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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.D., a Person Coming Under  
the Juvenile Court Law.

2d Juv. No. B286372  
(Super. Ct. No. J070501)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.D.,

Defendant and Appellant.

D.D. (Father) appeals an order of the juvenile court dismissing a dependency concerning his child S.D. and awarding primary physical custody to the child's mother (Mother). (Welf. & Inst. Code, § 362.4, subd. (a).)<sup>1</sup> We affirm.

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

### *FACTUAL AND PROCEDURAL HISTORY*

When S.D. was born, Mother and Father were in the process of divorce. On May 13, 2015, Father met S.D. for the first time at an arranged meeting at the courthouse. Thereafter, Mother accompanied Father to his motel room to retrieve her belongings. They discussed Father's visitation with S.D. and Mother suggested that Father participate in anger management counseling. This suggestion enraged Father, who then struck and choked Mother. They left the motel room and in the parking lot engaged in a physical altercation. To protect then-infant S.D., Mother passed the child to a bystander. Father then struck Mother twice with his vehicle as he drove away. Subsequently, Father was arrested for domestic violence and child endangerment, and Mother obtained a restraining order against him.

Following a contested detention hearing, the juvenile court ordered that S.D. be detained. It placed custody and care of S.D. with the Ventura County Human Services Agency (HSA). S.D. was placed in foster care and later with her maternal grandmother. On July 9, 2015, HSA filed a dependency petition alleging that Mother and Father have engaged in domestic violence, Father has abused illegal substances, and Mother has not benefitted from services regarding dependency proceedings involving S.D.'s half-siblings. (§ 300, subds. (b), (g), (j).) The court later sustained the allegations of the petition and ordered that Mother and Father receive family reunification services, including domestic violence and anger management counseling.

Meanwhile, Mother moved to Sacramento where she has support from family members, including S.D.'s maternal grandmother. By the time of the 18-month review hearing, Mother and Father continued to receive family reunification

services and were sharing equal custody of S.D. At the review hearing, the juvenile court judge expressed concern that an equal custody arrangement was not fair to S.D.: "[A]n exit order that gives 50/50 custody when one parent lives in Sacramento, one [in Ventura]" -- "it just doesn't seem to be right for this [child]."

HSA then consulted with a child custody expert, Doctor Robert Beilin, who reviewed S.D.'s case and concluded that "to support the child's best interests, one of the parents must become the primary caregiver with the other parent supporting a co-parenting role as secondary with ongoing frequent visitation." Based upon Beilin's opinion, HSA recommended that Mother serve as the primary parent and Father serve as the supporting parent with an 80/20 custody arrangement. In response, Father requested a contested hearing to challenge this recommendation.

On September 28, 2017, the juvenile court held a contested review hearing regarding custody of S.D. The court received evidence of an HSA memorandum stating that Mother was successfully participating in services but that Father had ceased participation in counseling and had not visited S.D. since June 2017. The court also received testimony from Mother, Father, and the HSA social worker, and took the matter under submission.

On October 3, 2017, the juvenile court issued a written ruling stating that continued supervision of the family was unnecessary and that the dependency proceedings would be dismissed. The court also stated that there is "chronic conflict" between S.D.'s parents and that the distance between their homes rendered crafting a custody order difficult: "[S.D.] should not be exposed to their conflict and she should not bear the burden of excessive travel time." The court noted that Father had not visited S.D. in many weeks. The court then ordered that

the parties would jointly share legal and physical custody of S.D., but that Mother had physical custody three weeks out of four and that Father had physical custody one week out of four. The court also awarded Father two-to-four days' visitation with S.D. every month.

Father appeals and contends that the juvenile court abused its discretion by awarding primary physical custody of S.D. to Mother.

### *DISCUSSION*

Father argues that the child custody award was not in S.D.'s best interests. He points out that Mother had previous family reunification services involving dependencies for her other children and that she has a recent arrest for theft. Father adds that his visits with S.D. are loving, he is now remarried, and S.D. loves the stepmother.

On appeal, we review the juvenile court's decision to terminate dependency jurisdiction and issue a custody order pursuant to section 362.4, subdivision (a) for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 296, 318 [change of placement decisions generally reviewed for an abuse of discretion]; *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.) Pursuant to this legal standard, we may not reverse the court's order unless it is arbitrary or unreasonable. (*Ibid.*) "When applying the deferential abuse of discretion standard, "the trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious."" (*Maya L.*, at p. 102.)

When determining custody in a dependency proceeding, the juvenile court's "focus and primary consideration" must be "the best interests of the child." (*In re Nicholas H.* (2003) 112

Cal.App.4th 251, 268.) “Thus, for example, 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 interests for a variety of reasons.”

(*Ibid.*) The court must still decide which parent should receive custody of the child by considering the best interests of the child.

(*In re Maya L.*, *supra*, 232 Cal.App.4th 81, 102-103.)

Here the juvenile court based its custody decision on the best interests of S.D. The decision is supported by substantial evidence. Mother has a strong family network in Sacramento upon whom she relies for support and child care. Father is a truck driver who is sometimes absent from California. Father also abandoned individual counseling and had not visited S.D. for several months prior to the contested review hearing. The court’s order reflects that S.D. has a strong emotional bond with each parent but that “she should not bear the burden of excessive travel time.” Doctor Beilin opined to HSA that generally a child's best interests are satisfied with one parent as a primary caregiver with the other parent supporting a secondary parenting role. S.D. also had developed behavioral problems resulting from frequent long-distance custody exchanges. Based upon these factual circumstances, the court did not abuse its discretion by awarding Mother primary physical custody.

The order is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

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