

Filed 8/3/17 In re M.H. CA2/1

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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.H., a Person Coming
Under the Juvenile Court Law.

B278535
(Los Angeles County
Super. Ct. No. DK13528)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JACOB M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Lisa R. Jaskol, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

Jacob M. (father) appeals from an exit order giving mother sole legal custody of M.H. We affirm.

BACKGROUND

M.H. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) when father was arrested and convicted of driving under the influence of alcohol (DUI), after an accident with 17-month-old M.H. in the car, on February 7, 2015. Father, who tested above the legal limit and admitted he had drunk two beers, was driving at 45 miles per hour when he lost control and hit a parked car. M.H. required emergency medical treatment for a fractured foot, abrasions, and bruising to his temple. DCFS filed a petition on September 28, 2015, alleging under Welfare and Institutions Code section 300, subdivision (b), that father's DUI endangered M.H., and that father abused alcohol, marijuana, and prescription medicine, suffered from bipolar disorder, and failed to take his prescribed psychotropic medicine. Mother failed to protect M.H. The petition also alleged that father had a history of violent and

assaultive behavior, including throwing an object and breaking mother's car window during an argument, and puncturing mother's sister's car tires.

A referral had stated that mother and father smoked marijuana in M.H.'s presence, verbally abused each other, and neglected M.H. M.H. lived with mother. Father, on probation for his DUI, visited on the weekends. Mother denied marijuana use and tested negative. She reported domestic violence in the past, but she no longer feared father and had rescinded an earlier restraining order. Father admitted he used marijuana every other day, but not when M.H. was present.

Father's child with another woman had been removed by DCFS based on the DUI with M.H. in the car. In connection with the other dependency case, father attended five domestic violence classes and two DUI classes, but missed a counseling appointment, failed to show for two drug tests, and tested positive for marijuana at a third.

Father was not at home when the social worker arrived for a scheduled appointment, and did not show up at a rescheduled appointment. He and mother missed their first joint visit to the DCFS office. At the rescheduled meeting, father said in a separate interview that he was quitting marijuana, and was attending classes on parenting, substance abuse, and domestic violence. He admitted that in June 2014 he vandalized mother's car while they were arguing, but now he and mother did not live together and had a civil relationship. He had stopped taking his

medications for his bipolar disorder because they “ ‘mess up his head.’ ”

On September 28, 2015, the juvenile court found that father was the presumed father, removed M.H. and released him to mother, and ordered monitored visitation for father twice a week.

A December 16, 2015 jurisdiction and disposition report stated that mother reported she and father had been together on and off since she was 16 years old, and he smoked marijuana daily. Despite making multiple appointments, the investigator had been unable to meet with father, who had not contacted the social worker to arrange visitation with M.H. Father had failed to show for four drug tests in October and November 2015 (which were considered dirty tests), and had tested positive for cannabinoids on October 6. On March 8, 2016, DCFS reported that father's phone was disconnected and he still had not arranged to visit M.H.

At the March 8, 2016 adjudication hearing, the court dismissed the domestic violence allegations and sustained the counts against father under section 300, subdivision (b) regarding the DUI, his use of alcohol and marijuana, and the bipolar disorder for which he failed to take his prescribed medication. The court declared M.H. a dependent child, placed M.H. in mother's home, and ordered monitored visitation by a DCFS-approved monitor for father. The court ordered father to complete a full drug and alcohol program, random or on demand testing every other week, a 12-step

program, a high-conflict parenting course, mental health counseling, and a psychiatric evaluation, and required father to take his prescribed psychotropic medication. The court ordered family maintenance services for mother, including individual counseling and parenting classes.

In June 2016, M.H. remained with mother, who lived with the maternal great grandmother. M.H. was bonded to mother, who was attentive to his needs. Mother had completed parenting classes but was having trouble locating individual counseling covered by her insurance. She wanted to move to Las Vegas to live with M.H.'s maternal grandparents.

Father lived with his relatives, was indecisive about visiting M.H., changed his mind about whether to "sign his rights away," and veered from apologetic to angry. He wanted to comply with his case plan and felt better since he had begun taking his prescribed medication. Father had been terminated from his drug program for his failure to pay a remaining balance although he had completed the classes. He had attended 11 group parenting classes and 11 of 12 individual counseling sessions, and was stable on his medication. He failed to appear for 15 of 17 random drug tests and the remaining two were positive for cannabinoids.

Father had a monitored visit at the DCFS office in April, but M.H. kicked and hit father until the social worker intervened. Father then requested and was granted monitored visits at a park, monitored by the paternal grandfather. Maternal grandmother called a month later to

report that father arrived for a visit without the monitor, made mother sign papers saying he had attended every visit, and pressed her to tell him whether she had a boyfriend. Father denied this at first but then apologized, saying he did not want to visit because of the drama and would sign his rights away. He said he had some thinking to do and hung up. When he called back he said mother had a boyfriend who was around M.H. and mother drank and partied. The social worker scheduled two visits monitored by staff at the DCFS office (the record does not show whether the visits took place).

A last minute information filed August 26, 2016 reported that mother had enrolled in individual counseling and was learning to overcome her years of abuse.

At the status review hearing on August 26 (father was not present), counsel for DCFS argued that mother was making progress and had enrolled in domestic violence counseling although it was not required. M.H.'s counsel reported that M.H. was doing well in mother's care with family support, and mother planned to move to Las Vegas to be with her family and away from father. Mother's counsel asked for sole physical and legal custody (joined by DCFS) and recommended that the court terminate jurisdiction; DCFS requested the case remain open three more months, and that father be ordered to comply with his case plan; and father's counsel asked for standard minimum visitation of two or three times a week, two to three hours, including telephone contact.

The juvenile court terminated jurisdiction. Father's counsel requested joint legal custody so father could still participate in parenting M.H., with language that mother could make decisions alone if father was unavailable or if the parents agreed. Counsel contended that although father was only in partial compliance, he had been ordered to complete many programs, and should not be barred from involvement in educational and health care decisions (through telephone and internet contact after mother moved away).

"[F]or the child's sake," the court ordered that mother have sole legal and physical custody, with monitored visitation for father at least two or three times a week for at least two or three hours, including telephonic contact, with mother not to serve as a monitor. Father's counsel objected to giving mother sole legal custody and not allowing her to monitor father's visitation after she moved out of state.

The family law order awarded mother sole physical and legal custody, with monitored visits and telephone contact for father two to three times a week for two to three hours each visit, with a monitor selected by mother. Father filed this timely appeal, in which he challenges only the award of sole legal custody to mother.

DISCUSSION

The juvenile court has exclusive jurisdiction to make custody and visitation orders (exit orders) when it terminates jurisdiction over a dependent child. These orders remain in effect unless modified or terminated in a later family law proceeding involving the child. (*In re Jennifer R.*

(1993) 14 Cal.App.4th 704, 711–712.) The juvenile court focuses on the child’s best interests, unconstrained by “any preferences or presumptions” regarding parental custody. (*In re John W.* (1996) 41 Cal.App.4th 961, 972, italics omitted.) The family law presumption that joint custody is in the best interests of the minor does not apply in the dependency context, and “is inconsistent with the purposes of the juvenile court.” (*In re Jennifer R.*, at p. 712.) The juvenile court has broad discretion to make custody determinations, which we will not disturb unless the decision was arbitrary, capricious, or patently absurd. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

“ ‘Sole legal custody means that one parent shall have the right and responsibility to make decisions relating to the health, education, and welfare of a child.’ (Fam. Code, § 3006.) Joint legal custody means that both parents share that right and responsibility. (Fam. Code, § 3003.) Father asserts the family law presumption in favor of joint custody, but that presumption does not apply to the juvenile court’s exit order. He argues that the totality of the circumstances shows that joint legal custody would be in M.H.’s best interests, because he had made progress in his case plan, and mother’s progress was “less than exemplary” because she had only recently begun individual counseling. “Neither parent has been perfect in this case,” and father had a fundamental interest in the care and management of M.H.

Father's arguments rest on generalities, and are a far cry from demonstrating an abuse of discretion. The record shows that mother was in substantial compliance with her case plan. Father proved slow to assert his monitored visitation with M.H. and erratic in his attendance. He attempted to strong-arm mother into signing a paper saying he had visited regularly, and vacillated about whether to relinquish his rights. Father's DUI with M.H. in the car injured M.H. and brought the child to DCFS's attention, and father either failed to show for required drug and alcohol testing or tested positive for cannabinoids. Given father's failure to make progress overcoming the problems leading to M.H.'s removal and his inconsistency and inappropriateness during visitation, the court did not act arbitrarily when it determined it was not in M.H.'s best interests to permit father to share in important decisions regarding M.H.'s welfare. (See *In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 713.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.