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

In re ANGIE R., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

LUIS R.,

Defendant and Appellant.

B275186

(Los Angeles County  
Super. Ct. No. DK10835)

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

Jack A. Love, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and  
Respondent.

In this dependency appeal, appellant Luis R. (father) appeals from the juvenile court's order terminating jurisdiction over Angie (born Aug. 2001) and A. (born Oct. 2007), granting Angelica R. (mother) sole legal and physical custody of the children, and according father monitored visits once a week for three hours. Father contends the juvenile court improperly terminated jurisdiction without ensuring compliance with its prior visitation order or ensuring that future visits would occur between father and the children. Father further contends the juvenile court's final custody and visitation order incorrectly states that father had not completed a court ordered parenting program and lists an incorrect name as the presumed father of Angie and A. and should be amended.

We affirm the order terminating jurisdiction, granting mother sole legal and physical custody of the children, and according father monitored visits but remand the matter to the juvenile court to correct the order to identify father as the presumed father of the children and to show that father completed the court ordered parenting program.

## **BACKGROUND**

### **Jurisdiction and initial visitation order**

On July 14, 2015, the juvenile court sustained a petition filed by the Los Angeles County Department of Children and Family Services (the Department) pursuant to Welfare and Institutions Code section 300<sup>1</sup>, subdivisions (a), (b), and (c) on behalf of Angie and A. alleging that mother and father had a history of engaging in violent altercations in the children's presence; on numerous prior occasions, father struck and shoved mother; on a prior occasion, father struck mother's face while mother was pregnant with A., causing mother to sustain a black

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

eye; and mother failed to protect the children by allowing father to reside in the children's home and have unlimited access to the children in violation of a restraining order against him. The court declared the children to be dependents of the juvenile court, and ordered them released to mother. Father, who had previously been found to be the children's presumed father, was ordered to complete a 52-week domestic violence program, a parenting program, and to participate in individual counseling. He was accorded monitored visits, to be monitored by a Department-approved monitor in a neutral setting.

**Father's visits with A.**

Father had a monitored visit with A. at the Department's office on July 15, 2015. Angie refused to attend the visit. During the visit, the monitor asked the Department social worker to come to the visiting room. When the social worker arrived, she observed A. sitting in the room across from father, who had tape across his mouth. The social worker asked father why he had tape across his mouth, but father did not respond. The social worker then spoke privately with A., who said he felt a little scared and uncomfortable. The social worker terminated the visit after 15 minutes.

On July 22, 2015, father arrived late for a scheduled visit with A. and was upset by the presence of cameras in the visiting room. Father then told the monitor, in English, that he was uncomfortable with the monitor's presence. The monitor explained that he was there to monitor the visit, and father thereafter began speaking to A. in Spanish. When the monitor asked father to converse in English, father replied that he did not speak English. The visit continued with minimal conversation and interaction between father and A.

On July 29, 2015, father entered the visiting room, greeted A., and then sat silently for 15 minutes without interacting with

A. Father thereafter began speaking softly to A. in Spanish, prompting A. to glance nervously at the monitor from time to time. As the visit progressed, A. played a video game on father's telephone and laughed and appeared to relax. Father then whispered to A. and left the room. After father departed, the monitor asked A. if father had ended the visit, and the child responded in the affirmative.

The monitor informed father at the outset of his August 5, 2015 visit that father's conversations with A. would have to be in English because the monitor did not speak Spanish. Father argued with the monitor, and when the monitor removed A. from the room so the monitor could speak with a social worker, father initially tried to prevent them from leaving. Father then followed the monitor and A. out of the room, and when the monitor turned around, father bumped him. The monitor informed a Department security guard about the incident, and the guard ordered father to remain in the lobby.

A Spanish-speaking social worker returned to monitor the remainder of the visit. The social worker reported that father insisted on talking to A. about the case, despite being admonished multiple times that the visit would be terminated if he continued to do so. During the same visit, the security guard informed the social worker that father had attempted to engage in a physical altercation with the children's adult male cousin, Gerardo A., who had transported A. to the visit. The security guard intervened to prevent father from hitting Gerardo. The altercation occurred in the presence of A., Angie, and Gerardo's two-year-old son.

When the social worker informed father that the visit was being terminated, father became argumentative and verbally aggressive. The social worker ended the conversation and walked

away, but father continued to follow her and stated in Spanish, “I’m going to find a way to get rid of you, one way or another.”

On August 11, 2015, the social worker received a voicemail message from A.’s therapist recommending that the child’s visits with father be suspended because A. was stressed by the visits.

Father telephoned the social worker on August 18, 2015, asking to postpone the visit that had been scheduled for that day to a later time. The social worker explained that because rescheduling A.’s transportation to the visit might be a problem, the visit would likely have to be rescheduled to later in the week. On August 19, 2015, the social worker telephoned father and left a voicemail message informing him that the visit would take place on August 20, the following day. On August 20, 2015, mother telephoned the social worker and informed her that A. could not attend the visit that day because he had no one to transport him to the Department’s office. The social worker immediately attempted to contact father and left him a voicemail message informing him that the visit had been cancelled because of transportation issues. Father arrived at the Department’s office later that day for the visit. When the social worker relayed to father in person the information she had given him previously by voicemail, father became upset. He attempted unsuccessfully to speak to the supervising social worker, and told an assistant that it was important for the supervising social worker to contact him, or “someone could die.”

On August 26, 2015, mother told the social worker that A.’s visits with father made the child sad and withdrawn and that A. no longer wanted to visit with father.

#### **Department’s request for a restraining order**

On August 28, 2015, the Department submitted an ex parte request for a hearing to grant the social worker and the supervising social worker a restraining order against father. The

Department also requested that father's visits with A. be terminated.

On September 3, 2015, the juvenile court granted the request for a temporary restraining order, suspended father's visits, and continued the matter for an order to show cause.

On September 16, 2015, the juvenile court denied the Department's request for a permanent restraining order and granted the Department discretion to resume father's visits.

#### **November 2015 visitation order**

On November 17, 2015, the juvenile court ordered that father have monitored visits with A. in a therapeutic setting every other week and ordered the Department to schedule the visits. The Department contacted A.'s and Angie's therapist, who was unwilling to monitor the visits. The Department then contacted father's therapist, who agreed to serve as the monitor.

Father's therapist monitored a visit between father and A. on December 22, 2015. Father and A. played a board game during the visit, and father reported that the visit went well, although it was short. A. reported that he enjoyed the visit and wanted to see more of father. On January 6, 2016, father's therapist informed the Department that she could no longer monitor the visits because of a scheduling conflict.

#### **Status review report**

In January 2016, the Department reported that mother had completed her court ordered domestic violence support program and individual counseling. She had remained in constant contact with the Department and made the children available for both scheduled and unannounced home visits. Mother told the social worker that she had no intention of reestablishing a relationship with father.

Father had completed 5 out of 52 domestic violence classes before being terminated from the program. He completed a

parenting and anger management program and was enrolled in and attending individual counseling.

Both children were bonded with mother and appeared to be happy in her care. Angie stated on multiple occasions that she does not want to see father. A. said he wanted to continue spending time with father.

### **Supplemental report on status of visits**

On January 12, 2016, the juvenile court ordered the Department to submit a supplemental report addressing its efforts to facilitate father's visits in a therapeutic setting. The Department's social worker reported that she had contacted A.'s and Angie's therapist, who was unwilling to serve as a monitor. Father's therapist agreed to monitor one visit in December 2015 and thereafter stated she could no longer do so. The Department's social worker then contacted father's family preservation social worker, Ms. R., to inquire whether she would be able to provide father visits in a therapeutic setting. Ms. R. replied that she could not do so but offered to assist the social worker in locating a therapist to monitor the visits. Ms. R. was unable to locate such a therapist.

### **Section 364 review hearing**

On February 22, 2016, the juvenile court ordered the Department to prepare a supplemental report addressing father's visitation and whether the court should retain jurisdiction. The court then continued the matter to April 7, 2016.

In a last minute information for the court filed on April 1, 2016, the Department reported that father had called the social worker on March 7, 2016, to complain that the Department had unfairly taken the children away from him. The social worker informed father that he could provide father with information as to a facility where monitored visits could occur, but that father would have to call in advance and pay a fee. Father objected to

payment of the fee and began to argue with the social worker. The social worker attempted to give father the name and telephone number of the facility where monitored visits could occur, but father did not respond. Father said he would call the social worker on March 8, 2016.

On March 7, 2016, the social worker contacted father's therapist to discuss father's progress. The therapist reported that father had attended only one session, was unable to take responsibility for his actions, and did not think he needed help. The therapist stated that she could not recommend conjoint counseling between father and the children at that time because father had not addressed his own issues.

On March 8, 2016, the social worker attempted unsuccessfully to contact father by telephone and sent him a text message with the names and telephone numbers of four facilities that were available for therapeutic visits. Father did not respond.

On March 15, 2016, father sent a text message to the social worker inquiring about the status of his visits. The social worker again provided father with information on centers that could provide monitored visits in a therapeutic setting. Father did not respond.

The Department recommended that the juvenile court terminate jurisdiction with a family law order granting sole legal and physical custody of the children to mother and monitored visits for father.

The juvenile court held a review hearing pursuant to section 364 on April 7, 2016. Father's counsel asked the court to retain jurisdiction over the case, to lift the requirement that father's visits take place in a therapeutic setting, and to order the Department to comply with the court's visitation order. Counsel for the children joined the Department's argument that the case



should be closed with sole legal and physical custody to mother and monitored visits for father.

The juvenile court found that the children were doing well in mother's home, that the conditions justifying initial assumption of jurisdiction no longer existed and that it did not appear that those conditions would return if supervision were to be withdrawn. The court further found that father had not accepted responsibility for his actions, that he had not completed a domestic violence program, and that until father did so, his visits would continue to be monitored.

The court terminated jurisdiction with an exit order granting mother sole legal and physical custody of the children, and according father monitored visits, to be monitored by a monitor approved by mother or by a professional monitor whose expenses were to be paid by father. When father objected to the order for a professional monitor, the juvenile court responded that father could have a non-professional monitor, so long as mother approved of the person. The juvenile court ordered that father have monitored visits for a minimum of three hours once a week and stayed the proceedings pending receipt of the custody order. The court lifted the stay and signed the custody order on April 22, 2016.

This appeal followed.

## **DISCUSSION**

### **I. Termination of jurisdiction**

#### ***A. Applicable law and standard of review***

Section 364, subdivision (c) requires the juvenile court to determine whether continued supervision is necessary when a child not removed from the parent is receiving family maintenance services. The statute provides that "[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 withdrawn.” (§ 364, subd. (c).) Section 364 does not literally require that the precise conditions for initially assuming dependency jurisdiction must still exist, it simply requires that “conditions exist that ‘*would* justify initial assumption of jurisdiction.’ [Citation.]” (*In re J.F.* (2014) 228 Cal.App.4th 202, 210.)

There is a split of authority on the standard of review applicable to an order terminating juvenile court jurisdiction. (Compare *In re Holly H.* (2002) 104 Cal.App.4th 1324, 1327 [abuse of discretion] and *In re Robert L.* (1998) 68 Cal.App.4th 789, 791 [abuse of discretion] with *In re N. S.* (2002) 97 Cal.App.4th 167, 172 [substantial evidence].) We need not determine which standard should apply here because the juvenile court’s termination of jurisdiction in this case was proper under either standard.

***B. The juvenile court did not err by terminating jurisdiction***

Father contends the juvenile court erred by terminating jurisdiction without first ensuring compliance with its prior visitation order. He points out that he had no visits with A. after December 22, 2014, and none with Angie throughout the case. Although Angie stated she did not want to attend the visits, father argues that the decision should not have been left up to her, especially after the court ordered that the visits take place in a therapeutic setting.

The record shows that the Department made sufficient efforts to ensure that father had visits with the children. Father’s physically and verbally aggressive behavior toward the monitor, social workers, and others during his initial visits with A. resulted in the issuance of a temporary restraining order

against him, suspension of his visits, and an order requiring future visits to take place in a therapeutic setting. In response to that order, the Department contacted several therapists and social workers who might serve as monitors, and provided father with information regarding several facilities where supervised visits could occur. A.'s and Angie's therapist was unwilling to serve as a monitor, and father's family preservation social worker stated she could not monitor the visits. Father's therapist agreed to monitor a December 22, 2015 visit but thereafter informed the Department that she could not monitor any future visits. The Department's social worker then provided father with the names and telephone numbers of facilities he could contact for supervised visits with the children. Father did not respond to the social worker, and there is no evidence that he attempted to contact any of the suggested facilities.

Father contends Angie should not have been allowed to decide whether or not to attend visits. He cites *In re Julie M.* (1999) 69 Cal.App.4th 41 (*Julie M.*), a case in which the appellate court reversed a visitation order requiring the children's consent for visitation, as support for his argument that a child's wishes cannot be the sole factor in determining whether visitation occurs.

The court in *Julie M.* noted, however, that "[w]hile visitation is a key element of reunification, the court must focus on the best interests of the children 'and on the elimination of conditions which led to the juvenile court's finding that the child has suffered, or is at risk of suffering, harm specified in section 300.' [Citation.] This includes the 'possibility of adverse psychological consequences of an unwanted visit between [father] and child.' [Citation.]" (*Julie M., supra*, 69 Cal.App.4th at p. 50.) "[T]he child's input and refusal and the possible adverse consequences if a visit is forced against the child's will are factors

to be considered in administering visitation.’ [Citation.]” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

While Angie’s aversion to visiting with father may have been a significant factor in administering the visitation order, it was not the sole factor. The record shows that father had a history of engaging in domestic violence against mother in the children’s presence. Both children were in therapy to address domestic violence issues. After the juvenile court assumed jurisdiction, father continued to engage in aggressive and confrontational behavior with social workers and others in the presence of the children. At the outset of one visit, a security guard intervened to prevent father from hitting the children’s adult male cousin who had transported A. to the visit. That altercation occurred in the presence of both A. and Angie.

There is nothing in the record to indicate that the juvenile court or the Department delegated the decision concerning visitation to Angie. There is also nothing in the record to indicate that father inquired about or requested visitation with Angie after she repeatedly refused to attend the visits.

The juvenile court assumed jurisdiction in this case because father committed acts of domestic violence against mother in the presence of the children and because mother failed to protect the children from exposure to father’s domestic violence. At the time jurisdiction was terminated, father no longer lived in the home, and mother had no intention of reestablishing a relationship with him. Mother was accorded sole legal and physical custody of the children, and there was substantial evidence that mother was able to support, care for, and protect the children. The juvenile court did not abuse its discretion by terminating jurisdiction.

## **II. Exit order regarding visitation and custody**

An order setting visitation terms is reviewed for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) An abuse of discretion does not occur unless the juvenile court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.) A visitation order may not jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B).)

The juvenile court's exit order accords father monitored visits a minimum of three hours once a week to be monitored by a person approved by mother or by a professional monitor paid for by father. In light of father's behavior during his visits with A. throughout much of the case, the order for monitored visits was not an abuse of discretion.

Father contends the final custody order inaccurately states that he did not complete a parenting program and lists an incorrect name for the presumed father of the children. We agree that the order should be corrected to indicate that father completed a parenting program and that he is the presumed father of the children.

## DISPOSITION

We remand the matter to the juvenile court to correct the final custody order to show that father completed a parenting program and to indicate that he is the presumed father of the children. The order is otherwise affirmed in its entirety.

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\_\_\_\_\_, Acting P. J.  
CHAVEZ

We concur:

\_\_\_\_\_, J.  
HOFFSTADT

\_\_\_\_\_, J.\*  
GOODMAN

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