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

In re GABRIELA G., et al.,
Persons Coming Under the
Juvenile Court Law.

B283134

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK08635

Plaintiff and Respondent,

v.

RAFAEL G.,

Defendant and Appellant.

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

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Though Rafael G. (father) had more than two years to comply with the juvenile court's order to undergo individual counseling to address his violent and controlling behavior, he never did. So, when the court terminated jurisdiction over Gabriela G., Lourdes G., and A.G., it awarded sole legal and physical custody to Maria G. (mother). Father was granted visitation. We are asked to decide whether the court abused its discretion by denying father joint legal custody of the children.¹ Because it was not arbitrary, capricious, or patently absurd for the court to conclude the children's interests would be best served by giving mother sole authority over decisions about their health, education, and welfare, we affirm.

BACKGROUND

The family in this case consists of mother, father, Rafael G. Jr. (born 1997), Gabriela (born 1999), Carlos G. (born 2003), Lourdes (born 2004), and A.G. (born 2009). This appeal concerns legal custody of Gabriela, Lourdes, and A.G.²

1. Initiation of Dependency Proceedings

On September 25, 2014, the Los Angeles Department of Children and Family Services (Department) received a report that five-year-old A.G. had been sexually abused by her 13-year-

¹ Father does not challenge the termination of dependency jurisdiction or the court's order granting sole physical custody to mother. Mother is not a party to this appeal.

² Though Gabriela turned 18 while these proceedings were pending, that fact does not affect our analysis.

old brother, Carlos, in the family home. During its investigation, the Department also learned that father had been beating the children, usually with a belt.

On December 9, 2014, the Department filed a dependency petition on behalf of Rafael Jr., Gabriela, Lourdes, and A.G. alleging serious physical harm, failure to protect, sexual abuse, and abuse of sibling. (Welf. & Inst. Code,³ § 300, subds. (a), (b)(1), (d), (j).) Because Carlos had been detained by the Probation Department, he was not included in the petition. At the initial detention hearing on December 9, 2014, the court detained Rafael, Lourdes, and A.G. from father and released them to mother's custody. At her request, Gabriela was detained from both parents. The court ordered that Carlos have no contact with A.G.

On December 30, 2014, the Department filed an ex parte application to remove Rafael Jr. from mother's care. Mother had informed the Department that Rafael Jr. was no longer welcome in her home, in part because he had impregnated his girlfriend and was setting a "bad example for his siblings at home." On December 30, 2014, the court granted the petition and detained Rafael Jr.

On January 26, 2015, the Department filed a report detailing the results of its continued investigation. Rafael Jr. told a social worker, "I've been getting hit by my dad since I was four years old. He hits me with belts, hangers, broomsticks and flycatchers. He has slapped me, pushed me and punched me. I've had marks, bruises and cuts from the abuse. I've had nosebleeds

³ All undesignated statutory references are to the Welfare and Institutions Code.

[and] bled from my back, legs, and mouth.” (Spelling corrected.) While mother had sometimes attempted to intervene, her efforts only escalated the situation. According to Rafael Jr., father would tell mother “if she didn’t like how he was disciplining us then she needed to keep us on check and raise better children.” During the most recent altercation—in which father repeatedly punched Rafael Jr. in the face—Rafael Jr. wanted mother to call the police. Instead, she called the church elders, who did not get involved.

Gabriela, Lourdes, and A.G. corroborated Rafael Jr.’s account and provided information about their own abuse. Gabriela had received beatings with belts, hangers, and her father’s hands for as long as she could remember. She was afraid to return home because even if father moved out, “he [was] technically still running that house and my mom.” Father “influence[d] every decision [mother made] and action” she took: he had “complete control over” her—and mother was “afraid of him.” The family “used to walk on eggshells around the house and [mother] used to get real nervous before he got home from work making sure everything was perfect around the house.” (Spelling corrected.)

Lourdes agreed. She told the social worker, “right now that my dad isn’t home, I feel safe and I don’t want him to come back. I’m very afraid of my dad. He can’t control himself and wants to hit us right away when he gets mad about something. He’s always mad, he’s always yelling and fighting with us.” Lourdes didn’t think that father could change or that mother could protect the children from him. Finally, A.G. confirmed that father hit all of his children and recounted the circumstances of her sexual abuse by Carlos.

In their conversations with social workers, both mother and father minimized the physical abuse. Mother explained that father “disciplined my children, he didn’t physically abuse[] them. There were no marks on them, there was no abuse. These kids are just saying all these things because they want freedom and want to do whatever they want outside the home. They were frustrated because my husband was trying to guide them in the right path.” Mother denied that father physically disciplined Lourdes or A.G. She could not decide whether she believed that Carlos had sexually abused A.G. Father admitting hitting Rafael Jr. with his hands and, occasionally, a belt but insisted Rafael Jr. was exaggerating the extent of the violence; father denied hitting the other children. Father was dubious of A.G.’s claims of sexual abuse because Carlos had denied it and A.G.’s story had changed over time.

At the jurisdictional hearing on April 7, 2015, the court sustained the allegations in the section 300 petition and found Carlos’s sexual abuse of A.G. and father’s physical abuse of all the children warranted dependency jurisdiction.⁴ The court then proceeded to the disposition hearing. The court declared the children dependents of the court, removed the children from both parents, and ordered family reunification services. Mother was ordered to participate in parenting education classes and sex abuse awareness counseling; she was also ordered to undergo individual counseling to address child protection and empowerment. Father was ordered to participate in sex abuse awareness counseling and a 52-week parenting education course;

⁴ On October 6, 2015, Rafael Jr. was designated a non-minor dependent.

he was ordered to undergo individual counseling to address physical abuse and child protection issues; and he was ordered to participate in conjoint counseling with Gabriela and Lourdes if recommended by their respective therapists. All non-conflicting prior court orders remained in effect.

2. Post-Disposition Events

While mother would go on to complete her case plan, father was less successful. At the six-month status review hearing on October 6, 2015, the court found father was not in compliance with his case plan. Father had not started parenting classes and had allowed Carlos to have contact with A.G. Such contact violated Carlos's probation conditions and the court's December 9, 2014, no-contact order. On November 5, 2015, the court again ordered both parents not to allow contact between Carlos and the other children. At the Department's request, the court also required father's monitored visits to take place at the Department's office.

At the 12-month review hearing on June 27, 2016, the court again found father had not complied with his case plan. He had finally enrolled in parenting classes on November 13, 2015, and had enrolled in sexual abuse classes on December 3, 2015. But while father went on to complete parenting classes on July 12, 2016, he stopped attending sexual abuse awareness classes on March 19, 2016, and only mother was participating in family counseling sessions with Carlos. Nor had father started individual counseling. Though father had been provided with numerous referrals, the agencies he contacted had lengthy waiting lists. Since father and Carlos had finally moved out of the family home, however, Gabriela, Lourdes, and A.G. were returned to mother's custody.

By the time the family appeared for the January 3, 2017, family maintenance hearing, father had completed a 17-week sexual abuse awareness class but had still not enrolled in individual counseling. And Carlos's performance on probation had deteriorated: he had stopped attending both school and sexual offender counseling.

At the next family maintenance hearing on February 8, 2017, the Department recommended that the court terminate jurisdiction and award sole legal and physical custody to mother. The next week, father notified the Department that he had enrolled in individual counseling.

3. Termination of Proceedings

The final section 364 review hearing was held on March 28, 2017. The Department had filed an interim report in which it noted father's statement that he had no plans to cooperate with in-home service providers because he felt they were biased against him because he is strict. The Department also noted that Carlos had not enrolled in school or in individual counseling for sexual abuse. Carlos admitted not coming home some days and not following the rules. Both father and Carlos's probation officer confirmed that report.

At the hearing, the Department recommended the court terminate dependency jurisdiction, award sole legal and physical custody to mother, and award father monitored visitation with Gabriela and unmonitored visitation with Lourdes and A.G. Father's attorney requested joint legal and physical custody of all three children. Counsel argued father had completed his case plan except for individual counseling, and there were no reports that he had committed misconduct or placed his children "at any risk of causing any neglect to them at this point." Gabriela's

attorney objected to joint custody because Gabriela did not have a relationship with father, father continued to blame her for the family's problems, and father had failed to take responsibility for their strained relationship.

The court terminated jurisdiction and stayed termination pending receipt of the custody exit order. The court awarded mother sole legal and physical custody and awarded father the visitation recommended by the Department. In denying father's request for joint custody, the court noted his failure to complete a "critical component" of his case plan: individual counseling. The court also had safety concerns based on father's continued denial that Carlos had abused A.G. and father's inability to control Carlos's school attendance and probation compliance.

On April 5, 2017, the court signed the custody order and lifted the stay. Father filed a timely notice of appeal.

DISCUSSION

Father contends the trial court abused its discretion by awarding mother sole legal custody of the children. We disagree.

1. Legal Principles

"When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court ... so long as the child remains a dependent of the juvenile court." (§ 302, subd. (c).) When the court terminates its jurisdiction, it may enter exit orders "determining the custody of, or visitation with, the child." (§ 362.4; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.)

Unlike family law judges, dependency judges crafting exit orders focus on the child's best interests, unconstrained by "any preferences or presumptions" about parental custody. (*In re*

John W. (1996) 41 Cal.App.4th 961, 972.) “In juvenile dependency proceedings, the child is involved in the court proceedings because he or she has been abused or neglected. Custody orders are not made until the child has been declared a dependent of the court and in many cases, such as this one, the child has been removed from the parents upon clear and convincing evidence of danger. The issue of the parents’ ability to protect and care for the child is the central issue. The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.” (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

Accordingly, when fashioning exit orders, juvenile courts have broad discretion to decide what would best serve and protect the child’s interests—and we will not disturb an exit order unless the court abuses that discretion. (*In re I.G.* (2004) 226 Cal.App.4th 380, 386–387.) “ ‘ “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.” ’ [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *id.* at p. 318 [court abuses its discretion if its order is “ ‘ “arbitrary, capricious, or patently absurd” ’ ”].)

2. The order was not an abuse of discretion.

“ ‘Joint legal custody’ means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code,

§ 3003.) Father contends the court abused its discretion by awarding sole legal custody to mother because there was no evidence joint legal custody would have harmed the children. We hold the court could have reasonably concluded it would be difficult for mother to coordinate medical, educational, travel, and other decisions with someone who flouted the court's orders, had a history of controlling behavior and present unwillingness to cooperate with in-home service providers, and was not successfully exercising legal custody over Carlos.

First, by waiting more than two years to begin the required individual counseling, father demonstrated a personal unwillingness or inability to abide by the court's prior orders. The court could reasonably conclude such a person was not a good candidate to share decision-making authority or to successfully co-parent. Second, there was substantial evidence father's controlling behavior would make it difficult for mother to exercise her decision-making authority if father were awarded joint legal custody. Third, Carlos's performance on probation had significantly deteriorated while he was in father's care: Carlos was no longer enrolled in school or in sex offender counseling. Fourth, there is nothing in the record to suggest father could not continue to enjoy a relationship with the younger children despite losing legal custody. The court's exit order awarded him at least three unmonitored visits per week lasting at least three hours each with Lourdes and A.G. It also awarded him two hours of supervised visits with Gabriela each month.

Accordingly, we conclude the court did not abuse its discretion in awarding mother sole legal custody of the children.

DISPOSITION

The order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.*

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