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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JULIA B., et al., Persons Coming  
Under the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

AMANDA P.,

Defendant and Appellant.

A131093 & A132515  
(Contra Costa County Super. Ct.  
Nos. J09-00380 & J09-00381)

Amanda P., mother of Julia B. and Ashley B., appeals from orders leading up to and following the termination of dependency jurisdiction for the two children, including the dismissal order. She complains that her boyfriend, the abuser of one of the children, should have been given therapeutic visitation with the children, and that the court erred in terminating jurisdiction with a continuing restraining order prohibiting him from having contact with the children for one year. We conclude the court did not abuse its discretion in denying therapeutic visitation, dismissing the petition, and issuing a continuing protective order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Jurisdiction and Disposition (A125775)***

This is the second time this case has been before us. The facts are undisputed. Appellant Amanda P. and Christopher B. had been married and divorced and had two children together, Julia B. and Ashley B. The children lived primarily with Amanda but had visitation with their father every other weekend. Amanda and the children lived with Mark T., Amanda's fiancé. Amanda became pregnant with Mark's child and gave birth during the dependency proceedings.

On February 27, 2009, while on a visit to their father's house, Ashley, age four at the time, complained that her "peepee" hurt. She said Mark had put his finger in her too hard while he was giving her a bath, specifically that he "put his finger inside me too deep and now my peepee hurts."

Christopher reported the suspected abuse to the police. In a taped interview, Ashley told the police that Mark had put his finger in "really far," that it hurt, and she told him so. Mark had also put his finger inside her peepee on other occasions. He touched her peepee every time he bathed her and always washed her with his bare hands.

Amanda confirmed that Mark had often bathed Ashley. She asked him to help out in that way because Ashley had broken her arm and could not bathe herself. Ashley also was prone to getting vaginal rashes, and Amanda told Mark it was important to keep her vaginal area clean. Ashley had complained before that her vagina hurt because either Amanda or Mark "touched it too hard during a bath." Amanda believed her ex-husband was jealous over her new relationship with Mark, and this may have played a part in his decision to report the matter to the police.

A medical examination was consistent with sexual abuse, but not conclusive: "Dr. Carpenter would state that [the Sexual Abuse Response Team] exam performed on [Ashley] was non-specific finding. It was consistent but not diagnostic. The most important part was her statements to the doctor. There was no pain until the hymen was touched. There was separation of the labia with a finger that went beyond. Digital penetration at least halfway up to the hymen. Soap could have given irritation. There is

not enough proof for criminal proceedings. However, he believes that what occurred is of a sexual nature and [he is] willing to testify.”

On March 11, 2009, Contra Costa County Children and Family Services Bureau (Bureau) initiated dependency proceedings for both Ashley and Julia, then age six. It was alleged Ashley had been sexually abused and her mother failed to protect her, and specifically that Mark had inserted his finger “at least half-way to the hymen on multiple occasions.” Julia’s petition alleged she was at risk of similar abuse. (Welf. & Inst. Code, § 300, subs. (b), (d) & (j).)<sup>1</sup> No evidence ever developed of any inappropriate behavior by Mark toward Julia.

It was ordered at a detention hearing that Mark was to have no contact with the children. Mark voluntarily left the home and said he would remain away until the court gave him permission to return. He promised never to bathe the girls again if allowed to return to the house.

Mark testified at the jurisdiction hearing that he washed Ashley with his bare hands a few times but denied pushing his finger inside her. He explained, “I soaped up my hand real quick, rubbed her down. I soaped up and rubbed her down. I got down there and I said, ‘Open up,’ and I went to soap up quickly and I rinsed real quick. It was just a couple of swipes. [¶] She cried, said ‘Ouch,’ and I said that it would be over in a minute. I had the water ready. It’s on a hose. I grabbed the nozzle and rinsed her off and, yes, she cried.” Mark maintained that she stopped crying within a few seconds. He asked her if it was better and she said it was. He also said he had also personally heard Ashley cry when Amanda washed her genitalia. He denied having any sexual intent to arouse himself when he bathed Ashley.

After hearing all the evidence, on July 9, 2009, the court found true the allegations that Mark had sexually abused Ashley, that Amanda failed to protect Ashley from sexual abuse, and that Julia was at risk of sexual abuse. (§ 300, subs. (b), (d) & (j).) The court found, based on Ashley’s interview, which it deemed credible, that Mark put his finger

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

inside her. The court elaborated: “There’s no reason to shove your finger up inside the child. And sure it hurt. And she didn’t make this up. And he may have rough hands, that’s fine. And the child may have vulvovaginitis,<sup>2</sup> that’s apparent. But she doesn’t make the same complaints of her mother. She doesn’t make the same complaints with her father. [¶] And the idea of washing somebody with your hands, especially a small child, it’s inappropriate. It may not be against the law but it’s inappropriate. And if someone has an irritation that everyone is aware of, a soft rag and a gentle washing is sufficient. I can only construe from the circumstance that there was sexual intent.”

At the disposition hearing on August 6, 2009, the court reiterated its certainty that Mark inserted his finger into Ashley’s vagina, saying the only question was whether there was sexual intent. The court acknowledged Mark was probably not someone who regularly molested small children, “[b]ut he did a very stupid thing and it affected [a] four-year-old . . . .” The court continued the minors as dependents of the court with placement in Amanda’s home, and Mark was to have no visitation or contact.

Amanda appealed from the dependency jurisdiction and disposition orders, which were affirmed by this court a nonpublished opinion, *In re Julia B.* (June 30, 2010, A125775).

### ***Postdisposition Factual Background***

Amanda was viewed as cooperative and responsive to the Bureau’s concerns. She provided “good care” for the children and was “respectful” of the court’s orders. Amanda said from the outset that her children come first, and if that meant Mark could not return to the family home, then he would not be allowed to return. Amanda attended

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<sup>2</sup> Dr. Lucia Yang had seen Ashley in her office for a physical examination on December 31, 2008; neither Amanda nor Ashley mentioned a vaginal irritation. At visits on March 30 and May 5, 2009, Ashley complained of vaginal itching and burning, and Dr. Yang diagnosed her with vulvovaginitis. Dr. Yang did not know there was a pending allegation that an adult finger had been inserted into the child’s vagina. Had she been told, her examination of Ashley would have included tests for sexually transmitted diseases. Masturbation, rubbing, or poking of the vaginal area could cause vulvovaginitis. Dr. Yang could not rule out sexual abuse, but did not have sufficient information to reach a conclusion.

counseling, both individually and with the girls, and completed a parenting course. So far as the Bureau knows, the no-contact order never has been violated.

Amanda does not believe, however, that Mark actually did anything to Ashley with sexual intent. She bases her belief in part on his openness in admitting his criminal history and in part on his having “passed a lie detector test.” Amanda continued to be involved in a romantic relationship with Mark and gave birth to his baby, Taylor.

Family maintenance services were provided and Amanda complied with all requirements under the children’s case plans. At the beginning of therapy Ashley reacted negatively when Mark’s name was mentioned. She would “shut down, turn red and curl her legs up.” After several months of therapy, however, Julia and Ashley were functioning well. By early 2010 they told their therapist and the social worker they missed Mark and wanted to see him, especially after their baby sister was born. Ashley’s discomfort with Mark seemed to be alleviated and she had not shown fear of him during the preceding six months. In fact, the girls’ therapist terminated therapy in March 2010 because its objectives had been achieved.

Throughout this time Amanda did not allow the older girls to have contact with Mark because of the no-contact order. Baby Taylor has not been declared a dependent, and Amanda and Mark spend time together with her, but the older girls do not participate.

Mark never admitted he digitally penetrated Ashley, and he never admitted what he did was done with sexual intent. He did acknowledge in therapy that Ashley could have been hurt and possibly frightened by the way in which he bathed her. As nearly as we can understand, Mark portrays the event as a case of clumsiness or at most excessive forcefulness in bathing a female child, without sexual content.

Mark was previously convicted of unlawful sex with a minor in 2006 or 2007 (Pen. Code, § 261.5) for having sex with a 17-year-old when he was 24; he was still on felony probation when the petitions were filed. According to the juvenile court judge, who had reviewed the police report, the crime was originally charged as forcible rape, but was reduced to statutory rape as part of a plea bargain. Mark told his probation officer about the petitions but did not disclose the sustained finding that he molested Ashley.

Significantly, the police report was never provided to the sex offense expert who eventually testified on Mark's behalf, and Mark described the prior offense to the expert as consensual sex. Mark told his therapist the police had fabricated evidence in the earlier case.

At family maintenance review hearings beginning with one scheduled for January 2010, the Bureau began recommending family therapy including Mark and by October 2010 recommended therapeutic visitation between Mark and the girls. This would have involved supervised visits in which interactions between Mark and the girls would be assessed by a therapist. The girls' social worker believed the girls were ready to have therapeutic visits with Mark because of their expressed desire to see him, because Mark and Amanda now had a baby together, and because the girls' therapist recommended it. Given Amanda's determination to remain involved with Mark, this was viewed as an interim step in integrating Mark back into the family so that Amanda and he could raise all three children in the same household. The Bureau recommend against simply allowing Mark to come back into the home without therapeutic visitation.

Throughout this time Christopher continued to assume custody of Ashley and Julia for every-other-weekend visitation. Both his and the children's counsel opposed visitation by Mark. It was becoming apparent that if therapeutic visitation were not to be provided, the Bureau would probably recommend termination of jurisdiction and dismissal of the petition.

Mark, by most accounts, was cooperative in responding to the concerns voiced by the Bureau. For instance, he took a parenting class, and in the fall of 2009 voluntarily went in for an assessment at A Step Forward, a sex offender treatment program. Nevertheless, in June 2010 the court announced it would not consider therapeutic visitation unless Mark first participated in three months of therapy at A Step Forward in accordance with the Bureau's recommendation.

Mark then began therapy with Arthur Paull, a licensed clinical social worker at A Step Forward, for approximately ten sessions. Mark received a positive report from

Paull, which depended in part on a favorable polygraph test in which he denied both digital penetration and sexual intent with Ashley.

At an interim review hearing on December 6, 2010, Paull testified as an expert on treating sex offenders. He placed Mark in a low to moderate risk category for reoffense. When the hearing concluded on December 9, 2010, however, the court did not order therapeutic visitation and maintained the no-contact order in effect. Amanda appeals from that order in A131093.

On February 4, 2011, counsel for the children applied for a restraining order to keep Mark away from them. A temporary restraining order was issued. In a status review report prepared for a hearing on February 14, the Bureau recommended that the court vacate the dependency and dismiss the petition with physical custody awarded to Amanda and joint legal custody to both parents. The Bureau also thought it would “benefit” the girls to engage in additional therapy “to address their feelings surrounding the family dynamic and the fact that they can’t see Mark [T.], even though their younger sister, Taylor [T.] and their mother has [*sic*] contact with him.” It was suggested this therapy could be conducted “without the Bureau’s involvement.” The recommended therapy was for Ashley and Julia alone, not to include Mark.

Amanda actively opposed termination of dependency jurisdiction and reasserted her request for therapeutic visitation for Mark, claiming it would not be possible for her and Mark to move forward as a family unless the court allowed such visitation. The children’s counsel objected to providing family reunification services for Mark, and counsel for the Bureau requested a continuing no-contact order.

On April 20, 2011, because Amanda and the girls had made such good progress and the no-contact order was being honored, the court found Ashley and Julia were no longer dependent children under section 300 and vacated jurisdiction. In terminating jurisdiction, the court expressed the concern that Amanda’s feelings for Mark could lead her to “serve her daughter up on a platter” to Mark. The court entered a no-contact exit order in the dependency.

At a continued hearing on May 19, 2011, the court issued a restraining order prohibiting Mark from having contact with Julia and Ashley, to remain in effect for one year. Mark was allowed to live with Amanda when the girls were visiting their father.

The notice of appeal filed June 29, 2011 (A132515) specified both the April 20 and May 19 orders. The two appeals were consolidated in this court at appellant's request.

### **DISCUSSION**

Amanda raises three alleged errors: (1) the court improperly refused to order therapeutic visitation for Mark on December 9, 2010; (2) jurisdiction should not have been terminated on April 20, 2011, because the children still needed therapeutic visitation with Mark; and (3) the restraining order issued on May 19, 2011, should not have been issued because the girls needed therapeutic visitation with Mark.

If we seem to emphasize therapeutic visitation with Mark in our outline of the issues, it is because that appears to be Amanda's sole objective in pursuing this appeal. Indeed, this case involves an unusual parental appeal from an order terminating dependency jurisdiction and ordering custody of the children placed with the appealing parent. The parties have switched their usual hats, with the county arguing that Amanda is a good mother and the children are well-adjusted, not in need of the court's dependency supervision as of April 20, 2011. Meanwhile, Amanda argues the dependency should have been continued and more services provided. And all of this must be done, we are told, for the purpose of reunifying the children with someone who is not their father and who had previously molested one of them.

Not only that, but since the court did not follow the Bureau's recommendation in December 2010, Amanda's appeal potentially invites the Bureau to take a position contrary to its previous recommendation. Understandably the Bureau declines to do so. Thus, we have no briefing directly defending the court's December 2010 no-contact order.

The Bureau does discuss, however, the question of therapeutic visitation in a broader way, arguing denial of therapeutic visitation in April 2011 was proper. We find

its arguments equally applicable to the decision made in December 2010. We agree with the Bureau that substantial discretion is vested in the juvenile court in deciding whether therapeutic visitation for a parent is appropriate (*In re Chantal S.* (1996) 13 Cal.4th 196, 203-204; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30), and we conclude for the reasons discussed below the court acted well within its discretion in denying therapeutic visitation for Mark, a nonparent, both in December 2010 and in April 2011.

The Bureau also does not defend the court's issuance of the restraining order in May 2011, since at that time the Bureau was no longer a party to the action. Thus, while we have briefing from Amanda on three issues, the Bureau defends the court's action only in terminating jurisdiction and denying therapeutic visitation in April 2011. Despite the lack of responsive briefing, we find the court's restraining order was reasonably issued as a matter of sound discretion.

#### **I. Denial of Therapeutic Visitation on December 9, 2010 (A131093)**

“As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.) However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’ [Citations.]” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488 (*C.C.*)). Suffice it to say we would be justified in dismissing the appeal in A131093 as moot. But even disregarding its mootness, the appeal is unmeritorious.

Child welfare services are not a constitutional entitlement. Rather, they are a benefit provided by statute. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 475.) Under section 361.5, reunification services must be provided to a mother and presumed father if the child is removed from the home. Mark is not a presumed father and the children were never removed from Amanda's custody. Thus, this case was not governed by section 361.5, but rather by section 362, which makes no provision for reunification services because it controls in cases where children are not removed from the home, as here.

Amanda is correct that the Bureau supported therapeutic visitation for Mark up to and including at the interim review that concluded on December 9, 2010. The judge, however, saw things differently. He expressed the view that it was inappropriate for a child victim of molestation to be “forced . . . to face the molester.” He said the case was “not about reunification with” Mark. “He is not a player here.” The court was within its discretion in denying services not required by law.

The court further found fault with the test used by the expert who was called by Amanda to testify on Mark’s low risk of reoffense. The test which gave that prediction was the Static-99, which took account of prior convictions for sex offenses, but not sustained juvenile court findings that an individual had sexually abused a child. The expert acknowledged that was “one of the weaknesses” of the test. In stronger language, the court concluded any test that excluded consideration of such factors was “nonsense.” Had the incident with Ashley been considered in the Static-99 test, the risk of reoffense would have been higher.

The court was also convinced that Mark’s denial of sexual intent was not credible and that he had not taken responsibility for the offense. In June 2010, the court said, “I wonder if anyone can envision a situation where an adult male, other than a doctor, . . . would shove his finger up into a four-year-old girl’s vagina, up to her hymen, and say that wasn’t with sexual intent, which is a fact, if we believe Ashley at all—and I do—occurred. And I guess he wanted her not only cleaned outside, but cleaned inside, because that’s—that’s what occurred, and that’s the problem I am stuck with as far as any contact between the parties, without the most guarded of circumstances. [¶] And at least on my watch, in this Department’s stewardship, we are going to be very careful as to what contact . . . [Mark] has with these two young girls.”

This was articulated more fully in later proceedings, where the court said: “I don’t think [Mark] has ever admitted that he did what the child said. Forget about sexual intent. I am troubled when an adult male places their digit up inside a youngster’s vagina for whatever purpose. He hasn’t recognized that or acknowledged it in any way . . . . And did he know and does he appreciate what he did to a young child was wrong?”

The court also factored Mark's prior conviction into its decision regarding the threat of future harm that Mark posed to Ashley and Julia, noting expressly that the past crime had originally been charged as a forcible rape. The court considered the prior offense to have been "closely connected . . . in time" to the incident with Ashley.

Amanda claims the evidence was insufficient to support the trial court's denial of therapeutic visitation. Applying the substantial evidence test, as advocated by Amanda (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216-217; *In re N.S.* (2002) 97 Cal.App.4th 167, 172 (N.S.)), we cannot agree.

Amanda cites *In re A.L.* (2010) 188 Cal.App.4th 138 (A.L.), but that case does not advance her argument. In *A.L.*, the court held that a presumed father was not entitled to reunification services where custody had not been removed from the mother's home. "[R]eunification is the goal of a dependency case only when, as a result of the dependency action, the existing custodial relationship between a *parent or guardian*, and the child, has been disrupted." (*Id.* at p. 144, italics added.) When a child has not been removed from the parent's home, "the goal of [a] dependency proceeding is simply to 'eliminate the conditions or factors requiring court supervision.' (Welf. & Inst. Code, § 364, subd. (b).)" (*Id.* at p. 140.) In *A.L.* a presumed father was held not to be entitled to reunification services where the child had resided with the mother prior to the dependency, was continued in the mother's care, and where the presumed father had inflicted physical injury on the baby. (*Id.* at pp. 140-142.) If a presumed father was not entitled to reunification services, so much less would a third party, such as Mark, be entitled to such services.

Likewise, *N.S.*, *supra*, 97 Cal.App.4th at pp. 172-173 is unhelpful to Amanda's argument. In that case the child's father objected to continuing dependency jurisdiction over his child, who had been placed in the mother's care, because the father had fully complied with the case plan for six months. The parents had initially lived together with the child, but the father was ordered to leave the home when jurisdiction was asserted over the child due to the non-accidental injury of the child's cousin while in the father's care. (*Id.* at p. 170.) After he had complied with the child's case plan for six months the

father was allowed to return to the home without supervision, but jurisdiction was continued. (*Ibid.*) It was the continuance of jurisdiction that was successfully challenged on appeal, not the termination of jurisdiction or the failure to provide additional services. *N.S.* therefore has no bearing on the present appeal.

Amanda argues there was insufficient evidence to establish the minors were at risk of harm if therapeutic visitation with Mark were ordered. That is not legally required.

*C.C.*, *supra*, 172 Cal.App.4th at p. 1490, cited by Amanda, involved a mother's claimed right to monitored visitation with her 12-year-old son, whom she had physically and emotionally abused. The case considered the juvenile court's finding that continued visitation would be detrimental to the child. Amanda relies on a detriment or risk of harm standard to argue there is insufficient evidence that visitation with Mark would be detrimental to Ashley and Julia.

But the Bureau correctly points out that no detriment need be found in these circumstances. (*N.S.*, *supra*, 97 Cal.App.4th at pp. 171-172.) A review hearing conducted under section 366.21, subdivision (e), in the case of a child who has been removed from the home incorporates a "detriment" standard in determining whether the child should be returned to parental care. But since Ashley and Julia had never been removed from parental care, the correct statute governing their periodic reviews is that set forth in section 364. Under section 364, subdivision (c), the court "shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker . . . establishes by a preponderance of evidence that the conditions still exist [that] would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."

The "detriment" discussion in *C.C.*, *supra*, 172 Cal.App.4th at p. 1490, was the standard employed by the trial court in ruling under section 362.1, subdivision (a)(1), which deals with visitation between parent or guardian and a dependent child who has been removed from the home. Such visitation is intended in part "to maintain ties between the parent or guardian and any siblings and the child" and in part to "provide information relevant to deciding if, and when, to return a child to the custody of his or her

parent or guardian.” (§ 362.1, subd. (a).) That section provides, “No visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(B).) The court in *C.C.* held this required substantial evidence of a threat to the safety of the child if visitation were ordered. A more general finding of “detriment” was not sufficiently “tethered to the statutory directive.” (*C.C.*, *supra*, 172 Cal.App.4th at p. 1492.)

But the statutory provision at issue there is inapplicable to Mark—and therefore the discussion in *C.C.* is likewise inapposite— both because Mark is not a parent or guardian of Ashley and Julia and because the girls were not removed from parental custody. Therefore no “reunification” of the family is required. For the same reasons, other cases cited by Amanda dealing with visitation rights of or reunification services to parents are also inapposite.

We do not disagree with cases advocating flexibility in visitation and reunification orders so as to meet the needs of each family. (E.g., *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229 [reunification plan must be appropriate for each family]; *In re T.G.* (2010) 188 Cal.App.4th 687, 696 [same]; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1376 [delegation to supervising agency decision regarding frequency and length of visits so as to provide necessary flexibility]; *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237 [same].) The plain fact, however, is that these cases deal with reunification of parents and their children, not simply reunification of “involved parties,” as Amanda’s brief suggests. Since the family unit—Amanda and her children—had not been disrupted, no reunification was necessary.

The situation before us is somewhat akin to, although weaker than, that of a stepparent seeking visitation with a stepchild. “[A]bsent a formal adoption of the child, a stepparent has no right to any reunification services” in child dependency proceedings and no right to custody or visitation. (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 752.)

Amanda points out that Julia and Ashley requested visitation with Mark, comparing the case to *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465 and *In re S.H.* (2003) 111 Cal.App.4th 310, 317. In those cases, however, the children either requested

or refused visitation with a parent, which significantly distinguishes them from the children's request in this case.

The reasons given by the court were neither irrational nor flawed by a failure to consider Mark's progress. The court's refusal to order therapeutic visitation for Mark and the children was supported by substantial evidence that Mark had molested Ashley and its disbelief of Mark's claims of innocent intent. Mark had never acknowledged a sexual intent and never acknowledged that he actually put his finger into Ashley's vagina. The trial court did not believe him. Such a credibility determination is within the juvenile court's province, not to be overturned on appeal. (*In re Walter E.* (1992) 13 Cal.App.4th 125, 139-140.) So long as Mark continues to portray the event as an instance of overly intrusive bathing, especially in light of the Bureau's proof this had happened "multiple" times, the court was justified in concluding he had not taken responsibility and could not be trusted with the children. His past conviction and its surrounding circumstances provided further evidence in support of the court's decision.

## **II. Termination of Dependency Jurisdiction on April 20, 2011 (A132515)**

Preliminarily, we question whether Amanda has standing to appeal the termination of dependency jurisdiction and dismissal of the petition. (*In re K.C.* (2011) 52 Cal.4th 231, 239; *In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) It is difficult to identify her as a party aggrieved by an order declaring her children no longer subject to dependency jurisdiction and awarding her full physical and joint legal custody. The Bureau has not argued this point, however, and therefore we will assume, without deciding, that Amanda has standing to appeal the April 20, 2011 order.

But even putting aside the issue of standing, an appeal from an order terminating jurisdiction and awarding custody to a parent is reviewed for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Amanda acknowledges that granting therapeutic services as an exit order is discretionary with the court. (*In re Chantal S.*, *supra*, 13 Cal.4th at pp. 203-204; *In re Roger S.*, *supra*, 4 Cal.App.4th at p. 30.)

Amanda relies on *In re K.D.* (2004) 124 Cal.App.4th 1013 (*K.D.*), but that case is distinguishable. *K.D.* involved a hearing under section 366.26, potentially resulting in

termination of parental rights, but the court found a beneficial relationship with the mother warranted nontermination under what is now section 366.26, subdivision (c)(1)(B)(i). (*K.D.*, *supra*, at p. 1018.) The court appointed the prospective adoptive parent as legal guardian and, though he had moved out of state with the child, ordered that he facilitate in-person visitation between K.D. and his mother at least twice a year. The court then terminated the dependency. (*Ibid.*)

The Court of Appeal affirmed the appointment of the legal guardian but reversed the order terminating jurisdiction. (*K.D.*, *supra*, 124 Cal.App.4th at p. 1020.) By determining that continued visitation with his mother was in K.D.'s best interest, the court effectively obligated itself to continue to exercise jurisdiction with periodic reviews so as to ensure that such visitation was carried out. (*Id.* at p. 1019.)

Besides the fact that there is contrary authority (*In re Grace C.* (2010) 190 Cal.App.4th 1470, 1475-1476), *K.D.* simply has no bearing on our decision here. First, our case deals with requested visitation and therapy for a person other than a parent. Second, it is not reasonably arguable that jurisdiction should have been continued to allow therapeutic visitation for Mark where the court implicitly found, based on substantial evidence, that visitation with Mark was not in the best interests of Ashley and Julia. And finally, in our case the court applied section 364, subdivision (c), which mandates termination of jurisdiction unless the evidence would support initial assertion of jurisdiction. We find no abuse of discretion in the court's ruling.

### **III. Restraining Order Issued May 19, 2011 (A132515)**

Amanda also objects to the court's issuance of a restraining order that prevents Mark from seeing Ashley and Julia for one more year. Section 213.5 allows the juvenile court, as part of a dependency proceeding, to enjoin "any person" from contacting the dependent child and further allows the court to exclude "any person from the dwelling of the person who has care, custody, and control of the child."

Again, we question whether Amanda has standing to object to a restraining order issued against Mark. Assuming for argument's sake she qualifies as a party aggrieved by the restraining order, we nevertheless reject her challenge on the merits.

The standard of review again is abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 849-850; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512.) To the extent we are called upon to review the court’s factual findings, the substantial evidence standard applies. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505.)

We find no basis for reversing the juvenile court’s order. Amanda cites *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1289-1290, which held a protective order need not be renewed simply because the party to be protected requests it. That is unlike our case, where the court carefully weighed the children’s interests before ruling. For reasons we have already discussed, we reject Amanda’s argument.

The restraining order was issued, Amanda claims, because of Mark’s past act in digitally penetrating Ashley and because of his prior conviction. But these, she contends, were “static” past facts; the court failed to take into account Mark’s significant efforts and progress in the time since the disposition hearing.

Even if based on “static” facts, the court’s decision here was certainly within the bounds of discretion. Amanda’s refusal to accept Mark’s culpability in what had occurred, and Mark’s continued denial of wrongdoing, were current ongoing problems in the judge’s view. We cannot say his interpretation of the evidence was unreasonable, and his judgment that Ashley and Julia needed ongoing protection was supported by substantial evidence.

#### **DISPOSITION**

The orders are affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Lambden, J.