, mother appeared before the juvenile court and provided the judge with a copy of the August 2, 2016 probate court order terminating Maria and Kevin's legal guardianship over Kayla. The court told mother she did not have standing to appear as a party in Kayla's dependency case, and that if she wanted to terminate Maria and Kevin's legal guardianship, she would need to file the appropriate motion in the juvenile court. The court denied mother's requests for appointed counsel and visits with Kayla and excused mother from the disposition hearing.

After mother left the courtroom, the court conducted the disposition hearing. The court declared Kayla a dependent of the court, removed her from Kevin's custody, and released her to Maria's custody. The court ordered the Department to provide Maria and Kevin family maintenance services.

3. The First Appeal

Mother appealed from the August 5, 2016 disposition order, arguing the court erred in finding she lacked standing to participate in Kayla's dependency proceedings and denying her requests for appointed counsel and visits with the child. (See *Kayla I, supra*, 16 Cal.App.5th at p. 416.) We reversed, concluding that although mother had placed Kayla in a legal guardianship, her parental rights had not been terminated and, as a noncustodial parent, she was entitled to appear at all of Kayla's juvenile court hearings with appointed counsel. (*Id.* at pp. 416–417.) Because mother was not allowed to appear at the

disposition hearing and make a request for visitation or custody with the assistance of appointed counsel, we concluded she was prejudiced by the court's decision to exclude her from the disposition hearing. (*Id.* at pp. 417–419.) We remanded for the court to conduct a new disposition hearing at which mother could appear with appointed counsel. (*Id.* at p. 419.)

While mother's appeal in *Kayla I* was pending, mother did not appear at any of Kayla's hearings and no one arranged for the child to visit with mother or father. During that period, the juvenile court allowed Kevin to move back into Maria's home and Maria obtained a restraining order against mother. Mother had continued to threaten Maria, and father had made harassing phone calls from prison. According to Maria, mother and father are members of a criminal street gang and had used drugs and consumed alcohol in Kayla's presence in the past. Maria was fearful that mother would retaliate against her for maintaining custody of Kayla. Kevin also reported that mother "continue[s] to harass him" and that he has changed his phone number to avoid conflict with her.

Kayla had become strongly bonded with Maria and Kevin, who wanted to adopt the child. Maria and Kevin were "gradually stabiliz[ing]" and participating in services, and they had accepted responsibility for their roles in Kayla coming to the court's attention. The guardians did not want mother and father to be allowed to visit the child due to the guardians' "fear of violence and retaliation since the biological parents have a history of violence, are part of a street gang and have made threats to the [l]egal [g]uardians."

4. Post-Appeal Events

On August 2, 2017, after we issued the remittitur in mother's appeal, the court held a review hearing. Although mother did not appear at the hearing, she was appointed counsel. The court scheduled a disposition hearing for late October 2017 and ordered the Department to evaluate whether mother should be allowed to visit Kayla.

The Department interviewed Maria in September 2017. Maria did not think it would be in Kayla's best interests to allow mother to visit the child. Maria was concerned that visits would not benefit Kayla because the child had not seen mother for a long time, and Maria doubted whether mother would behave appropriately around the child. Maria told the Department "she just wants to protect the child from mother's violent lifestyle and aggressive attitude." Maria stated she would comply with any visitation orders, however, as long as she believed the child would be safe during the visits. Although the Department was unable to interview mother, it recommended she receive monitored visits in a neutral setting.

5. The New Disposition Hearing

On October 25, 2017, the court commenced a new disposition hearing. Father appeared for the first time in Kayla's dependency proceedings and was appointed counsel;² mother and the legal guardians also appeared with counsel. The court found father was Kayla's paternal father.

² Father had been incarcerated since the time Kayla's dependency proceedings were initiated in April 2016.

Mother and father requested the court award them visitation with Kayla, and the Department recommended the court terminate dependency jurisdiction because Kayla no longer faced a risk of harm in her guardians' custody. When the court inquired about the parents' visitation rights under the November 2015 probate court order appointing Maria and Kevin as Kayla's legal guardians, counsel for mother noted that the order did not include any provision addressing visitation. The court directed the Department to arrange monitored visitation for mother, father, and Kayla's sibling one day a week for two hours per visit. The court continued the disposition hearing to allow father's counsel to review the case file.

The court resumed the disposition hearing on December 14, 2017. Mother, father, and the legal guardians appeared with counsel. The Department's supplemental report noted that mother and father had visited Kayla five times since the last hearing. The parents acted appropriately around, and were affectionate toward, Kayla, and the child responded well to the parents. The Department recommended that the court terminate dependency jurisdiction, place Kayla in the legal guardians' custody, and award mother and father monitored visitation with the child.

The court again inquired about mother's and father's visitation rights under the probate court order appointing Maria and Kevin as Kayla's legal guardians. Father's counsel noted that the order did not include any provision addressing the parents' visitation rights. Father intended to go the probate court once Kayla's dependency proceedings were terminated to try to dissolve Maria's and Kevin's legal guardianship over the child. Nevertheless, father asked the juvenile court for an order

awarding him unmonitored visits with Kayla because he was uncertain how long it would take for the probate court to schedule a hearing in Kayla's case. The court responded that it appeared the probate court addressed the issue of the parents' visitation rights by not issuing an order for visitation. Father's counsel replied there was nothing in the probate court order confirming that it had addressed or even considered the parents' visitation rights.

Mother joined in father's request for visitation. Since the probate court order did not include any provision addressing the parents' visitation rights, mother's counsel asked the juvenile court to award mother visitation because it might take months for the probate court to rule on any request for visitation by the parents.

Kevin opposed the parents' requests for visitation, citing the guardians' concerns about the child's safety around mother. In the event the court decided to award mother and father visitation, Kevin requested that the visits be monitored by someone other than Maria.

Maria joined in the Department's request to terminate jurisdiction, and did not oppose mother's and father's requests for visitation. Although Maria was "not thrilled with the idea of Kayla visiting with her parents, she [understood] that visitation may be necessary at this time." Maria requested that any visits between Kayla and her parents be monitored.

Towards the end of the hearing, the court ordered Kayla to remain in Maria's and Kevin's custody and terminated dependency jurisdiction over the child without issuing an order addressing mother's and father's visitation rights. The court explained it did not issue a visitation order because, once it

terminated dependency jurisdiction, the parties would “go back to where they were before. ... [And] the probate court [would be] appropriate for any modifications or addition[s] to the probate legal guardians.”

Father’s counsel pointed out that if the court were to terminate jurisdiction without addressing the parents’ visitation rights, the parents would no longer be able to visit Kayla even though the court had awarded them monitored visitation at the October 25, 2017 hearing. The court responded, “There was no visitation before the petition [was] filed[;] that would be the same.” When father’s counsel reminded the court it was “not even clear that that’s the case,” the court responded, “if there was visitation placed under the probate legal guardian [order] that will continue to be in effect. We have no further jurisdiction. The probate court has jurisdiction. So that will be the court’s order.” Father’s counsel then asked the court, “so the court is ordering no visits for [the] parents?” The court responded, “I think you don’t understand me. I’m not ordering anything. It’s now a matter for the probate court.” The court then adjourned the hearing.

Mother and father timely appealed from the court’s order terminating dependency jurisdiction.

DISCUSSION

Mother and father contend the juvenile court erred by refusing to issue an exit order awarding them visitation with Kayla when it terminated dependency jurisdiction. As we explain below, the court abused its discretion when it refused to address the parents’ requests for visitation with their child.

Family preservation is the first priority when dependency proceedings are initiated. An essential component of family preservation is maintaining regular visitation between a

dependent child and her parents. To this end, the juvenile court “has the power and responsibility to regulate visitation between dependent children and their parents.” (*In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476 (*Donnovan J.*.) The juvenile court is therefore required to define the parents’ rights to visitation. (*Ibid.*)

When a juvenile court terminates dependency jurisdiction, it has the authority to issue orders concerning custody and visitation—commonly known as “exit” orders—that will remain in effect after dependency jurisdiction is terminated. (§ 362.4, subd. (a); *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) In deciding whether to grant or deny a parent visitation via an exit order, the court must act in the child’s best interests. (*In re John W.* (1996) 41 Cal.App.4th 961, 973 (*John W.*.) The court is not constrained by any preferences or presumptions, but rather it must look to the totality of circumstances to determine what type of order would be in the child’s best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

We review a juvenile court’s order terminating dependency jurisdiction and making an exit order under section 362.4 for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300–301.) We may not disturb such an order unless the juvenile court “ “ ‘exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’ ” ” (*Ibid.*) An error of law or a refusal to exercise discretion conferred by law may constitute an abuse of discretion. (*In re T.C.* (2009) 173 Cal.App.4th 837, 843; *In re L.A.* (2009) 180 Cal.App.4th 413, 428 (*L.A.*.)

Here, the record shows the court believed it could not make a visitation order once it terminated dependency jurisdiction. For example, toward the beginning of the disposition hearing, the court stated it believed the probate court had denied mother and father visitation with Kayla. However, after father's counsel reminded the court that the probate court's order was silent on the issue of visitation, the court told the parties that mother and father would be able to continue visiting Kayla "if there was visitation placed under the probate legal guardian [order]." When father's counsel asked the court to clarify whether it was ordering no visitation for the parents, the court stated it was "not ordering anything" because it lacked jurisdiction to issue a visitation order and it would be up to the probate court to determine whether mother and father could visit Kayla in the future.

As noted above, a juvenile court is required to determine what rights, if any, parents have to visit their child, even after it decides to terminate dependency jurisdiction. (See *Donnovan J.*, *supra*, 58 Cal.App.4th at p. 1476 [to satisfy its responsibility to regulate visitation between dependent children and their parents, "a [juvenile] court must 'define the rights of the parties to visitation'"]; see also *In re Luke L.* (1996) 44 Cal.App.4th 670, 679 ["Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt visits even after the end of the reunification period."]) The court in this case acted under the erroneous belief that it lacked the authority to issue a visitation order once it decided to terminate dependency jurisdiction. (See § 362.4.) The court's refusal to issue a visitation order based on this mistaken belief is an abuse of discretion. (See *L.A.*, *supra*, 180 Cal.App.4th at p. 428; [failure to exercise discretion conferred and compelled by law requires reversal];

Olsen v. Harbison (2005) 134 Cal.App.4th 278, 285 [abuse of discretion when trial court acted “on a mistaken view about the scope of its discretion”].)

The record also shows that the court failed to exercise informed discretion before refusing to address the parents’ requests for visitation. As our summary of the December 14, 2017 disposition hearing shows, the juvenile court did not know for sure whether the probate court had previously awarded mother and father visitation with Kayla. And, since it did not address visitation in its exit order, the juvenile court did not know whether mother and father would be able to continue visiting with Kayla after it terminated dependency jurisdiction. In fact, mother and father stated that the probate court had not issued any order addressing visitation when it appointed Maria and Kevin as the child’s legal guardians.³ For that reason, mother and father asked the juvenile court to award them visitation with Kayla to ensure their visits would continue pending future proceedings in the probate court. Otherwise, the parents pointed out, they would be left with no order expressly allowing them to visit their child once dependency jurisdiction was terminated.

Under these circumstances, we must reverse the court’s order terminating dependency jurisdiction and remand the matter for a new disposition hearing to allow the juvenile court to

³ We have reviewed the November 2015 probate court order appointing Maria and Kevin to be Kayla’s legal guardians that is included in the record on appeal. It does not contain any provision awarding or denying the parents visitation with Kayla.

address the parents' visitation requests.⁴ In remanding the matter for a new disposition hearing, we reject mother's and father's requests to direct the juvenile court to issue an order awarding them visitation with Kayla. The decision whether to grant or deny visitation is a fact-specific inquiry focused on the child's best interests. (See *John W.*, *supra*, 41 Cal.App.4th at p. 973.) The juvenile court is, therefore, best suited to determine in the first instance whether mother and father should be allowed to visit Kayla.

DISPOSITION

The December 14, 2017 order terminating dependency jurisdiction is reversed. The matter is remanded to the juvenile court to allow it to address mother's and father's visitation requests.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

⁴ In light of this conclusion, we need not address the other arguments mother and father raise in the opening briefs challenging the court's decision not to issue an order addressing visitation.

EGERTON, J.