Filed 3/15/16 In re L.M. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re L.M., et al., Persons Coming Under the Juvenile Court Law.	B262657 c/w B265343
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RICHARD M., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK04386)

APPEAL from orders of the Superior Court of Los Angeles County. Timothy Saito, Judge. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Appellant, Richard M.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Respondent, Julia U.

INTRODUCTION

Appellant Richard M. Sr. (father) appeals from a restraining order and final judgment entered in dependency proceedings involving his three children: L.M., R.M. and E.M.[1] Dependency jurisdiction was based on father inappropriately disciplining R.M. and failing to protect R.M. and E.M. from physical abuse by a paternal uncle; jurisdiction over L.M. was based on the same facts. The children were placed with nonoffending mother and father was given monitored visits. At the section 364 six-month review hearing in December 2014, the juvenile court issued a temporary restraining order (TRO) requiring father to stay away from mother and the children; the court subsequently extended the TRO for one year only as to mother (the restraining order). In June 2015, the juvenile court terminated dependency jurisdiction with a final judgment and family law "exit order" giving father supervised visits and mother sole legal and physical custody of the children (the final judgment).

In case No. B262657, father challenges the sufficiency of the evidence to support the TRO and restraining order. In case No. B265343, father challenges the sufficiency of the evidence to support the final judgment. We consolidated case Nos. B265343 and B262657 for purposes of opinion. We affirm the TRO and restraining order (case No. B262657) and the final judgment (case No. B265343).

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Child Abuse Referral*

In November 2013, mother and father were divorced and had joint custody of then 10-year-old L.M., nine-year-old R.M. and eight-year-old E.M. R.M. had been diagnosed with attention deficit hyperactivity disorder (ADHD) and there was some concern he might be autistic. Mother and the children lived in Los Angeles with maternal grandparents; Father lived in Monterey Park with paternal grandparents and three paternal uncles (Joshua, Isaac and Anthony). Father had court-ordered visitation with the children on Wednesday and Thursday nights and every other weekend.

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[1] L.M. was born in 2003, R.M. was born in 2004 and E.M. was born 2006. From time to time we refer to them collectively as the children.

On November 22, 2013, R.M.'s speech therapist reported to the Department of Children and Family Services (DCFS) that R.M. said father "beat him up" for receiving a bad school report. On Monday, December 2, 2013, a DCFS social worker interviewed mother and all three children at mother's home:

- E.M. said father hits him on the butt with a belt when he is "really really bad," or with his hand if he cannot find a belt; father also hits R.M. and L.M. E.M. said "what is really bothering him" is that paternal uncle Anthony calls E.M. girl names, instructs E.M. to pull down his pants and calls E.M. "gay." Anthony pinches E.M. on the butt and legs, but has never touched E.M.'s private parts. Sometimes, E.M. wants to kill Anthony.
- R.M. denied that father "beats him up," but said father sometimes hits him on the butt with his hand. Father does not know that Anthony punches R.M. on the leg. R.M. confirmed that Anthony ridicules E.M.
- L.M. said father hits them with his hand or a belt when they are "really bad." She never saw Anthony pinch her brothers, but heard him call E.M. names. L.M. was not afraid of father or any of the paternal relatives living in father's home.
- Mother said she did not have a good relationship with father, whom she left after an incident of domestic violence. She had twice reported father to DCFS but nothing happened.[2] When the children return from a visit with father, mother asks them about the visit and the children have never disclosed any physical abuse. Mother was aware of the name calling but not the pinching. She did not see any marks or bruises on the children.

Mother told the social worker that, since DCFS has not taken any action in response to her previous reports, it was in the social worker's "hands to decide what should be done" about the most recent referral from R.M.'s speech therapist.

The social worker was unable to make contact with father until an unannounced visit to his home more than one month later, on Thursday, January 9, 2014. The children

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[2] The children had been the subject of four prior referrals: (1) an August 2010 report that the children viewed pornography on a computer while in father's care (deemed inconclusive); (2) a May 2011 report that E.M. was injured while in father's care when paternal uncle Joshua dragged him on the carpet (deemed inconclusive); (3) a July 2011 report that mother knew E.M. was injured while in father's care, but continued to allow the children to visit father (deemed unfounded); and (4) an October 2011 report that E.M. was injured because mother was not properly supervising the children (deemed unfounded).

were present when the social worker arrived; they appeared in good spirits and had no marks or bruises. The social worker interviewed father, paternal uncle Anthony and paternal grandmother. Paternal grandmother said father spanks the children, but does not physically abuse them. Anthony said he rough houses with children; R.M. recently bit him while they were wrestling (Anthony displayed a bite mark on his wrist); Anthony calls E.M. "a girl" because E.M. cries too much. Father denied any domestic violence, substance abuse or criminal history. He admitted spanking the children, but denied beating them. Father did not deny that Anthony ridiculed and pinched E.M.; father discounted the conduct with the observation that E.M. was "sensitive."

When the social worker interviewed mother, L.M., R.M. and E.M. again on Monday, March 17, 2014, mother said E.M. continued to complain that Anthony tells E.M. to take off his pants and calls him a girl. Mother also said that upon the children's return from their most recent visit with father, mother noticed that R.M.'s ear was red and swollen. In response to mother's inquiry, R.M. said father pulled his ear and pushed him after R.M. accidentally tripped E.M. Mother showed the social worker a series of text messages between mother and father in which father admitted pulling R.M.'s ear and pushing him, but said he did not pull R.M.'s ear "that hard" and he did not push R.M. "like an adult." L.M. said the ear-pulling incident occurred during a basketball game when R.M. "was trying to throw the ball and [E.M.] went in front of him and he fell. . . . [Father] got mad and [R.M.] went running away. Father pushed [R.M.] and then pulled him by his ear and made him go into a timeout." E.M. said he fell while playing basketball; E.M. saw father pull R.M.'s ear, but did not see him push R.M.

Questioned about the ear-pulling incident the next day, father characterized it as "ridiculous." In response to the social worker's offer of a Voluntary Maintenance Contract, father said he would call her back. The social worker next received a telephone call from mother, who was afraid that father was going to retaliate. Mother said father had scared the children by telling them they were going to live in a different home.

Two days later, on Thursday, March 20, 2014, the social worker received a voicemail from mother, reporting the children were very upset when they returned from a

visit with father the day before. During the visit, father punished them by making them kneel on the ground and would not let them speak to each other. The children were begging not to be forced to visit father again, but mother could not violate the family court visitation order. Mother asked the social worker to intercede.

On Monday, March 24, 2014, the juvenile court authorized removal of the children from father. The therapist who performed a Violence Intervention Program mental health screening on R.M. and E.M. the next day reported that both boys "presented with a depressed/flat effect throughout the interview process, made minimal eye contact with therapist and presented as highly guarded." E.M., cried when discussing his relationship with father. R.M. and E.M. told the therapist about the ear pulling incident and about paternal uncle Anthony's conduct toward E.M. R.M. complained that father does not let him watch television or play games, but denied father had ever hit him with his hand, a belt or any object. E.M. said father had not hit them with a belt in awhile but recently, when L.M. wrote "I hate dad," father made L.M. kneel on the ground and when E.M. brought L.M. some water, father made E.M. kneel with L.M. for a long time. R.M. and E.M. did not want to visit father.

On Wednesday, March 26, 2014, the social worker interviewed father, paternal uncle Anthony and paternal grandmother. Anthony denied telling E.M. to pull down his pants. Paternal grandmother said the children were lying. Father denied Anthony ever told E.M. to take off his pants. Father said, " 'This is an ongoing issue. They play and joke around. E.M. is very super sensitive and gets hurt all the time. I have been keeping them apart and separate them.' " Regarding the ear-pulling incident, father denied "yanking" R.M.'s ear but admitted "pulling" it, and denied pushing R.M. Father explained that after he saw R.M. "violently" push E.M., father said to R.M., "Would you want me to push you?" But father never actually pushed R.M. Regarding making the children kneel as a form of discipline, father said, " 'Yes, I made them kneel once, I didn't hurt them.' " Father explained, " 'I am the only one that disciplines the children. . . . She babies them too much. Mother manipulates the situation and hounds the children for information and the children shouldn't have to go through this.' Father

stated [L.M.] talks back like she is an adult. I yell at her every time she acts like an adult, these children are rebelling.' Father stated, 'Yes, I yell at my kids. I am not killing them.' Father stated, 'I love my kids. There is a lot of friction between us and I am tired of being the bad guy.' " Father would not agree to a family maintenance contract.

The social worker served father with the removal order the next day, Thursday, March 27, 2014. Father later called mother and said, " 'It is ok, I have another child on the way and he won't be as messed up as the ones that I have now.' "[3]

B. *Jurisdiction and Disposition*

DCFS filed a section 300 petition on April 1, 2014.[4] According to the Jurisdiction/Disposition Report, the children were now unwilling to talk to the social worker about the allegations. L.M. said, "I don't want to talk about it." R.M. described the ear-pulling incident, but other than that said, " 'didn't do nothin' to anyone and 'no one does nothin to me.' " E.M. said father punished the children by hitting them with a belt, but would not elaborate. Regarding Anthony's conduct toward E.M., E.M. said father sometimes "did something" about it, but E.M. could not recall what father did, father told Anthony to "get outta here." E.M. said Anthony told him that, if E.M. tells anyone about Anthony abusing him, Anthony will go to jail.

On June 6, 2014, father pled no contest to an amended petition which, as sustained, alleges:

> **Paragraphs b-1 and j-1:** "On 3/16/14, [father] inappropriately physically disciplined the child [R.M.] by pulling the child's left ear, inflicting swelling to the child's ear. The father pushed the child into a table. Such inappropriate physical discipline of the child by the father places the child and the child's siblings, [L.M.] and [E.M.] at risk of harm."
> **Paragraphs b-3 and j-3:** "On prior occasions, [the children's] paternal uncle, Anthony M., physically abused . . . [R.M.] and [E.M.] by pinching the child [R.M.]'s legs and pinching the child [E.M.]'s buttocks and legs. Such physical abuse was excessive and caused the children unreasonable

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[3] At the time, father's pregnant girlfriend lived in Las Vegas.

[4] All undesignated statutory references are to the Welfare and Institutions Code.

> pain and suffering. The child's father, [R.M.] failed to protect the children when the father reasonably should have known that the children were being physically abused by the paternal uncle. Such physical abuse of the children by the paternal uncle and the father's failure to protect the children places the children and the children's sibling, [L.M.], at risk of physical harm."[5]

The children were placed with mother under DCFS supervision. Father was given thrice weekly monitored visits of three hours each and was ordered to participate in individual counseling and parenting classes. Conjoint counseling for father and the children was ordered but only if recommended by the children's therapist. A section 364 six-month review hearing was scheduled for December 5, 2014.

C. *The TRO and Permanent Restraining Order*

By the time of the December 5th hearing, father had enrolled in individual therapy and parenting classes, but had not made any progress. Mother sought a restraining order against father. The request was based on two incidents of alleged stalking, several months apart. In both incidents, mother and the children were on vacations in Nevada when they encountered father.

On December 5, the juvenile court issued a TRO which required father to stay 100 yards away from mother and the children except for monitored visits. The TRO was returnable on January 22, 2015. Following a hearing on that date, the juvenile court issued a permanent restraining order as to mother only, which expired on January 22, 2016. The matter was continued to April 23, 2015, for a section 364 hearing.

Father timely appealed from the TRO issued on December 5, 2014, and the restraining order issued on January 22, 2015 (case No. B262657).

D. *The Final Judgment*

By the time of the section 364 hearing on April 23, 2015, the children had been in the dependency system for 10 months. DCFS reported that it was investigating a March 28, 2015, report to the Child Abuse Hotline that paternal uncle Anthony made

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5 Paragraphs A-1, 2, 3, 4, 5, B-2, 4, 5 and J-2 and 4 were stricken.

E.M. "smell his private parts and buttocks, and he hit the child with a belt on his arms, and he called the child 'retard.' " Father wanted unmonitored visits with the children. Father had completed his parenting class, but not his individual counseling program. Father told the social worker that he had learned a lot from his court ordered services. Father's therapist, Luz Celeya, reported that father had taken responsibility for inappropriately disciplining R.M. But during monthly meetings with the social worker, the children consistently said they enjoyed *monitored* visits with father, but did not want *unmonitored* visits. E.M. told the social worker that father only pretends to be nice because the monitor is there but if the monitor " 'goes away and he gets unmonitored visits, then BAM!, he's back to being mean to us again.' " The children's therapist, David Guidino, recommended against conjoint counseling, observing that L.M. said it " 'makes her stomach sick' " to think about being with father.[6] DCFS recommended termination of dependency jurisdiction with an exit order granting mother sole physical custody, mother and father *joint legal custody* and father monitored visits. The juvenile court continued the matter to June 9, 2015 for a contested hearing on father's request for unmonitored visits.

By the time of the June 9 hearing, DCFS had changed its recommendation to *sole legal and physical* custody to mother; DCFS continued to recommend monitored visits for father. In its report for the continued hearing, DCFS related that, whereas the children had previously been reticent to talk about father, after a year of therapy they had become more forthcoming. During a May 6 2015, interview, the children revealed to the social worker a pattern of emotional and physical abuse (hair pulling, ear pulling, hitting and name calling) that went beyond the allegations of the sustained petition. The children expressed fear of father and said they said did not trust he had changed. They were adamantly against unmonitored visits. In addition, apparently referring to the encounters in Laughlin which led to the restraining order, R.M. told the social worker to tell father to

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6 Guidino was also mother's therapist. At the social worker's recommendation, mother was in therapy to address anxiety issues.

"stop lying at Court." R.M. continued: "You tell him to stop lying, I don't like liars, none of us lie and none of us like it."

Meanwhile, father had completed both his parenting and individual counseling programs. But when the social worker told therapist Celeya what the children said, Celeya said she would not have terminated father's services if she had known that there were these ongoing issues to address.

Father was the only witness at the June 9 hearing. He sought to have the restraining order lifted, joint legal and physical custody and unmonitored visits. As we describe in greater detail, father testified as to his understanding of the conditions that brought the children into the dependency system and what he had learned from his reunification services. DCFS, joined by mother's counsel, argued for a family law exit order giving mother sole legal and physical custody. Mother's and the children's counsel joined DCFS in opposing unmonitored visits. Counsel for the children said that each time she interviewed the children, they were opposed to unmonitored visits.

The juvenile court terminated dependency jurisdiction with an exit order giving mother sole legal and physical custody of the children, and father thrice weekly monitored visits of three hours each. The court reasoned that although father had completed parenting classes and individual counseling, father's testimony revealed a lack of insight. Notably, father's therapist said she would not have terminated therapy had she known the information disclosed by the children for the first time in May 2015. The juvenile court concluded that unmonitored visits would be inconsistent with therapist Guidino's recommendation against conjoint counseling. The termination order was stayed until receipt of the family law order. Final judgment was entered on June 12, 2015 (the final judgment).

Father timely appealed (case No. B265343).[7]

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[7] The notice of appeal was filed on June 11, 2015, the day before the final judgment was entered, and identifies the order appealed from as the "6/9/15 denial of request to lift restraining order, denial of joint legal custody and unmonitored visits in the family law

DISCUSSION

A. *Case No. B262657: The TRO and Restraining Order Were Supported By Substantial Evidence*

Father challenges the sufficiency of the evidence to support issuance of the TRO and the restraining order. He argues there was substantial evidence he had a legitimate purpose for being in Laughlin and Las Vegas when he coincidentally encountered mother and the children, and no substantial evidence he engaged in a course of conduct designed to harass or harm mother and the children. He continues that mother and the children were not actually "seriously alarmed, annoyed, tormented or terrorized" by unexpected encounters with father in Laughlin and Las Vegas, nor would "mother's safety would be jeopardized" in the absence of a restraining order. We find no error.

During dependency proceedings, the juvenile court may enjoin any person from stalking or coming within a specified distance of any parent or the child. (§ 213.5, subd. (a).) We review any such order for substantial evidence. Under that standard, "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed. [Citation.]" (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 211.)

Violent behavior is not a prerequisite to a section 213.5 restraining order. "Stalking" and "molesting" can be enjoined even though neither is violent. (*Cassandra B., supra*, 125 Cal.App.4th at p. 211.) In the context of section 213.5, the word "molest" is "in general, a synonym for annoy. The term 'molestation' always conveys the idea of some injustice or injury. Molest is also defined as meaning to trouble, disturb, annoy or vex. [Citation.] To molest means to interfere with so as to injure or disturb; molestation is a willful injury inflicted upon another by interference with the user of rights as to person or property. [Citation.] Annoyance or molestation

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order." We deem the notice of appeal to be a timely notice of appeal from the final judgment entered on June 12, 2015.

signifies something that works hurt, inconvenience or damage. [Citation.]" [Citation.]' [Citation.]" (*Id*. at p. 213.)

The application for a TRO in this case arose out of two incidents in which mother unexpectedly encountered father while she and the children were on vacation in Nevada. On the first occasion, mother followed the social worker's instructions and informed father that she was taking the children to Laughlin on specified dates in July 2014. While mother and the children were at the river in Laughlin, they saw father jet-skiing; father circled the area where mother and the children were located and smiled at them, but did not approach. On the second occasion, mother informed father that she was taking the children to Las Vegas on specified dates in September 2014. While walking in a Las Vegas mall, they encountered father walking with male friends; father smiled at them; when L.M. started to "giggle and cry at the same time," mother hugged her. L.M. told the social worker that father "does it on purpose . . . he had a big smile." L.M. was bothered by both incidents, the boys said they were not. Father told his therapist that it was a coincidence he encountered mother and the children on both occasions.

After the TRO was issued, in an interview for the January 22 hearing, father told the social worker that mother knew father annually vacationed in Laughlin with his extended family and mother intentionally planned her vacation to coincide with father's family's annual trip. Regarding Las Vegas, father said he was there for a softball tournament which was planned before mother planned her trip; additionally, his girlfriend and new baby live in Las Vegas and he goes there often to visit them. Father submitted letters from paternal relatives describing the coincidental encounter with mother and the children at the lake in Laughlin, and other documentation supporting his claim that he was in Las Vegas for a softball tournament. Father told the social worker that when mother asked for permission to take the children, father knew he was going to be in both locations at the same time mother planned to be there, but felt no obligation to so inform mother so that she could make alternate plans.

There was no testimony at the hearing on January 22, 2015. Although the children had not weighed-in at the TRO hearing, at the January 22 hearing counsel for the children

stated: "The children are not afraid of the father. They do think he would benefit from anger management classes, and there are still some trust issues between the children and the father. However, they're not afraid of him and haven't seen him outside of the visits and the two times in Las Vegas and Laughlin." The children joined mother's request to terminate dependency with a family law order giving father monitored visits.

The juvenile court issued the restraining order only as to mother, finding it "too much of a coincidence" that father would twice accidentally encounter mother on out-of-state vacations and that it "does cause pause for the mother to have these issues of fear with regard to the father in this case stalking her or at lease knowing where she's at in this case."

Substantial evidence supports issuance of both the TRO and the restraining order. A trier of fact could reasonably conclude that father went to Laughlin and Las Vegas, knowing mother and the children were vacationing there, with the intention to annoy or vex mother and the children, and that mother and the children were "seriously alarmed, annoyed, tormented or terrorized" by the unexpected encounter with father. That father provided evidence suggesting an innocent explanation for his presence in both places does not compel a contrary result. It was for the juvenile court, not this court, to weigh the credibility of this evidence. The court's comments indicate it found father's explanations (including the supporting documentation) not credible. R.M.'s subsequent vehement statement to the social worker that father and the paternal family were all "liars" supports the juvenile court's credibility finding.

We also find no merit in father's argument that the portion of the TRO directing him to stay away from the children except for monitored visits should be reversed because the children were not afraid of father. The information that the children were not afraid of father was put forth at the hearing on the restraining order, not the prior TRO hearing. The evidence at the TRO hearing was that L.M. reacted emotionally to unexpectedly seeing father and was bothered by the encounters; the boys said they were not bothered. To the extent counsel's statement at the January 22 is relevant to the TRO, the statement was internally contradictory: she said the children were "not afraid of

father" but at the same time they wanted him to take anger management classes and to be limited to monitored visits.

From this information, as well as the evidence of father's conduct throughout dependency proceedings, the juvenile court could reasonably conclude the children were more fearful of father than they were willing to admit. The juvenile court's percipience in this regard was borne out by statements the children later made to their therapist and the social worker.

On this record, the TRO and restraining orders were supported by substantial evidence.

B. *Case No. B265343: The Final Judgment is Supported by Substantial Evidence*

Father contends it was an abuse of discretion to award mother sole legal and physical custody of the children and to limit father to monitored visits. He also contends the trial court improperly delegated the nature of the visits to the children. He argues this was not a "serious abuse case;" father had successfully completed his case plan; he was appropriate during monitored visits; therapist Guidino's recommendation against conjoint counseling is not substantial evidence because he was biased in favor of mother; there was conflicting evidence as to whether the children did or did not want unmonitored visits (father testified that they did, the reports indicated that they did not); and in any case, the children's wishes should not have been dispositive. We find no abuse of discretion.

1. Standard of Review

We review the "juvenile court's decision to terminate dependency jurisdiction and to issue a custody (or 'exit') order pursuant to section 362.4 for abuse of discretion [citation] and may not disturb the order unless the court ' " 'exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].' " ' [Citations.]" (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Applying this standard, we review the trial court's findings of fact 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." [Citations.]' [Citation.]" (*In re Maya L.* (2014) 232 Cal.App.4th 81, 102.)

2. Legal Authority

The status of a dependent child must be reviewed every six months. (*Maya L.*, *supra*, 232 Cal.App.4th at p. 98.) Where, as here, the child is not removed from the custodial parent, the six-month review hearings are governed by section 364.[8] (*Ibid*.) Section 364 directs the juvenile court to determine, at each six-month review hearing, whether continued supervision is necessary. (§ 364.) "The court shall terminate its jurisdiction unless [DCFS] 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).) Where, as here, the juvenile court terminates dependency jurisdiction over a child that is the subject of a Family Law custody order, the juvenile court may issue an order determining custody of, and visitation with, the child. Any such order must be filed in the superior court family law proceeding involving the child. (§ 362.4.)

In making a section 362.4 custody order, "it is the best interests of the child, in the context of the peculiar facts of the case before the court, which are paramount." (*In re John W.* (1996) 41 Cal.App.4th 961, 965, overruled by statute on another ground.) Where one parent continues to pose an active threat, it not an abuse of discretion to award sole physical and legal custody to the other parent. (*Id*. at pp. 973-974.)

The juvenile court has the discretion to determine the right and extent of visitation by a noncustodial parent and that discretion applies to family law exit orders. (*In re A.C.* (2011) 197 Cal.App.4th 796, 799.) In determining the right and extent of visitation, the child's desires are a factor to be considered but are not determinative. (*In re S.H.* (2003) 111 Cal.App.4th 310, 317, citing *In re Julie M.* (1999) 69 Cal.App.4th 41, 50–51 [child's aversion to visiting an abusive parent is proper factor for consideration in administering visitation so long as it is not the "the sole factor"].) While the juvenile court may not

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8 Review hearings for dependent children placed in foster care are governed by section 366.21. (*Maya L.*, at pp. 98-99.)

delegate whether or not visits occur, it may delegate the discretion to determine the time, manner and place of visitation. (*A.C.* at p. 799.)

3. The Evidence

At the June 22, 2015 hearing, father was asked why he understood there was an ongoing dependency case. Father said, "Well, I disciplined my son, which I feel, you know, I was wrong for doing." Asked to describe how he disciplined his son, father testified, "I pulled his ear and gave him a little, like, kind of shove." Father did not mention failing to protect both R.M. and E.M. from physical abuse by paternal uncle Anthony.

Father described two incidents in which he had to discipline the children during monitored visits, which father believed demonstrated that he had learned from parenting classes and individual counseling how to appropriately discipline. In the first incident, father was playing the game *Sorry* with R.M. and E.M. when R.M. became upset and hit E.M. in the head. Father testified:

> "I stopped [R.M.]. I talked to him. I said hey, you can't do that. [R.M.] proceeded to want to play with his Pokémon cards, which my daughter, [*L.M.*], *informed me that his therapist had said whenever he was misbehaving, for him to pull out the cards.* I told him no, that doesn't work. We're going to sit in time-out.
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> You know, I explained to him, you're not supposed to be hitting your brother, you know, *especially right here*, you know. So I had a talk with him. He was having a really bad meltdown at that time.
>
> And then I just – you know, I just really talked to him and I said, when you're ready, you know, you could apologize to your brother. He was really upset at the situation. I gave him about a good five, ten minutes, I finally talked to him again.
>
> At that point he – he tried to apologize but it wasn't sincere. And I told him, hey, you have to apologize like you mean it. At that point he gave him a hug and apologized. After that, he apologized, I just told him, you're not supposed to fight with him. You know, you shouldn't be throwing punches at him, it's not good, nor your sister.
>
> So at that point he just kind of mellowed out and he was fine. And it was about ten minutes later that the visit ended." (Italics added.)

The second incident also involved R.M. Father explained:

> "He's having a meltdown. You know, he wanted to play a game, and they were just fighting. Just talked to him and said, hey, we've got to play nicely. One wanted to play on my team. We were playing *Connect Four*. One wanted to be on my team. You know, they all want to be on my team because they want to win.
>
> So I just told them, hey, you know, we need to chill out. You know, there's no need to fight. There's no reason for fighting. It's just a game. And you know, they just kind of mellowed out after that."

In support of his request for unmonitored visits, father testified that during the monitored visits, the children often told him that they wanted unmonitored visits; in particular, R.M. and E.M. wanted father to take them to Disneyland without the monitor. To the extent the children expressed apprehension about unmonitored visits, father believed it was because father had always been the one to discipline them, which made them think father was "the bad guy."

Father testified that counseling taught him how to better deal with "a certain situation." Asked to elaborate, father testified: "A lot of it had to do with the mom. You know, definitely how she would try to push my buttons and just kind of – just get me riled up. Now I learned that it's not – it's not worth it for me to get upset and to argue with her. Just to kind of – just be a – not a bigger person but a better adult and to be – handle the situation a lot better with her than to argue and to fight with her."

Explaining the reasons for its exit order, the juvenile court said of father's testimony: "I would characterize it, as the department has indicated, that there seems to be a lot of self-realization on the part of the father but not a lot of insight yet." The lack of insight was shown by father's testimony blaming mother for getting him "riled up." The example of good discipline father gave was demanding one child apologize to another child. "Nothing with regards to how he applied any parenting skill or what he learned from the sessions that were being applied with regards to the relationship of his children." The juvenile court also expressed skepticism of father's claim that running into mother and the children in Laughlin and Las Vegas was coincidental.

4. Analysis

We find no abuse of discretion in the juvenile court's exit order. There was substantial evidence that giving mother sole legal and physical custody and limiting father to monitored visits was in the children's best interest.

We first address father's argument that the juvenile court abused its discretion because this is "not a serious abuse case." By definition, abusive conduct that leads to dependency jurisdiction is "serious abuse." When "a juvenile court hears a dependency case under section 300 of the Welfare and Institutions Code, the court deals with children who have been seriously abused, abandoned, or neglected." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) Father's characterization of this as "not a serious abuse case" demonstrates the lack of insight which the juvenile court identified as one reason for the exit order.

We next turn to father's argument that the juvenile court abused its discretion because father had successfully completed the case plan and was appropriate during monitored visits. There was substantial evidence that despite completion of his case plan, father was still an active threat to the children. In his testimony, father minimized the conditions that brought the children into the dependency system and his personal responsibility for bringing those conditions about. Asked what led to dependency jurisdiction, father did not acknowledge his failure to protect R.M. and E.M. from physical abuse by paternal uncle Anthony. Called upon to discipline R.M. during a monitored visit, father was informed of, but ignored R.M.'s therapist's recommendation that R.M. be redirected to his Pokémon cards. Father's take away from parenting classes and individual counseling was that mother was to blame for father's bad behavior – mother pushed father's buttons, riled him up and made him look like the bad guy.

On this record, the juvenile court could reasonably conclude that father did not yet understand that dependency jurisdiction was based, at least in part, on his failure to protect R.M. and E.M. from abuse by the paternal uncle. Although father understood dependency jurisdiction was based on his inappropriate disciplining of R.M., father did not understand *why* this was so and had not learned how to interact appropriately with the

children. Without such understanding, the juvenile court could reasonably find father continued to pose an active threat to the children's physical and emotional well being. As such, there was substantial evidence that it was in the children's best interest to give mother sole legal and physical custody and limit father to monitored visits.

We are not persuaded otherwise by father's arguments there was substantial evidence that the children were not afraid of him and they wanted unmonitored visits. There was conflicting evidence on both issues. Early on, the children told the social worker that they were not afraid of father but by June 2015, the children had said they were afraid of father; they consistently told the social worker, their therapist and appointed counsel that they did not want unmonitored visits. But father testified that they told him they wanted unmonitored visits. Resolution of such conflicts in the evidence is for the trial court, not the appellate court. In this case, the juvenile court resolved the conflicts against father.

Also unavailing is father's argument that the monitored visit order was an abuse of discretion because it was based solely on the children's opposition to unmonitored visits. First, the juvenile court did not delegate to the children or anyone else the discretion to decide whether or not visits would occur. It ordered thrice weekly visits. Second, the children's opposition to unmonitored visits was not the only factor considered by the court in ordering monitored visits. Therapist Guidino's recommendation against unmonitored visits was another factor. Third, even assuming the monitored visit order had been based largely on the children's wishes, we find no abuse of discretion. (*Julie M., supra,* 69 Cal.App.4th at p. 51.)

We find no merit in father's argument that Guidino's recommendation against conjoint counseling is not substantial evidence because Guidino was mother's therapist and, as such, was biased against father. It was for the juvenile court to weigh the evidence, not this court.

DISPOSITION

We affirm the TRO and restraining order (case No. B262657).

We affirm the final judgment (case No. B265343).

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.