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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B287377

(Los Angeles County  
Super. Ct. No. DK20194)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Julie Fox Blackshaw, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

T.J. (Mother) appeals from juvenile court orders terminating dependency jurisdiction and granting sole physical and legal custody of her daughters K.G. and Ka.G. (collectively, the Minors) to their father, B.G. (Father).<sup>1</sup> We are asked to decide whether the termination and custody determinations were an abuse of the court's discretion. We also decide whether the Department of Children and Family Services (the Department) failed to comply with the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related provisions of California law.

## I. BACKGROUND

### A. *The Incident that Triggered Dependency Court Jurisdiction*

Mother and Father were in a six-year relationship that ended in March 2013. They had two children together, the Minors, who were seven and six years old when dependency proceedings commenced.

The case arose out of a September 2016 altercation between Mother and Father's fiancée, J.A. At the time, Mother and Father shared joint custody of the Minors as provided by a 2014 family law order. Pursuant to that order, the Minors were to spend the first to the fifteenth of every month with Mother, and the sixteenth to the thirty-first of every month with Father. That schedule, however, was not being followed by September 2016, partly because Mother was homeless. Instead, Mother would usually call Father to arrange spending a day or two with the Minors.

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<sup>1</sup> Father did not appeal, nor did he file a response to Mother's opening brief.

On the day of the altercation, Mother called Father to make arrangements to pick up the Minors. Father was not available to drop the Minors off, but J.A., who had helped with custody exchanges of the Minors previously, offered to do so. J.A. and Mother had an antagonistic phone conversation prior to meeting in person, but they proceeded with the plan to exchange the children.

J.A. and a friend took the Minors to their school, which is where the exchange was to occur. Mother arrived with two of her friends. After J.A. exited her car, Mother walked over, pushed her, and began throwing punches at her. J.A. attempted to walk away, but Mother continued to attack. Mother ultimately punched J.A. in the face approximately four times, striking her on the lips and the bottom of her right eye. J.A.'s friend attempted to help J.A., but one of Mother's friends threatened to hit her if she kept interfering.

Following the incident, J.A. called the police and reported the assault. J.A.'s friend notified Father. Mother and the Minors had already left by the time he arrived at the school. Mother ultimately returned the Minors to Father's care the next night.

When notified of the incident, the Department conducted an investigation. A Department social worker reviewed the pertinent police report and interviewed Mother, Father, and J.A. The social worker also interviewed the Minors. When asked about the altercation, Ka.G. said J.A. did not want to fight, Mother used a fist when hitting J.A., and J.A. put open hands up to block Mother. Ka.G. also reported she was standing next to Mother during the fight and Mother almost backed into her. K.G. stated Mother pushed J.A., J.A. pushed back, and then Mother punched J.A. K.G. further stated J.A. attempted to get her and

Ka.G. out of the way, and asked Mother if she was going to fight in front of the children. According to K.G., Mother replied, “I don’t care.”

*B. The Dependency Petition*

The Department filed a petition asking the juvenile court to assume jurisdiction over the Minors under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).<sup>2</sup> As pertinent here, the petition alleged Mother engaged in a violent altercation with J.A. while the Minors were present, and Mother bumped Ka.G. during the altercation.<sup>3</sup> The petition further alleged Mother’s violent conduct endangered the Minors’ physical health and safety, and placed them at risk of serious physical harm.

At the initial detention hearing, the juvenile court removed the Minors from Mother’s custody and released them to Father’s care. The court also issued a temporary restraining order against Mother, protecting Father and the Minors until January 31, 2017. Mother, however, was granted monitored visitation with the Minors for a minimum of three hours per week.

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<sup>2</sup> Undesignated statutory references that follow are to the Welfare and Institutions Code.

<sup>3</sup> The initial dependency petition also alleged Father failed to protect the children from Mother’s violent conduct. Because the allegation was later stricken by the juvenile court and because it is not relevant to this appeal, we do not discuss it further.

*C. The Juvenile Court Assumes Jurisdiction*

Mother filed a Waiver of Rights and pled no contest to the dependency petition. The juvenile court sustained count a-1 of the petition (as amended) and dismissed count b-1. The juvenile court declared the Minors dependents of the court and ordered them removed from Mother's custody and placed with Father. The court also ordered Mother to participate in anger management and parenting education classes, and to receive individual counseling to address case issues. Mother was granted monitored visits that the Department had discretion to liberalize.

*D. The Initial Section 364 Review Hearing*

Over the ensuing months, Mother completed her anger management and parenting education courses and she consistently attended individual counseling. The Minors were doing well in Father's care, but issues arose regarding visitation.

In April, Mother told a social worker that Father had thrown away toys, Easter baskets, and clothing she had given to the Minors. When the social worker asked the Minors about the gifts, they said they liked the toys, the toys were not broken, and they were sad Father had thrown them away. Father admitted to throwing the toys away, and the social worker informed him that was inappropriate.

In May 2017, Mother's visits were liberalized to unmonitored visits on Saturdays from 12 p.m. to 4 p.m. In July, the Department social worker contacted Mother to discuss further liberalization to unmonitored overnight and weekend visits. Mother stated she needed to discuss the possibility of overnight visits with her parents because she was temporarily residing in their home.

A Department status report later in August acknowledged Mother's progress and her compliance with court orders while expressing concern Mother could not provide the Minors with stable and appropriate housing. The Department recommended the juvenile court terminate jurisdiction, grant Father sole physical custody, and grant Mother and Father joint legal custody.

The juvenile court held a section 364 review hearing in August 2017. Father requested sole legal custody of the Minors, stating he was unsure if he and Mother could work together to make parenting decisions effectively. Upon inquiry from the juvenile court, Father informed the court he and Mother were not making joint decisions at the time. Mother "submit[ted] on the recommendation for joint legal custody" and requested overnight visits. The Minors' attorney supported joint legal custody and overnight visits. The Department's attorney stated that if the court were to grant Mother overnight visits, it wanted the court to keep the case open for three additional months to ensure the Department could evaluate Mother's housing and see if the overnight visits happened successfully.

The juvenile court decided to retain jurisdiction because overnight visits with Mother were a new development. The court ordered the Minors were to remain in Father's home and Mother was to have unmonitored visits and two overnight visits per week. The court stated it would like Mother and Father to begin making medical, educational, and after-school activity decisions together. The juvenile court told Mother and Father that "[i]f the next three months works, I'm going to give you joint legal custody. If it doesn't work, then it's going to be sole legal

custody.” The court encouraged Mother and Father to “[t]ry to make it work.”

*E. Ensuing Developments and the Second Section 364 Hearing*

In the month following the first section 364 hearing, Father reported Mother was not visiting the children. He informed the Department social worker that Mother had occasionally called, but then stopped calling. Father also reported Mother had asked (via the maternal grandfather) to change her visits to Sundays due to her work schedule, but Father could not accommodate the change because the Minors had commitments on Sundays. Two Department social workers attempted to speak to Mother about assessing her home in order to establish a schedule for overnight visits, but their efforts were unsuccessful.

When asked, Ka.G. stated she missed the visits with Mother “a little”; K.G. did “not really” miss them. K.G. was willing to give overnight visits a try, but Ka.G. was concerned about the idea because she liked sleeping in her own bed and was not sure who else would be present at the overnight visits.

Mother was out of contact with the Department from early August to late September. Once a Department social worker eventually made contact with Mother, she was thereafter diligent about maintaining contact and returning messages.

The Department social worker met with Mother in early October. Mother reported Father had refused Sunday visits, not allowed Mother prolonged visits, and would not make direct contact with Mother. Mother showed the Department social worker text messages demonstrating she had tried to contact Father about arranging visits five times from early August to



mid-September and Father had only responded to her last message, asking if she had received any messages from maternal grandfather. The Department social worker informed Father it was his responsibility to facilitate scheduling visits between Mother and the Minors. Father felt overwhelmed by thinking about the Minors having visits with Mother. While he acknowledged visits could possibly be scheduled on Sundays, he stated it would be “so much change.”

Mother visited with the Minors for about two and a half hours the next Friday. The Department social worker attempted to coordinate a visit for the following Sunday, but Father stated the Minors were only available in the morning and Mother was not available then. Mother wanted longer visits on Fridays if Father was going to limit Sunday visits to times Mother was unavailable. Father did not agree to a longer visit the following Friday, and he maintained the children were only available on Sunday mornings. The Department social worker observed Mother had made a sincere effort to maintain visitation, but Father had not been flexible with his availability.

The trial court held a second section 364 hearing in October 2017. The Department recommended termination of jurisdiction with a custody order providing for joint legal custody and sole physical custody to Father, with unmonitored visitation for Mother. Father argued for sole legal custody, stating he did not feel he and Mother were capable of making joint parental decisions. He asked the court to close the case because it had already been continued for three months and Mother had yet to obtain housing. Mother asked the court to keep the case open or grant joint custody. Mother asserted Father was the party thwarting Mother’s visits, though she acknowledged she did not

have housing available to provide overnight visits. The Minors' counsel stated she believed the Minors were safe in Father's care but would not object to keeping the case open.

The juvenile court stated there was no reason to continue jurisdiction because the remaining issues were between the parents and unrelated to the safety of the children. The court declined to grant joint legal custody, noting "I don't think joint legal custody is appropriate when the parents don't get along. If there is a time when you are able to get along and make decisions together, then I think you can certainly go back to family court and make a change."

The court granted sole legal and physical custody to Father but issued a "very specific visitation order," warning Father that Mother could go to family court and enforce it if Father did not comply. The court ordered Mother was to receive unmonitored visitation on Fridays after school until 8:00 p.m. and on Sundays from 8:00 a.m. to 2:00 p.m. The court further ordered that once Mother acquired appropriate housing, Mother was to have every other weekend with the children. The juvenile court instructed Mother to go to family court if Father withheld the children from weekend visits once Mother obtained appropriate housing.

#### *F. Facts Concerning ICWA Compliance*

Mother denied Indian ancestry at the outset of the dependency proceedings, but she later filed a parental notification of Indian status form indicating she might have Cherokee Indian ancestry through her maternal great-grandparents. Father denied any Indian ancestry. At the initial detention hearing, the juvenile court noted Mother had potential

Cherokee ancestry and asked the Department to investigate the matter further.

Between the detention and jurisdiction hearings, the Department social worker interviewed Mother regarding her potential Cherokee heritage and sent ICWA notices. The notices listed the names and birthdates of Mother's biological parents but did not contain any further information regarding extended family members. The proof of mailings submitted by the Department indicate it sent ICWA notices to the Secretary of the Interior, Bureau of Indian Affairs (BIA); the Bureau of Indian Affairs in Sacramento; the Cherokee Nation of Oklahoma; the Eastern Band of Cherokee Indians; and the United Keetoowah of Cherokee Indians in Oklahoma. The BIA responded with a letter indicating the notice did not contain sufficient information for the BIA to determine tribal affiliation. The Department also received responses from the Eastern Band of Cherokee Indians and the Cherokee Nation stating the Minors were not considered "Indian Children" based on the information provided.

The Department subsequently recommended the juvenile court make an ICWA finding. The record on appeal does not demonstrate the juvenile court ever did.

## II. DISCUSSION

Mother presents three arguments on appeal, none of which is meritorious. First, Mother argues the juvenile court abused its discretion by terminating dependency jurisdiction because Father's inflexibility regarding visitation arrangements constituted a need for continuing supervision. Under section 364, however, a juvenile court only maintains jurisdiction if there is a continuing need for supervision to ensure the safety of the

children. Because there is no evidence demonstrating any such need here, termination of jurisdiction was not error. Second, Mother argues the juvenile court abused its discretion by granting Father sole custody, but her argument relies on family law presumptions and preferences that are inapplicable in dependency proceedings. The pertinent inquiry in the dependency context is whether sole custody was in the best interest of the Minors, and the juvenile court was within the bounds of its discretion to determine granting Father sole custody was in the Minors' best interest because Father provided the Minors with a safe, stable home and Mother and Father seemed incapable of working together. Finally, Mother argues the Department failed to satisfy ICWA requirements because its investigation and ICWA notices were inadequate. The notice and inquiry requirements of ICWA were never triggered, however, because the Minors at all times remained in the custody of a parent (Father).

A. *The Trial Court Did Not Abuse Its Discretion by Terminating Jurisdiction and Granting Father Sole Custody*

We review the juvenile court's decision to terminate dependency jurisdiction and issue a custody order for abuse of discretion. (See *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300 (*Bridget A.*); *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4 (*Nicholas H.*)) ["court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case"].)

1. *Termination of jurisdiction was not an abuse of discretion*

A juvenile court is required to review the status of a dependent child every six months. (§§ 364, 366.21, 366.22; *Bridget A.*, *supra*, 148 Cal.App.4th at pp. 303-304.) Where, as here, a child is in the custody of a parent, the juvenile court must determine at each six month interval whether its jurisdiction should be terminated or whether further supervision is necessary. (§ 364; *In re N. S.* (2002) 97 Cal.App.4th 167, 171-172; *In re Joel T.* (1999) 70 Cal.App.4th 263, 267-268.) Further supervision is deemed necessary if conditions still exist that would justify the court taking jurisdiction of the child or if such conditions would exist if jurisdiction were terminated. (§ 364, subd. (c); see also *In re N. S.*, *supra*, at p. 173.)

Here, the juvenile court assumed jurisdiction over the Minors because Mother had engaged in a violent altercation with J.A. in the Minors' presence. There is no evidence the conditions that caused the court to take jurisdiction over the Minors still existed or would exist if jurisdiction were terminated. Nothing in the record indicates Mother had engaged in any other violent altercations in the Minors' presence since the incident that initially triggered jurisdiction. Further, Mother had complied with her case plan by completing her anger management and parenting education courses and consistently attending individual counseling. Without more (and there was no more), the difficulty scheduling visitation, even due to Father's alleged inflexibility, does not constitute a reason for the juvenile court to maintain jurisdiction over the Minors. The family court that will be responsible for enforcing (or modifying) the juvenile court's visitation order is equally capable of ensuring visitation takes

place as ordered. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203 [“When the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court”]) (*Chantal S.*.)

2. *The juvenile court did not abuse its discretion by granting Father sole legal and physical custody over the Minors*

A juvenile court terminating dependency jurisdiction and making custody or visitation orders “does so as a court with ‘a special responsibility to the child as *parens patriae* and [it] must look to the totality of a child’s circumstances when making decisions regarding the child.’ [Citation.]” (*In re J.T.* (2014) 228 Cal.App.4th 953, 963.) In making such orders, the dependency court’s primary concern must be a determination of “what would best serve and protect the child’s interest.” (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652; see also *Nicholas H., supra*, 112 Cal.App.4th at p. 268; *Chantal S., supra*, 13 Cal.4th at p. 206.)

Family law presumptions favoring joint custody do not apply in the dependency context. (*Chantal S., supra*, 13 Cal.4th at p. 206 [“application of a family-law-based joint custody presumption would be inconsistent with the purpose of juvenile court law”].) Rather, a “juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case.” (*Nicholas H., supra*, 112 Cal.App.4th at p. 265, fn. 4.) “Thus, for example, a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in

the child's best interests for a variety of reasons. [Citation.] By the same token, a finding that the parent from whom custody was removed no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not necessarily determinative of, the best interests of the child." (*Id.* at p. 268.)

There is ample record evidence demonstrating it was in the Minors' best interests to grant Father sole physical custody. When the juvenile court terminated jurisdiction, Mother did not have a settled living situation and could not provide the Minors with a place for overnight visits. Father, by contrast, provided the Minors with a stable, safe home and the Minors were doing well in Father's care.

Substantial evidence also demonstrates there was no abuse of discretion in determining that giving Father sole legal custody of the Minors was in their best interest. "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child." (Fam. Code, § 3003.) To be workable, joint legal custody requires the parents' willingness and ability to cooperate in making medical, educational, and other child-rearing decisions. At the time of the second section 364 hearing, Father and Mother were not making any decisions jointly. Father appeared to be avoiding communicating directly with Mother, and the two could not even schedule visitation without the assistance of the Department social worker. Under these circumstances, the juvenile court reasonably concluded joint legal custody was not in the Minors' best interest (indeed, it could have provoked further conflict detrimental to the Minors).

Mother presents no argument to the contrary. Instead, she argues the juvenile court should have considered factors the Family Code enumerates to guide custody determinations in family law proceedings. For example, she argues the juvenile court was required to consider which parent was more likely to allow the Minors frequent and continuing contact with the noncustodial parent. No such consideration was necessary. As we have already explained, these family law custody principles do not govern when a dependency court makes a custody determination. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712); accord, *Chantal S.*, *supra*, 13 Cal.4th at p. 201.)

*B. There Was No Violation of ICWA Inquiry and Notice Requirements*

ICWA and related provisions of California law impose duties of inquiry and notice “whenever it is known or there is reason to know that an Indian child is involved in a ‘child custody proceeding’ within the meaning of ICWA, which includes a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. (§ 224.1, subd. (d), see § 224.2, subd. (a); 25 U.S.C. §§ 1903(1), 1912(a).) In such cases, notice must be sent to all federally recognized tribes of which the child may be a member or eligible for membership. (Cal. Rules of Court, rule 5.481(b)(1).) However, ‘[b]y its own terms, [ICWA] requires notice only when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding.’ (*In re Alexis H.* (2005) 132



Cal.App.4th 11, 14[ ]; see also *In re J.B.* (2009) 178 Cal.App.4th 751, 758[ ] [finding that ‘ICWA does not apply to a proceeding to place an Indian child with a *parent*’].)” (*In re M.R.* (2017) 7 Cal.App.5th 886, 903-904.)

Mother contends the ICWA inquiry and notices here were inadequate because the notices failed to include information in the Department’s possession and because the Department failed to conduct a sufficient investigation to discover other information. We need not determine whether the Department’s investigation or the ICWA notices were deficient because ICWA’s requirements were never triggered in the first place. At no point in the proceedings at issue in this appeal did the Department seek to have the Minors placed in foster care or seek termination of parental rights. The Minors were living with Father before the dependency proceedings commenced, remained in Father’s home throughout the proceedings, and were placed in Father’s custody when juvenile court jurisdiction terminated. Simply put, “ICWA and its attendant notice requirements do not apply to a proceeding [like this one] in which a dependent child is removed from one parent and placed with another.” (*In re M.R., supra*, 7 Cal.App.5th at p. 904.)

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.\*

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