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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ANGEL C., JR., a Person Coming  
Under the Juvenile Court Law.

B236121

(Los Angeles County  
Super. Ct. No. CK85181)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANGEL C., SR.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Donna Levin, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Tracey M. Blount, Deputy County Counsel, for Plaintiff and Respondent.

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Angel C., Sr. (Father), appeals the juvenile court's order under Welfare and Institutions Code section 362.4<sup>1</sup> terminating its jurisdiction and granting sole legal and physical custody of the couple's eight-year-old son, Angel C., Jr. (Angel), to Rosa D. (Mother), limiting Father to monitored visitation. Father contends the juvenile court abused its discretion in granting Mother sole legal custody of Angel. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Petition*

On November 16, 2010 the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition alleging Father had physically abused Angel by choking him and repeatedly kicking him in the buttocks and Mother had failed to protect Angel from Father's abuse. The petition also alleged Father and Mother have a history of engaging in violent altercations in Angel's presence; Father has hit and choked Mother in Angel and his younger sibling's presence;<sup>2</sup> and Father is a daily abuser of alcohol, which renders him incapable of providing regular care and supervision. The juvenile court detained Angel and released him to his mother after being assured Father no longer resided with her. On November 18, 2010 the court also issued a temporary restraining order against Father based on Mother's allegations he had threatened to kill her.

### *2. The Jurisdiction and Disposition Hearing*

After a contested jurisdiction and disposition hearing on February 3, 2011, the juvenile court sustained the allegations in the petition, declared Angel a dependent child of the court, removed him from Father's custody and ordered him released to the home of Mother.<sup>3</sup> The court ordered family reunification services for Father with monitored visitation and family preservation services for Mother. The court's order required Father

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Angel C., Sr., is not the father of Kimberly, Mother's other child, who is three years younger than Angel. Kimberly is not a subject of this appeal.

<sup>3</sup> Kimberly was also released to Mother's custody.

to complete domestic violence counseling for batterers and random drug and alcohol testing. If Father tested positive for drugs or alcohol or, if any tests were missed, he was to complete a substance abuse program with random drug and alcohol testing. Mother was ordered to complete a program of domestic violence counseling for victims. The court also issued a permanent restraining order against Father, to expire February 3, 2014.

### *3. The Section 364 Review Hearing and Termination of the Court's Jurisdiction*

At the section 364 review hearing on August 4, 2011, the Department reported Mother and her children had been participating in family preservation services and Mother was in full compliance with her case plan. Father, on the other hand, had failed to participate in several of the court-ordered programs, complaining he could not find a job and thus could not afford them despite Department referrals for free sessions. He tested negative for drugs and alcohol several times, but had missed other tests and did not enroll in a substance abuse program or a parenting program as ordered. He also failed to consistently attend his counseling program for domestic batterers. Angel was initially resistant to visiting with Father, but became more comfortable as the visits progressed. Father was appropriate with Angel during these visits. However, Angel reported he had felt apprehensive about visiting with Father without a monitor present. After Father made an offer of proof contesting the Department's report, the court continued the matter to August 26, 2011 for a contested section 364 hearing.

On August 26, 2011, following an evidentiary hearing, the court found Father had not made substantial progress addressing the issues that had led the court to intervene. Pursuant to the Department's and Angel's request, the court granted sole legal and physical custody of Angel to Mother with twice weekly monitored visitation for Father. The court advised both parents it would terminate jurisdiction upon receipt of a custody order.

On August 31, 2011 the juvenile court restated its August 26, 2011 order as a custody order pursuant to section 362.4 and terminated its jurisdiction.

## DISCUSSION

### 1. *Governing Law and Standard of Review*

Section 362.4 authorizes the juvenile court, when terminating its jurisdiction over a child who has been declared a dependent child of the juvenile court, to issue a custody and visitation order that will become part of the relevant family law file and remain in effect in the family law action “until modified or terminated by a subsequent order.”

When making a custody determination under section 362.4, “the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; accord, *In re Chantal S.* (1996) 13 Cal.4th 196, 206.) This determination is made without reference to any preferences or presumptions ordinarily applicable in the family court. (See *In re John W.* (1996) 41 Cal.App.4th 961, 972 [ordinary “presumption of parental fitness ‘that underlies custody law in the family court just does not apply to dependency cases’”].)

We review the juvenile court’s decision to issue a custody order and terminate its jurisdiction pursuant to section 362.4 for abuse of discretion (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318) and may not disturb the order unless the court ““exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.”” (*Ibid.*; accord, *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

### 2. *Father Has Not Demonstrated the Juvenile Court Abused Its Discretion*

Father contends the court deprived him of legal custody without identifying its factual reasons for doing so, and this alone constitutes an abuse of the court’s discretion. Contrary to Father’s contention, the record amply demonstrates the propriety of the court’s order: Mother had participated in court-ordered programs and had made substantial progress in dealing with the issues that had led the court to assume jurisdiction. Father, in contrast, had not made substantial progress addressing the domestic violence and child abuse issues that had prompted jurisdiction in the first place. Mother’s counsel and Angel’s counsel both emphasized Father’s compliance deficiencies and supported the Department’s recommendation that Mother receive sole legal and

physical custody and that dependency jurisdiction be terminated. Following arguments of counsel, the court granted Mother sole legal and physical custody of Angel with monitored visitation with Father. While the court did not fully explain its reasons for the order on the record, its implied finding such an order was in Angel's best interests was clear and unmistakable and well within the court's broad discretion. (See *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825 [ample evidence supports juvenile court's implied findings, which, while not express, were "obvious" from record].)

#### **DISPOSITION**

The August 31, 2011 section 362.4 order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.