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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH
AND HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant,

LARRY U.,

Respondent.

D086098

(Super. Ct. No. J521374)

APPEAL from an order of the Superior Court of San Diego County,
Alexander M. Calero, Judge. Reversed with directions.

Brent D. Riggs, under appointment by the Court of Appeal, for
Defendant and Appellant.

Jesse J. McGowan, under appointment by the Court of Appeal, for Respondent.

David Smith, Acting County Counsel, Lisa M. Maldonado, Chief Deputy County Counsel, and Indra N. Bennett, Deputy County Counsel, for Plaintiff and Respondent.

A.A. (Minor), now almost 15 years old, appeals from a juvenile court exit order that grants visitation rights to her biological father, Larry U. Larry had not been involved in Minor's life or provided for her until she, her mother, and her brothers moved in with him when she was 12 years old. Minor spent only two months with Larry and in that time, he hit her repeatedly with a belt and forced her to stand for hours as punishment, resulting in her removal from Larry's and her mother's care. Minor was adamant that she did not want any contact with Larry and refused all visitation with him during the pendency of her case. As a result, their relationship progressed no further.

Minor asserts the juvenile court abused its discretion when it ordered visitation with Larry in its exit order because it was not shown to be in her best interest. The San Diego County Health and Human Services Agency (Agency) agrees with Minor. We do as well and reverse the order with directions to eliminate any required visitation with Larry.

FACTUAL AND PROCEDURAL BACKGROUND

Minor's mother, Joyce A., was married to O.A. (hereafter "O.") around the time Minor was conceived and when she was born. O. believed he was Minor's biological father, Joyce had told him he was the father when she was pregnant, he cut Minor's umbilical cord, his name was listed on her birth certificate, and he raised her as his own child. Joyce and O. had two more children, and the family lived together until Minor was four or five years old.

When Joyce and O. divorced, O. was recognized as Minor's father, and he received parenting time with her. Minor views O. as her father.

In October 2023, when Minor was 12 years old, Larry filed a motion in family court to establish a relationship with her, have himself substituted for O. on her birth certificate, and to change her last name to his own. Prior to this, Larry had never sent money for Minor's support or gifts. But he claimed that he spoke to her on the phone when Joyce would call him, and that Minor called him "Mr. Larry." Larry believed that she knew he was her father since she was five or six years old.

Minor met Larry in person for the first time as a 12-year-old. Joyce had suffered a health episode, she needed help with her children, and she intended to move closer to Larry to allow him to have a relationship with Minor. Joyce moved herself, Minor, and her two other children into Larry's apartment. Larry tried to get closer to Minor, wanting to hug her even when she did not like it. He enrolled her in school in the beginning of December. Before she started school, Larry took her on outings to amusement parks with his minor son, J.U., who also lived with him. Once Minor was in school, Larry helped her with her homework.

Within two months of moving in with Larry, Minor reported at school that Larry hit her with a belt. She explained on the night prior to her reporting, Larry made her stand completely straight with her hands to her sides while he hit her with the nonbuckle end of the belt. Minor was scared to go home and while school staff did not examine her legs, they could see reddish welt marks on her arm.

Minor was taken to a hospital where she was examined by a physician with child abuse expertise. The doctor observed "patterned loop marks,

consistent with physical abuse and the use of a belt” on her arm and thigh. Photographs of her welt marks were admitted at trial.

Minor explained she had been hit with the belt on three occasions. During the most recent incident, she was doing homework and preparing for a test at school the next day. She watched a video to help her study, and Larry directed her to write down information from the video for him to question her about later. Larry then asked her questions related to the video, but she did not know the answers to his questions. When she was unable to answer correctly, Larry grabbed the belt, took her to the living room and hit her. Joyce saw Larry hit Minor and she did nothing to stop it. Joyce just kept telling Minor that she was “stupid.” Minor did not count how many times she was hit that night but stated that during one of the two days before that incident Larry hit her with the belt eight times. She knew this because Larry told her “[S]he was misbehaving and that eight was the number she deserved.”

Minor explained that on another occasion, Larry hit her with a belt because he learned that she changed into her gym clothes at school to avoid wearing the clothing that Larry forced her to wear. Minor preferred to wear pants, shorts, and T-shirts, but Larry punished her by throwing away her clothing and forcing her to wear dresses and high heels. She did not like dressing this way and felt uncomfortable wearing the dresses to school because Larry did not allow her to wear shorts underneath.

On the night before Minor reported the incidents, she was forced to stand until she was done with her homework. She stood from sometime “between 6pm–8pm until 1am” and was not allowed to lean on anything. She explained that being forced to stand until she was done with her homework happened frequently.

Larry denied that he hit Minor with a belt, made her stand for hours, or abused her in any way. Joyce similarly denied the abuse occurred and claimed Minor was lying. But Larry's son, J.U., confirmed Minor's reporting. He also revealed that Larry was coaching him and Minor's younger siblings to deny that anything had occurred: "After [Minor] got taken away, Larry knew that we would be questioned at school. The day of, and the days after, he would prepare us in the living room to say nothing, and to say, oh this happened, that happened. He'd train us to say 'no,' and deny it all, and prepare whatever came to us, for us to deny it and say everything was okay at home. And, if we need to, that we want to call Larry or Joyce." J.U. also alleged that during the time that Minor lived in the house, Larry hit, kicked, and dragged J.U. causing him to cough up blood.

The Agency placed Minor in foster care and filed a dependency petition alleging that Larry subjected or exposed Minor to excessive discipline by hitting her repeatedly with a belt on multiple occasions, that Joyce observed this abuse, and that Larry and Joyce forced her to stand for several hours at a time as punishment. The court initially ordered visitation with O. and Joyce but no contact between Larry and Minor.

As Minor's dependency case progressed, Larry was designated as an alleged father. As a result, the court made voluntary services available to him and ordered visitation with Larry, with Minor's input to be considered. Paternity testing then proved Larry was Minor's biological father and his status in the case was changed to reflect this. The court confirmed that voluntary services were available to Larry, as was visitation with Minor's input to be considered. But the court denied Larry presumed father status. It reasoned that Larry and Minor did not have an existing "fully developed

relationship,” and it did not appear she had a stable placement in his home or wished to have a continued relationship with him.

After a multi-day trial, the court found that Minor’s disclosures were “overall credible,” and determined the allegations were true. It reasoned that J.U. had reported similar physical abuse by Larry and that the similarities lent credibility to Minor’s story. Furthermore, J.U. corroborated Minor’s disclosures and there was no credible allegation that Minor and J.U. conspired with each other to fabricate the allegations. The court also assigned substantial weight to the medical professionals’ findings that Minor’s injuries were consistent with her explanation of what occurred. Lastly, it found the circumstances of Larry’s prior conviction for physical abuse and a related dependency case concerning his other children supported the finding.¹

The court adjudged Minor a dependent of the court and placed her in the custody of O. The court determined that Larry’s progress toward alleviating or mitigating the causes necessitating placement had been “none.” It ordered enhancement services for Larry and Joyce. It also expressed the hope that the parties would be open to conjoint therapy and “that relationships will mend and grow.”

Larry had engaged in services 10 years before when he faced the prior allegations of striking his sons with a belt. In regard to that case, he “acknowledge[d] that he physically disciplined his own child but, was non[]chalant about the injuries . . . and felt physical discipline was appropriate.” Larry’s two children were removed from his care. By the time that case concluded, a social worker noted that Larry completed 38 sessions

¹ Approximately 10 years earlier, Larry was convicted for inflicting corporal injury on a child (Pen. Code, § 273d) after he struck his minor sons with a belt on their arms and legs.

of child abuse/parenting group and was making progress, but he still scored low in the areas of “empathy” and “insight” concerning the fear and trauma his abuse caused. This time, when the court offered voluntary services and later ordered enhancement services, Larry provided no evidence that he was completing the portion of the court’s order that he could accomplish without Minor’s involvement. Specifically, he was ordered to work with a therapist regarding his anger, but he provided no evidence of compliance.

There was likewise no indication of any progress in improving Larry and Minor’s relationship. Throughout the case, Minor refused all visitation with Larry. When Minor visited with Joyce, she said she did not miss Larry and did not want Joyce to refer to him as her father. She was “vehement” that she did not wish to see or talk to Larry. Minor expressed that she did not really know Larry, did not see him as her “father,” could not understand how someone who is her biological father could hurt her, did not feel safe with him, and did not want any contact with him. But despite Minor’s refusal, the court wanted visits to happen. It explained that perhaps Larry could begin writing letters to “break the ice, and help the youth to be open to visits.” There is no evidence that Larry attempted to write her a letter.

Over the 15 months between Minor’s removal from Larry and Joyce and the court’s decision to terminate jurisdiction, Minor had no contact with Larry. As the court considered exit orders,² Minor’s counsel advised the court that Minor wanted no in-person or telephone visits with Larry and urged the court to not order visitation with him. The court terminated

² When a juvenile court terminates dependency jurisdiction, it may issue orders concerning custody and visitation—commonly known as “exit” orders—that will remain in effect after dependency jurisdiction is terminated. (Welf. & Inst. Code, § 362.4, subd. (a); *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.)

jurisdiction, granting sole custody to O., and observed that “[Minor] does not want contact with [Larry] at this time. Involving him in the mix would not be in [Minor]’s best interest.” But in the formal exit order, the court separately granted Larry and Joyce supervised phone and in-person visits, requiring phone visits occur at least one time per week. The order provided that “Minor’s input will be taken into consideration” with respect to the phone calls and further noted that “Minor has declined visits with [Larry] over the entirety of the case.”

DISCUSSION

Minor argues that the court’s exit order requiring visitation with Larry should be reversed because it does not serve her best interests. The Agency agrees that the record does not support the court’s express or implied findings. In response, Larry contends Minor does not have standing to challenge the order and asserts, in any event, that the court did not abuse its discretion. We conclude Minor has standing to challenge the order and that the court abused its discretion when it ordered visitation with Larry.

A. *The Minor Has Standing to Challenge the Visitation Order.*

Larry asserts that Minor does not have standing to challenge the court’s exit order because it requires that her input be “taken into consideration” with respect to visitation. According to Larry, the order effectively gives Minor “the right to veto any visitation with Larry,” meaning she is not an aggrieved party.

To have standing to challenge a court’s order, a party “must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision.” (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) Here, Minor has standing because, while her input is to be considered, it is not solely dispositive. (See *In re S.H.* (2003) 111 Cal.App.4th 310, 319

[child's wishes may not be "the *sole* factor" in determining whether any visitation takes place].) The terms of the order do not preclude the possibility that Minor will be required to visit with Larry despite her contrary wishes. This possibility is sufficient to confer standing.

B. *The Court Abused Its Discretion in Ordering Visitation.*

In deciding whether to grant a parent visitation as part of an exit order, the juvenile court must act in the child's best interests. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) The court is not constrained by any preferences or presumptions, but rather it must look to the totality of circumstances to determine what type of order would be in the child's best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) "While a child's wishes are not determinative of her best interests," they can be "powerful demonstrative evidence" that must be considered. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.)

We review a juvenile court's exit orders for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) We will not disturb its decision unless the court has "exceeded the bounds of reasons," all the circumstances considered. (*Ibid.*; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) In considering the record, we resolve all evidentiary conflicts in the light most favorable to the juvenile court's order. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Here, in view of the totality of the circumstances, the court unreasonably determined Minor's best interests were served by ordering her to have interaction with Larry that she does not want and has refused to participate in. The evidence before the court demonstrated that Larry's children had previously been removed from him because he had struck them

with his belt. Despite prior counseling on this issue, Larry nevertheless was found to have engaged in the same conduct with Minor, demonstrating a lack of growth even as he matured with age.

Within weeks of meeting Minor in person for the first time, Larry hit her with his belt in front of Joyce and J.U., leaving red welt marks on her body. He took no responsibility for his actions and engaged in no services, even after they were ordered by the court. Throughout the 15-month pendency of the case, Minor consistently refused any contact with Larry. He damaged the minimal relationship they had, and their relationship has not been mended or improved. The court explained that the situation with Larry remained “unchanged,” but nonetheless ordered visitation with him. As the Agency aptly articulated in a joinder letter to this court, “From [Minor]’s perspective, [O.] was her *only* father. [Larry] had never become a parent to [Minor]” and the juvenile court’s order “cornered [Minor] into obligatory interactions with someone who had never been—and was unlikely to become—a safe, supportive, or meaningful person in her life.”

While the court acknowledged that Larry’s visitation should be supervised because he had not completed parenting classes, individual counseling, child abuse group and high conflict coparenting class, we find no support for mandating any visitation with Larry. We reject his argument that the court appropriately exercised its discretion in ordering his visitation because he helped Minor with her homework, showed a commitment to her well-being, and their relationship was more established than Minor let on. It is uncontroverted that Minor met Larry in person for the first time at age 12. Within weeks of meeting her, Larry hit her repeatedly with a belt, leaving red marks on her body and causing her to feel unsafe. And his “help” with her homework was inextricably intertwined with the conduct that led to her

removal from his care: striking her with a belt when she did not know answers and forcing her to stand for hours to finish her homework. Even viewed in the best light possible, this behavior demonstrates a very misguided commitment to Minor's education and well-being.

Equally important, there are no facts to demonstrate that Larry acknowledged his shortcomings or wanted to improve. It was certainly appropriate for the court to express a wish or hope that Larry and Minor's relationship might grow or mend after the termination of its jurisdiction. But the facts of this case simply do not support ordering visitation over the objection of Minor because forced visitation is not reasonably in her best interest.³

3 Based on a significant change of circumstances and a showing that visitation with Larry would be in Minor's best interest, Larry could file a request for an order regarding visitation in family court. (Cal. Rules of Court, rule 5.700; see *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1705.)

DISPOSITION

The order is reversed with directions to enter a new order omitting any visitation with Larry.

DATO, Acting P. J.

WE CONCUR:

DO, J.

CASTILLO, J.