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

In re A.P., a Person Coming Under the
Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.P.,

Defendant and Appellant.

B295115

(Los Angeles County
Super. Ct. No. 17CCJP02709A)

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

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Navid Nakhjavani, Principal Deputy County Counsel for Plaintiff and Respondent.

K.P. (Mother) appeals from a juvenile court exit order terminating the court's dependency jurisdiction and awarding Mother and Michael C. (Father) joint legal and physical custody of minor A.P. Mother contends the juvenile court abused its discretion by applying an incorrect legal standard in making its custody order and by denying her the opportunity to examine Father at the Welfare and Institutions Code section 364 hearing.¹ We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background and Prior Dependency History

A.P. (born in December 2009) is the child of Mother and Father, who were married for only a few months and separated while Mother was pregnant with A.P.² Prior to these proceedings, A.P. resided with Mother, and Father had not seen A.P. since he was three years old. Father resided at a confidential address in Washington with his girlfriend and her child. There was no family law custody order in place.

A.P. was the subject of a prior dependency petition in 2016. The petition charged Mother with "expos[ing] the child to the sale, distribution and manufacturing of marijuana in the child's home in the child's presence" and exposing him to an "unsanitary and unsafe home environment." DCFS noted Mother "continuously lied" throughout the investigation. The petition was dismissed pursuant to a section 301 contract, and family

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

² Father indicated his marriage to Mother was "annulled" in February 2009. At a hearing, Mother's counsel referenced a pending divorce case between the parents.

maintenance services were provided until January 2017 when the case was closed.

An allegation of general neglect in May 2017 was deemed inconclusive. A teacher reported that A.P. had severe and persistent tooth pain, but Mother showed little concern. When questioned about his home environment, A.P. disclosed that his mother stored marijuana and “sells something at night [but] she told him never to tell anyone.” Mother denied substance abuse and marijuana possession, but resisted a home assessment.

B. Dependency Petition

The Los Angeles County Department of Child and Family Services (DCFS) filed a dependency petition on behalf of eight-year-old A.P on December 22, 2017. As subsequently amended in January 2018, the petition alleged a single count under section 300, subdivision (b)(1): “The child [A.P.]’s mother, [Kristina P.], placed the child in a detrimental, endangering, and hazardous home environment in that on 10/24/2017, multiple pounds of marijuana, concentrated THC oils and wax, drug paraphernalia, and a medical marijuana delivery service, [were] found in the child’s home, within access of the child. The child was exposed to illicit marijuana packaging, distributing, and trafficking in the child’s home. The child’s home emitted a marijuana odor. Remedial services failed to resolve the family problem in that the mother continues to place the child in a detrimental, endangering and hazardous home environment.” Father was not named in the amended petition.

C. Detention Report and Detention Hearing

DCFS filed a detention report based on interviews conducted in November and December. Mother explained that she was self-employed as a dispatcher of medical marijuana. Although she worked out of a home office, she claimed not to handle or store any marijuana in the home. Mother denied any drug use, but declined to be tested.

A.P. was interviewed with Mother's attorney present. He reported feeling safe at home, and denied any physical abuse or drug use by Mother. He claimed not to know what Mother did for work or what was in the home office, which was locked and inaccessible to him.

According to the police report, officers who searched Mother's home had found 25 pounds of marijuana within access of the child, mostly in the unlocked office but also in the living room, kitchen, and bedroom. The kitchen was filthy and contained no food. Mother was arrested and posted bail. The District Attorney's office referred the matter to the City Attorney for a misdemeanor filing.

Father was located and interviewed. He explained he had not met A.P. until the child was two years old. Father lived briefly with A.P. when the child was three, but Mother had since prevented him from having any contact with A.P. Father had never witnessed Mother using drugs. He was eager to care for A.P. if the child needed a placement. Father had no history of child abuse in Washington.

By December, when DCFS performed an announced assessment of Mother's home, the house was clean and presentable, with adequate food in the kitchen. The office contained drug paraphernalia ready for shipping, but no

marijuana was observed. Mother denied storing any marijuana. However, she did not provide access to the backhouse because she explained it was subleased to other tenants.

DCFS concluded A.P. was at “high” risk of serious physical harm, and the juvenile court authorized a removal warrant. A.P. was removed from Mother and released to Father, who planned to take A.P. to Washington. A.P. had believed, based on what Mother had told him, that when parents divorce, fathers are no longer allowed to see their children. At the time he was turned over to Father, A.P. appeared happy and comfortable in his presence.

D. Adjudication Hearing and Disposition Order

Further interviews were conducted by a children’s social worker (CSW). Mother now admitted she had marijuana in the house, but vowed to close her business because “[A.P.] comes first.” Mother alleged Father made no effort to have a relationship with A.P., was a frequent user of alcohol and marijuana, and had a history of depression. Father admitted he had had no contact with A.P. since 2011, but now sought full custody. A.P. expressed a desire to return to Mother.

At the January 19 adjudication hearing, the court sustained the petition as amended and determined Father was nonoffending. At the February 23 disposition hearing, A.P. was declared a dependent of the court under section 300 and placed in home of Father. Mother was permitted overnight/weekend visits, in addition to daily Skype calls, with A.P. Mother was ordered to submit to drug tests and participate in parenting classes and individual counseling. The parents were also ordered to enroll in TalkingParents.com, a co-parenting communication tool.

E. Section 388 Petition and Ex Parte Application

In April 2018, Mother requested a change of the court's disposition order. In support, she demonstrated compliance with her case plan and asserted that A.P. called her multiple times a day to ask when he could come home. Mother also alleged that: Father refused to communicate with her despite her inquiries about A.P.'s recent meltdowns and behavioral issues at school; A.P. seemed to be bullied and had developed anger issues; and Mother was concerned about A.P.'s living conditions because he complained of being hungry, was unkempt, and reported going to school without underwear.

The CSW made two unannounced visits to Mother's home in March and April 2018 during A.P.'s overnight visits. A.P. appeared well-groomed and happy with Mother. The CSW observed no safety concerns.

Before the hearing on Mother's section 388 petition, DCFS filed an ex parte application requesting that A.P. be placed with Mother. DCFS was concerned after confirming that, while in Father's care, A.P. sometimes went hungry and could not find clean underwear for school. DCFS was also concerned about Father's "attachment with the child," noting A.P. wished to "live with [his] mom and go visit [his] dad.'" He also preferred his school and friends in Los Angeles. DCFS recommended removal from Father because he "lack[ed] the ability to provide for the child's emotional and physical needs," as well as "basic necessities."

At the May 11 hearing, the court placed A.P. with Mother and ordered the child "home of Parents" under DCFS supervision. DCFS was ordered to provide family maintenance services to both parents, and Mother's section 388 petition was withdrawn.

F. Status Review Report

DCFS maintained monthly contact with Mother and reported no safety concerns as of August 2018. Mother was “extremely affectionate and attentive” to A.P.’s needs, and the child was thriving in her care. A.P. stated: “ ‘I feel safe with my dad but I feel even safer with my mom.’ ” Mother completed all court-ordered services and went beyond her case plan requirements, volunteering to continue drug testing and consistently testing negative. Mother had also started new employment as a photography assistant. DCFS learned A.P. had had no contact with Father since May 2018.

DCFS recommended terminating dependency jurisdiction with a court order awarding sole legal and physical custody to Mother, and monitored visitation for Father. However, two days later, DCFS modified its recommendation and requested A.P. remain placed in “home of parent to both [Mother] and [Father],” noting that Father “remains non-offending.”

G. Second Section 388 Petition

In November 2018, Mother filed another section 388 petition to modify the court’s disposition order.³ Mother requested sole legal and physical custody of A.P., and that Father be permitted monitored visitation in California. In Mother’s declaration, she reported A.P. had witnessed Father throwing his girlfriend’s child on the floor; that A.P. was scared of Father and would prefer not to visit or contact him; that Father had made no effort to contact A.P. in six months; and that sharing legal

³ At the time of the section 388 petition, the court had already modified its disposition order by returning A.P. to Mother’s custody in May 2018.

custody with Father would be untenable because Father had failed to communicate with her through TalkingParents.com.⁴

The court summarily denied Mother's petition.

H. Section 364 Hearing

At a hearing on December 14, 2018, Mother's counsel indicated he wished to call Father as a witness at the section 364 hearing.⁵ The court asked for an offer of proof. Counsel responded he would like the court to "look at the totality of the situation and decide whether it's appropriate for this particular parent to have unmonitored contact and joint legal." Furthermore, "[t]here were issues that the child raised about his stay in Washington, which went completely unanswered," such as why he began acting out in school and why he now feared Father. The court denied the request because: (1) the issue of what happened in Washington was not before the court, (2) the court had already denied Mother's section 388 petition and DCFS

⁴ Mother submitted all communications between the parents on TalkingParents.com. Father had stopped responding to Mother after May 2018. However, their communications between March and May 2018, when A.P. was in Washington, were regular and showed attempts by Father to coordinate visits with Mother, address A.P.'s emotional needs, discipline A.P. for negative behavior, enforce regular school attendance, and provide dental care for A.P. At the section 364 hearing, the court took judicial notice of the case file.

⁵ At a section 364 hearing, "the court shall determine whether continued supervision is necessary. The 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. . . ." (§ 364, subd. (c).)

would not be filing another petition, and (3) counsel's examination of Father would be a waste of judicial resources.

The CSW testified at the section 364 hearing on December 20, 2018. Mother's counsel questioned her about why DCFS had changed its custody recommendation in August. The CSW responded that in her assessment, "Father does not present . . . any physical harm to [A.P.]" so "Father should have equal rights . . . as Mother." On redirect, the CSW further explained: "We never detained. . . . So there's no reason for monitored visitation, at this time."

A.P.'s counsel explained that A.P. was afraid of Father and wanted monitored contact with him, but as his counsel, she saw no grounds for monitored visitation. Father's counsel agreed and expressed Father's wish "to have a relationship with his child," joining DCFS's recommendation for joint legal and physical custody. Mother's counsel urged the court to act in the best interest of the child, and argued that sharing legal custody would be difficult because of Father's confidential address and the parents' inability to communicate and make joint decisions.

The court noted the parents' "acrimonious" relationship and questioned Mother's credibility, "keeping in mind that [Mother] did not want [A.P.] sent to the father in the first place." Because Father was nonoffending and DCFS had no intention to file another petition based on its supervision, the court saw no reason to remove A.P. from Father's custody. The court terminated jurisdiction with an order granting joint legal and physical custody of A.P. to both parents, and primary residence with Mother. The court refused to make a specific visitation order, and suggested the parties come to an agreement through

mediation. The order was stayed pending the parties' submission of a custody order.

Subsequently, the filed custody order provided visitation/parenting time for Father on Mondays and Tuesdays from 3:00 p.m. to 7:00 p.m. in Los Angeles. Father was to pick up A.P. at school and drop him off at Mother's residence. Mother's visitation/parenting time was "[a]ll of the time that is not allocated to [Father]."

Only Mother appeals the custody order.

DISCUSSION

Mother argues the juvenile court abused its discretion by granting Father joint legal and physical custody without considering the child's best interest, and by denying her the opportunity to call Father as a witness when it rejected her offer of proof.

A. No Abuse of Discretion in Joint Custody Order

1. Governing Law and Standard of Review

If the juvenile court terminates its jurisdiction over a dependent child, the juvenile court may, on its own motion, issue a custody or visitation order for the child. (§ 362.4, subds. (a), (c).) Such "exit orders," as they are commonly called, remain in effect until modified or terminated by the family law court. (*In re John W.* (1996) 41 Cal.App.4th 961, 970 (*John W.*)) The exit order is considered a "final judgment" and cannot be modified "unless the [family] court finds that there has been a significant change of circumstances." (§ 302, subd. (d).)

In making an exit order, the juvenile court must act in the best interest of the child, considering the totality of the circumstances. (*John W.*, *supra*, 41 Cal.App.4th at pp. 973-974.) "When determining the best interest of the child, relevant factors

include the health, safety and welfare of the child, any history of abuse by one parent against the child or the other parent, and the nature and amount of contact with the parents. ([Fam. Code,] § 3011.)” (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) The court has wide discretion to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).)

We review the juvenile court’s decision to terminate dependency jurisdiction and issue a custody exit order for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.) “When applying the deferential abuse of discretion standard, ‘the trial court’s findings of fact are reviewed for substantial evidence . . . and its application of the law to the facts is reversible only if arbitrary and capricious.’ [Citations.]” (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.) “ ‘ “The trial judge, having heard the evidence, observed the witnesses, their demeanor, attitude, candor or lack of candor, is best qualified to pass upon and determine the factual issues presented by their testimony.” ’ [Citation.]” (*Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163.) We will not disturb the order unless the juvenile court has “ ‘ “exceeded the bounds of reason.” ’ ” (*In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1288.)

2. The Custody Order Is Not Contrary to A.P.’s Best Interest.

Mother challenges the juvenile court’s exit order, urging that the juvenile court erred by granting joint legal custody to the parents and unmonitored visitation to Father. Specifically, Mother contends that the juvenile court failed to apply the “best interest” standard, and that substantial evidence does not

support the juvenile court's conclusion that joint legal custody and unmonitored visits with Father were in A.P.'s best interest.

As a preliminary matter, we find no evidence in the record that the court misapplied the law and failed to consider the child's best interest. To the contrary, the record reflects that in reaching its decision, the court considered not only Father's nonoffending status, but the totality of the circumstances during the child's dependency history. (See *People v. Jones* (2017) 3 Cal.5th 583, 616 [“ ‘In the absence of evidence to the contrary, we presume that the court “knows and applies the correct statutory and case law.” ’ ”].) Moreover, substantial evidence supports the finding that joint legal custody and unmonitored visits with Father were in A.P.'s best interest. Father consistently maintained that he desired to have a relationship with A.P. Upon learning that A.P. would be removed from Mother, Father immediately arrived in Los Angeles to take temporary custody of A.P. Although there was some evidence that Father was inattentive to A.P.'s needs and stopped communicating with Mother after May 2018, we also find evidence in the record that during A.P.'s placement in Washington, Father made attempts to care for A.P.'s physical and emotional health, arrange visitation with Mother, and maintain communication with her. Although A.P. expressed fear of Father, the child also indicated after his return from Washington that he felt “ ‘safe’ ” with Father, and “ ‘safer’ ” with Mother. Despite A.P.'s preference for monitored visitation, both his counsel and DCFS represented they saw no grounds for monitored visitation and had no safety concerns regarding Father. (See *In re David M.* (2005) 134 Cal.App.4th 822, 828 [“we resolve all conflicts and make all reasonable

inferences from the evidence to uphold the court's orders, if possible"].)

The court also considered evidence suggesting that Mother had prevented Father from seeing A.P. in the past, and questioned Mother's veracity based on her conduct during the current and prior DCFS investigations. In light of the parents' "acrimonious" relationship and Father's residence in Washington, there was reasonable basis to conclude that awarding Father joint legal and physical custody would facilitate a relationship between father and child, and advance A.P.'s best interest. (See Fam. Code, § 3020, subd. (b) ["it is the public policy of this state to ensure that children have frequent and continuing contact with both parents after the parents have separated . . . and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. . . ."]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 51 [discretion to determine visitation "must remain with the court, not social workers and therapists, and certainly not with the children"].)

Mother's reliance on *John W.* to argue that Father's nonoffending status cannot be the basis for joint custody is misplaced. First, as discussed above, Father's nonoffending status was not the sole basis of the court's "best interest" analysis. *John W.* reversed a juvenile court's exit order awarding joint physical custody where "there was no evidence one parent was any better or worse than the other" and the child was no longer at risk of harm. (*John W.*, *supra*, 41 Cal.App.4th at pp. 965, 968.) The court's exit order provided for alternating physical custody between the two parents between Los Angeles County and Orange County every two weeks. (*Id.* at p. 968.) *John W.* held that the juvenile court failed to apply the correct

standard because it was not in the child's "best interest" to be shuttled back and forth between two parents during the school year. (*Id.* at p. 974.) In contrast, A.P.'s primary residence was with Mother, and it is undisputed that the court heeded his wishes to remain in Los Angeles, at his school, and with Mother.

Essentially, the court's custody order conforms to A.P.'s expressed preference for primary residence with Mother and visitation with Father. Mother acknowledges that "in light of the limited number of hours provided in the exit order for father to have 'custody' or parenting time with [A.P.] . . . mother cannot complain except to reassert her position that father's time with [A.P.] should be monitored." However, the court reasonably determined that monitored visitation was not warranted. Therefore, we discern no abuse of discretion.

B. No Abuse of Discretion in Denial of Request to Have Father Testify

1. Governing Law and Standard of Review

At a section 364 hearing, the court may hear "evidence presented by the social worker, the parent, the guardian, or the child" to determine whether the juvenile court's continued supervision is necessary. (§ 364, subd. (c).) However, "[t]he due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.) Accordingly, the court may "require an offer of proof to [e]nsure that before limited judicial and attorney resources are committed to a hearing on the issue, [the parent] ha[s] evidence of significant probative value. . . . [D]ue process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest. . . . [I]t

does not violate due process for a trial court to require an offer of proof before conducting a contested hearing. . . .” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

“A proper offer of proof gives the trial court an opportunity to determine if, in fact, there really is a contested issue of fact.” (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124.) Accordingly, “[t]he offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Ibid.*)

Evidentiary rulings are reviewed for abuse of discretion. (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1594.)

2. The Offer of Proof Was Inadequate.

When asked for an offer of proof, Mother’s counsel simply identified the issues to be addressed: whether unmonitored contact and joint legal custody with Father would benefit the child, and “unanswered” questions about the child’s placement in Washington. At no time did Mother’s counsel identify the actual evidence to be produced, or suggest that he possessed additional evidence not already before the court. In fact, Mother acknowledges “that mother’s counsel could not possibly have specified the precise nature of father’s testimony; all counsel could have hoped for was testimony either corroborating the statements made by [A.P.] or testimony so outrageously different than what [A.P.] described so as to have been deemed implausible.” The juvenile court was entitled to conclude that such a speculative offer of proof had little probative value and would be a waste of judicial resources. Thus, “[h]aving failed to make the proper offer of proof, [Mother] is in no position to assign

error in the trial court’s ruling.’ ”⁶ (*People v. Fudge* (1994) 7 Cal.4th 1075, 1122.)

DISPOSITION

The juvenile court’s order is affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.

⁶ We do not find *In re Armando L.* (2016) 1 Cal.App.5th 606 instructive. In *In re Armando L.*, “there was no court hearing on the issue of [the child’s] custody.” (*Id.* at p. 618.) The juvenile court “denied mother *any* evidentiary hearing on the issues she attempted to raise,” and mother had no opportunity to testify or present any evidence. (*Id.* at pp. 619-620.) In contrast, as Mother acknowledges, the court below held a contested hearing and heard testimony from Mother and the social worker.