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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re S.C., a Person Coming Under the
Juvenile Court Law.**

**ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,**

Petitioner and Respondent,

v.

LAMAR C.,

Defendant and Appellant.

A132219

**(Alameda County
Super. Ct. No. 0J09011693)**

Lamar C. appeals from exit orders made by the juvenile court upon termination of dependency jurisdiction, pursuant to Welfare and Institutions Code section 362.4.¹ He contends: (1) the court erred in denying him joint legal custody; (2) the court erred in denying him visitation; and (3) he was prejudiced because the juvenile court judge believed she could modify the visitation order after termination of dependency jurisdiction. We will affirm the order.

¹ Except where otherwise indicated, all statutory references are to the Welfare and Institutions Code.

I. FACTS AND PROCEDURAL HISTORY

Appellant is the father of the minor S.C. As of January 2009, father and mother were married but separated, S.C. was six years old and lived with mother, and there had been 18 reports to Child Protective Services about the family. Pursuant to a family court order, mother had sole physical custody and shared legal custody of S.C.

In January 2009, S.C. was delivered into protective custody after she disclosed that she had been sexually abused by a neighbor's son. The detention report noted that father wanted S.C. to be placed with him, but a family court order prohibited contact between S.C. and the son of father's live-in girlfriend (T.J.) because T.J. had sexually molested S.C. previously. Although initially evasive, father eventually admitted that T.J. had been present at S.C.'s last visit. In addition, the family's therapist at the time reported that S.C. "does not want to visit the father sometimes and [S.C.] reports that her father will call her names and spank her." On one occasion, S.C. had been so reluctant to visit father that she had a breakdown, screamed for over an hour, and was taken to a hospital for a psychological assessment.

S.C. was detained by the court and placed in a foster home.

A. *The Dependency Petition*

Respondent Alameda County Social Services Agency (Agency) filed a section 300 petition in January 2009, contending that S.C. fell within the juvenile court's jurisdiction under subdivision (b) (failure to protect) and subdivision (d) (sexual abuse). The petition alleged that mother had an extensive mental health history and was under psychiatric care. It also alleged that father had been diagnosed with bipolar disorder, had a history of depression and obsessive-compulsive disorder, was on psychotropic medications, and had an extensive criminal history dating from 1987, including a charge that he committed grand theft in February 2007 with S.C. present. In addition, it was alleged S.C. had been caught shoplifting as well. The petition further asserted that S.C. had a history of being sexually abused, including the sexual molestation by the neighbor's 11-year-son and a purported rape by a 15-year-old cousin when she was about four years old.

B. Jurisdictional and Dispositional Hearing and Order

The Agency's jurisdiction and disposition report recommended that the court declare S.C. a dependent, place S.C. out of home, and order reunification services for father and mother, who agreed with the recommendation.

The Agency changed its recommendation, however, in an addendum report filed on February 13, 2009. According to the report, S.C. was upset and crying on February 6, 2009, because father had used bad words during his visits. S.C. did not want to live with him. Father had failed to return S.C. to mother after visitation on a timely basis. After an overnight visit with father, S.C. appeared to be happy, but she had been wetting herself a lot more. Therapist Angela Crenshaw expressed concern about S.C.'s "previous history of setting the house on fire." And father admitted to being a kleptomaniac. Despite all this, the Agency recommended that S.C. be placed with father, since services were in place for them.

At the jurisdictional and disposition hearing on February 17, 2009, father and mother submitted to the dependency petition on the basis of the Agency's report. The court sustained the petition as amended, found S.C. to be a person described by section 300, subdivisions (b) and (d), declared her a dependent of the court, placed S.C. in father's home under Agency supervision, and ordered family maintenance services for father and reunification services for mother.

C. Section 387 Petition and Order

The Agency filed a supplemental petition, pursuant to section 387, on April 2, 2009. The supplemental petition sought to remove S.C. from father's home and place her in foster care, based on the following: on March 31, 2009, S.C. reported that father and his girlfriend used derogatory language towards her; T.J. touched S.C. on her bottom and put his hands on her privates; T.J. undressed her while in the backyard and put his hands on her privates; on March 30, 2009, father stole a toy in S.C.'s presence and gave it to her; on March 21, 2009, father dropped S.C. off for a visit with mother while S.C. was having an asthma attack, without providing the correct medication.

S.C. was removed from father's home and placed in a foster home while these matters were investigated. When it became clear to S.C. that "the police [were] coming" and she would be removed (from father's home), however, S.C. recanted and said she had lied.

Based on S.C.'s initial reports, it was clear that S.C. did not like how she was treated in father's home and did not want to live with him. S.C. wanted to be returned to mother's custody. She claimed that she was subjected to inappropriate treatment and verbal abuse by father, his girlfriend, and T.J. More specifically, she claimed that father used profanity towards her, calling her a "bitch," "mother fucker," "bitch mother fucker," and "ass." He threatened that she would get a "whooping" if she said anything. He kept a rabbit at his house, even though she is allergic to rabbits. T.J. touched her bottom every day and sometimes put his hands in her "privates."

Father asserted that S.C. was lying, mother had prompted S.C.'s reports, and there was no reason for intervention. Mother requested that S.C. be placed with a maternal aunt. At the detention hearing on April 6, 2009, the court found that S.C.'s welfare required removal from father's care, but nevertheless gave discretion to the social worker to return S.C. to father.

The Agency's report of June 11, 2009, for the jurisdiction and disposition hearing recommended sustaining an amended section 387 petition and returning S.C. to father's custody upon the conditions that he participate in therapy, he participate in anger management counseling, and there be no contact between S.C. and T.J.

At the continued jurisdiction and disposition hearing on June 11, 2009, the court sustained the section 387 petition as amended, returned S.C. to father under the Agency's supervision, ordered family maintenance services for father, ordered father to cooperate with the social worker, and ordered no contact for the next 90 days between S.C. and T.J.

D. Second Section 387 Petition (July 2009)

On July 22, 2009, a second supplemental amended petition was filed, again alleging that S.C., while in father's care, was sexually touched and verbally abused, and father failed to meet her medical needs. The matter was set for a hearing.

E. Mother's Section 388 Petition (August 2009)

Meanwhile, in August 2009, mother filed a section 388 petition seeking family maintenance services because S.C. was now staying with her on overnight visits from Fridays to Mondays. The court set mother's petition for a hearing as well.

The Agency's report of September 8, 2009, confirmed that S.C. lived with father from Monday to Friday evening and lived with mother from Friday evening until Monday morning. It further noted that on July 15, 2009, with S.C. present, father was arrested for domestic violence upon his girlfriend and spent a night in jail; S.C. spent that night with her mother. On July 24, 2009, father failed to obtain S.C.'s asthma medication in a timely manner, requiring mother to take S.C. to the doctor. In addition, on August 10, 2009, father allowed S.C. to have contact with T.J.

At a hearing on mother's section 388 petition and the Agency's section 387 petition on October 13, 2009, the court ordered family maintenance for both parents and continued existing orders.

F. November 2009 Report

The Agency's report of November 17, 2009, recommended a continuation of family maintenance services for both father and mother, since they continued to divide equal time with S.C. The social worker was concerned that father was not providing S.C. with her asthma medication, but father denied the accusation. Father still had not attended anger management classes, even though he had been given a referral.

G. Father's Incarceration in February 2010; March 2010 Section 387 Petition

In March 2010, the Agency filed a supplemental petition under section 387, alleging that on February 25, 2010, father had been arrested for theft, violated his probation, and was incarcerated. The Agency alleged that father was not in compliance with his case plan and had not enrolled in anger management classes. He had a history of domestic violence and continued to violate the order precluding contact between S.C. and T.J. In addition, father had missed three of his last four appointments with his psychiatrist to monitor his medications prior to his incarceration. The Agency sought placement of S.C. with mother.

According to the Agency's detention report, father had failed to comply with services offered to manage his mental health symptoms and claimed he did not have time for anger management classes. Although S.C. did not "necessarily" express fear of father, the social worker knew that father was able to "control" S.C. only by threatening her. In February 2010, for example, mother reported that S.C. was crying and claiming her "life was over" after she acted out in a therapy session because father had previously threatened that he would "beat her to death" the next time she got into trouble. Father also continued to allow contact between S.C. and T.J.

The court detained S.C. and placed her in mother's home under the Agency's supervision.

The Agency's jurisdiction and disposition report of April 8, 2010, recommended terminating father's services, placing S.C. with mother, and continuing mother's family maintenance services, with the goal of dismissing dependency. Mother had cared for S.C. since February 25, 2010, while father was incarcerated.

On May 13, 2010, the court found true the first allegation of the section 387 petition as amended. The court ordered placement of S.C. with mother, along with family maintenance services.

H. June 2010 Review Report and 18-Month Review

The Agency's 18-month review report of June 29, 2010, recommended terminating father's reunification services and continuing mother's family maintenance services. S.C. was still living with mother. Father remained incarcerated, with an expected release date of July 22, 2010.

The family therapist (Dr. Pittman) reported that S.C. was doing better, she had no stealing incidents since father's incarceration, her bed wetting had decreased, and she was following instructions. Dr. Pittman credited the improvement "to the stability the minor has in her living arrangement since February 2010 and the lack of negative influences such as witnessing the father shoplifting."

On June 29, 2010, the court continued the existing orders, ordered father's visits to be supervised, and set a contested 18-month review hearing, as requested by father, for August 16, 2010.

I. August 2010 Review Report and Contested Review Hearing

In its report of August 16, 2010, the Agency recommended dismissing dependency, terminating father's services, and providing mother with informal family maintenance services. S.C. was doing well with mother, and mother was reportedly doing a great job caring for S.C. S.C.'s therapist was pleased with mother's progress and had no concern about her ability to protect S.C. Meanwhile, father was out of jail but homeless, staying in a hotel.

S.C. did not want to see father and expressed fear of him. When asked by her therapist why she was having difficulties during her sessions, S.C. replied: "I'm feeling worried about having to see my dad." S.C. told the social worker of a nightmare in which father shot S.C. and mother. She showed the social worker a letter she had dictated to her therapist to be sent to father, in which she said he "whooped" her and made her a liar and a thief, and she did not want to see him or speak to him. Mother confirmed that S.C. had been anxious since finding out that father was going to be released from jail: S.C. wet her bed more frequently and started waking up with nightmares, and for the first few days she did not want to leave the house at all.

On August 16, 2010, the court found that reasonable reunification services had been provided to father, but ordered that reunification services "continue for three additional months."

J. November 2010 [Interim] Review Report

The Agency's report dated November 16, 2010, again recommended dismissing dependency, terminating father's services, and providing mother with informal family maintenance services. Although the court had ordered therapeutic visits between father and S.C., her therapists recommended that visits not occur because of concerns about S.C.'s fear of father – as evidenced by her negative behaviors when the subject of

visitation arose – and because forcing visitation might be detrimental to S.C.’s mental health and well being.

For example, Theresa Viglizzo, a therapeutic visitation therapist assigned to father and S.C., conducted an assessment to evaluate S.C.’s level of social and emotional functioning and to determine how to proceed with therapeutic visitation services for father. She concluded that therapeutic visitation between them was premature, because of S.C.’s observable distress when the issue of seeing father came up. Viglizzo therefore provided therapeutic visitation services for them separately in an attempt to increase S.C.’s readiness before actually seeing father, and to increase father’s ability to parent. Father asserted, however, that the deterioration in S.C.’s social and emotional functioning was not related to the prospect of visitation with him, and insisted that he be permitted to see S.C. right away. The Agency recommended that he not be allowed visits with S.C.

K. February 2011 Review Report and Contested Review Hearing

In its report of February 2, 2011, the Agency again recommended terminating father’s services and dismissing the dependency case. Father had participated in services, but Dr. Pittman, therapist Milam, and therapist Viglizzo continued to opine that S.C. was not ready to visit father, based on S.C.’s negative behaviors. It was also noted that, once S.C. was informed that she would not have therapeutic visits with father, her social and emotional functioning improved. Meanwhile, father had failed to attend a number of his anger management classes.

At the contested review hearing on March 29, 2011, county counsel recommended dismissal of the matter and termination of father’s services. S.C.’s attorney, Cheryl Smith, stated that she had seen a great improvement in S.C. and agreed to dismissal. Smith added that she represented S.C. in family court as well, and would be able to bring a motion in the family court for father’s visits in the future. Father’s attorney, however, complained that father had not received visitation during the time services were offered.

The court admitted the entire dependency file into evidence and heard testimony from numerous witnesses.

1. Social Worker Michael's Testimony

Azeb Michael testified that S.C. had split her time between father and mother until father's incarceration in February 2010. At that point, S.C. expressed fear of father and told Michael she did not want to see him. This was the first time Michael heard S.C. say this. Michael had not been instructed to facilitate visits between S.C. and father while he was in jail, and father had not asked for them.

Michael acknowledged that father had participated in available services while incarcerated, and within two days of his release asked to visit S.C., but he had not been allowed to see her. Michael also acknowledged that father had completed some of his case plan. After his release from jail, father had participated in programs as well. Michael also acknowledged, however, that mother and S.C. had reported that father committed thefts in S.C.'s presence.

Michael testified that it was appropriate to terminate father's reunification services, dismiss the dependency, and award custody to the mother. She believed S.C. was safe with mother, and that therapy would continue after dismissal. In addition, the therapists had reported that both S.C. and mother were doing well.

2. Mental Health Clinician Viglizzo's Testimony

Viglizzo testified that she had worked with father and S.C. separately to facilitate therapeutic visits. Based on S.C.'s behaviors (such as enuresis, encopresis, and acting out at school) and S.C.'s self-reports, Viglizzo determined that S.C. experienced very high anxiety at the prospect of visiting father. Viglizzo also noted that father had stopped attending his sessions with her.

3. Dr. Pittman's Testimony

Dr. Pittman testified that she had supervised S.C.'s treatment at "Better Way" since March 2009. S.C. did not want to live with father, but wanted to live with mother instead.

S.C. expressed fear of father before and after he went to jail. Although most of S.C.'s fears about father came out after he was jailed, Dr. Pittman opined that this was

because S.C. felt safer when father was incarcerated. Dr. Pittman knew that S.C. had lied in the past, but she did not believe S.C. was lying to her in this regard.

4. Psychotherapist Milam's Testimony

Jean Milam had been S.C.'s psychotherapist at Better Way since July 2009 and reported to Dr. Pittman. Milam acknowledged that S.C. lied on occasion, but her lies were so obvious that she would not get away with them. Milam believed that S.C. was speaking truthfully when she spoke of her fear of father, because of the quality of the information S.C. provided, the pictures she drew, and her body language (including hiding under a table when the topic of father came up).

Milam believed the first time S.C. disclosed fear of her father was during the summer of 2010, when she was worried about father because he had been released from jail. S.C. confided that she was afraid father would hurt her and mother, and she feared seeing him. In Milam's view, S.C.'s fear of father stemmed from the fact that S.C. was hit by father and she saw him hit mother. S.C.'s behavior had improved while father was in jail, but deteriorated when she became worried about his release.

5. Father's Testimony

Father testified that in February 2010 he had been arrested for theft, the charges were dropped, but he stayed in jail because "they violated my probation." While he was incarcerated, he did not talk with S.C. and the social worker did not contact him.

According to father, he started seeing a therapist in November 2010 in order to have therapeutic visits with S.C., but no one wanted to talk to him about S.C. Since his release, he had completed his case plan, and not seeing his daughter was "killing [him] emotionally." Father believed that S.C. was not really afraid of him and just wanted to make those around her happy.

Father admitted that mother loved S.C. and S.C. was not in danger with her.

L. The Juvenile Court's Order

The court observed that there was no basis for dependency to continue and, although it was not as if visitation with father would never occur, "the experts and all the people that are dealing with her [are] saying she is not ready yet." The court requested

the parties' assistance in crafting exit orders that would allow a transition back to therapeutic visitation at the appropriate time.

Cheryl Smith, the attorney for S.C., then suggested that visitation issues arising within a year after dismissal of dependency could be heard in "juvenile court," a prospect the juvenile court judge appreciated: "MS. SMITH: I don't have the exact court rule number off the top of my head, but there is a court rule that says that when a case dismisses out of dependency that any issues regarding visitation that come up within a year of the dismissal of dependency will come back to the juvenile court. [¶] So in other words, within the next year if we dismiss today, I as minor's counsel can actually – let's say I keep in touch with the therapist and they say she is ready now, we need to start therapeutic visits or she's ready to have supervised visits or whatever they say she is ready for, I can bring it back to the Court for changes to the visitation order that we come up with today. [¶] THE COURT: Which is what I want. [¶] MS. SMITH: And it would come back to this Court. [¶] THE COURT: Yes. [¶] MS. SMITH: If it's within a year. [¶] THE COURT: My fear of dismissal was losing my hands on this case. [¶] MS. SMITH: Your hands would still be on this case for at least a year. [¶] THE COURT: I want this to resolve in the best way for all parties. I sincerely do. I feel better in knowing that it would come back here."

Counsel and the court next held an "off-the-record discussion about the possibility of what could be included in some exit orders that would allow or discuss the appropriateness of [S.C.'s] visitation with her father," but these efforts were unsuccessful because the task required "input from the . . . experts that are working with her." The court noted: "In the meantime, Ms. Smith has advised the Court that visitation matters can come back to this Court a year from today's date in the future." After S.C.'s attorney confirmed this, the court added: "I would certainly be open to reviewing visitation in three months, find out where the therapy is, and hopefully if there is any possible way to help move this case along so that all parties benefit."

S.C.'s counsel then made an important correction to her prior statement, however, explaining that the visitation matter would come back before the same *judge*, but it would

be in the context of the “*family law case*,” “so if I were to bring a motion to modify visitation, let’s say, in three months, I would ask that it be added to this calendar in this courtroom *as a family law matter*.” (Italics added.) Smith added: “I would not be coming in as her dependency attorney but as her family law attorney, and so I just want to make it clear that it’s still a *family law case*, but this judge would be hearing that for the next year, any modifications in the next year would have to be heard.” (Italics added.) The court inquired, “How do I have jurisdiction?” S.C.’s attorney stated that she had the rule in her office and could “get it to” the court.

Mother’s counsel (Mr. Morrison) advised that mother was willing to be represented by him if the matter shifted “to family court status,” and father’s attorney (Mr. Monroe) stated he was “going to continue to represent the father as well.” S.C.’s attorney stated: “Then actually that makes it easier. Then I can notify Mr. Morrison and Mr. Monroe if I am going to file a modification.” The court added: “It does because I really look forward to modifying it. I hope this works out. I want [father] to see his daughter. I think we all do, but we just need her to heal some more.”

The court found that conditions did not exist that would justify the initial assumption of jurisdiction under section 300 and would not likely exist if supervision were withdrawn, and that reasonable reunification services had been provided to father. The court then terminated father’s reunification services, dismissed dependency, and issued exit orders awarding sole legal and physical custody to mother and denying visitation to the father. In its written order and judgment of May 24, 2011, the court checked the box stating that the court “has terminated jurisdiction over the children listed in item 3; requests for any modifications of these orders must be brought in the *family court case* in which these orders are filed under Welfare and Institutions Code section 302(d) or 726.5(c).” (Italics added.)

This appeal followed.

II. DISCUSSION

As mentioned, the juvenile court terminated father’s reunification services and dependency jurisdiction, and issued exit orders awarding sole legal and physical custody

to mother and no visitation to father. Father does not challenge the termination of reunification services or the termination of the dependency. Nor does he challenge the award of sole physical custody to mother. He contends: (1) the court should have granted him joint legal custody; (2) the court abused its discretion in denying him visitation; and (3) he was prejudiced because the judge issuing the order believed that the juvenile court could modify the visitation order after termination of jurisdiction.²

A. Custody Order

Section 362.4 authorizes the dependency court to decide custody issues upon termination of its jurisdiction. The statute provides in part: “When the juvenile court terminates its jurisdiction over a minor . . . and proceedings for the dissolution of the marriage . . . or for legal separation[] of the minor’s parents . . . are pending in the superior court, . . . the juvenile court . . . may issue . . . an order determining the custody of, or visitation with, the child.” The parties do not dispute that the juvenile court had the authority to make an order as to legal custody in this case. (See, e.g., *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712-713.)

Legal custody refers to the right and responsibility to make decisions relating to the child’s health, education and welfare. (See Fam. Code, § 3006.) In fashioning a custody order under section 362.4, the dependency court must focus on the best interests of the child in the totality of the circumstances. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712.) A primary consideration is the minor’s stability and continuity. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

The parties agree that we review the court’s order for an abuse of discretion. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) Accordingly, we will not disturb the custody

² Respondent argues that father’s appeal is moot because the juvenile court’s dependency jurisdiction was terminated, and father does not challenge the termination of jurisdiction. We disagree. Juvenile court exit orders become part of the related family court proceeding, which respondent contends exists. (§ 362.4.) If an exit order constitutes prejudicial error, the order is reversed and remanded to the family court. (*In re John W.* (1996) 41 Cal.App.4th 961, 974-977.)

determination “ “unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.” “ ” (*Ibid.*)

In the matter before us, the court did not abuse its discretion in awarding sole legal custody to mother to effect the best interests of S.C. S.C. had lived with mother exclusively since father was arrested in February 2010. In June 2010, family therapist Pittman reported that S.C. was doing better than she had before, as S.C. had no more incidents of stealing, had fewer instances wetting the bed, and had been following instructions. She credited this improvement “to the stability the minor has in her living arrangement since February 2010 and the lack of negative influences such as witnessing the father shoplifting.” By August 2010, S.C. continued to do well living with mother, and S.C.’s therapist was pleased with mother’s progress. At the hearing, S.C.’s attorney stated that she saw great improvement in S.C. and agreed that mother should have custody. Social worker Michael testified that it was appropriate to award custody to mother, because S.C. was safe with mother and she believed therapy would continue after dismissal of the dependency case. Father admitted that mother loved S.C. and that S.C. was not in danger with her, and he does not contend that mother failed to make the decisions necessary for S.C.’s health, education and welfare.

By contrast, a reasonable inference from the evidence is that father would not make appropriate decisions regarding S.C.’s health, education and welfare. According to allegations admitted and sustained by the court, father was diagnosed with bipolar disorder and had a history of depression and obsessive-compulsive disorder. He had an extensive criminal history and admitted to being a kleptomaniac. He shoplifted in S.C.’s presence, and she shoplifted in his presence. He repeatedly violated the court’s order prohibiting contact between S.C. and T.J. He also had a history of domestic violence and threatening behavior against both S.C. and mother, and S.C.’s therapist opined that her fear of father stemmed from S.C. being hit by father and witnessing him hit mother. In February 2010, mother reported that S.C. was crying, claiming her “life was over” because she acted out in a therapy session and father had previously threatened that if she “messed up again, he would beat her to death.” And although father’s case plan indicated

his need to control his anger, he claimed he had no time for anger management classes and, even after he finally started classes, missed a number of them.

Father was also demonstrably insensitive to S.C.'s emotional, educational, and physical needs and repeatedly exercised bad judgment. He dropped S.C. off for a visit with mother when S.C. was having an asthma attack, without providing the correct medication, requiring a 911 call and transportation to a hospital. He failed to get S.C. to school on time, or did not take her at all. S.C. declared that he kept a rabbit at his residence even though S.C. was allergic to rabbits. He called S.C. a "bitch," "motherfucker," "bitch motherfucker," and "ass." When confronted with these matters, father largely contended they were invented by S.C., S.C.'s mother, or the social worker.

We also note that S.C. is afraid of father to the point that she does not even want to see him. In August 2010, the Agency reported that S.C. did not want to see father and expressed fear of him. In January and February 2011, S.C.'s therapists recommended that visits not occur due to their concerns about S.C.'s behaviors. At the hearing, social worker Michael testified that S.C. told her, after father was incarcerated in February 2010, that she did not want to see father and expressed fear of him. Therapist Viglizzo explained that S.C. had high anxiety regarding visiting her father. Dr. Pittman testified that S.C.'s behavioral problems were decreasing until S.C. learned that father's visits were to be resumed after he got out of jail. S.C. told Pittman that she did not want to live with father, and wanted to live with mother instead. S.C.'s psychotherapist, Jean Milam, testified that S.C. disclosed fear of father in the summer of 2010, when she learned father had been released from jail, and she was afraid that father would hurt her and her mother.

Under the totality of the circumstances, it was not an abuse of discretion to conclude that S.C.'s best interests compelled granting mother sole legal custody to make decisions about S.C.'s health, education and welfare. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 713 [court did not err in awarding one parent sole legal custody in exit order, where other parent had history of serious mental illness, demonstrated anger, failed

to follow through on referrals and drug test, and was irregular in visitation and acted inappropriately during visits].)

Father's arguments to the contrary are utterly devoid of merit. He points out that the family court had awarded him shared legal custody before the dependency case arose. However, in a section 362.4 exit order by the juvenile court, the family law presumption that joint custody is in the best interests of the child does not apply. (*In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712.) Father's argument, therefore, is irrelevant. At any rate, his behavior *after* the family court custody order demonstrated that sole legal custody should be awarded to mother.

Father also argues that both parents were responsible for the juvenile court's initial assumption of jurisdiction, and both thereafter engaged in services and counseling. Even in jail, he argues, he participated in the services available to him. However, it is not our role to reweigh the evidence, and the evidence that father musters does not come anywhere close to establishing a judicial abuse of discretion. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

Father further argues that S.C. had not expressed fear of him until the summer of 2010, after his incarceration, without her having seen him while he was in jail, and the therapists did nothing to alleviate the situation. In particular, he represents that her therapist testified that S.C. had not expressed fear of father until the summer of 2010, and the social worker testified that there were no signs of the minor's fear before father's incarceration.

Father's argument on this point is unavailing as well. First, there is evidence that S.C. *did* express fear of father before he was incarcerated. In response to questioning by father's lawyer at the hearing, Dr. Pittman testified: "Q. Okay. Prior to [father] going to jail, did [S.C.] ever speak to you about a constant fear of [father]? [¶] A. *Yes.*"³ Second, whether or not S.C. had *expressed* fear of father before he was incarcerated, a reasonable inference is that she *felt* such fear based on his repeated abuse. Her nightmares and other

³ Dr. Pittman later acknowledged that she did not mention those expressions of fear in the reports written before father went to jail.

symptoms of fear and anxiety began long before father went to jail, his threats of violence and profanity occurred before he went to jail, and S.C.'s therapist opined that S.C.'s fear stemmed from her being hit by father and seeing him hit her mother, which also began before he went to jail. Third, the reason that S.C. did not fully express her fear of father earlier was because she was, in fact, *afraid of father*. The social worker noted in the Agency's March 2010 detention report: "The minor doesn't necessarily exhibit fear of the father, but CWW Azeb is aware that the only way the father could control the minor is by threatening her." Dr. Pittman opined that, although most of S.C.'s fears about her father came out after he was jailed, that was because she felt safer after his incarceration. Fourth, in any event, the question is not when S.C. *began* to express her fear of father, but whether she held such fear at the time of the custody order. The record shows that S.C. reported her fear of father on multiple occasions to numerous professionals who concluded she was telling the truth in that regard.

Lastly, father argues that joint legal custody would permit him to participate in major decisions about his daughter and retain a voice in her life and future. Yes, it would. But given the record on appeal, he has not established that the court abused its discretion in concluding that S.C.'s best interests warranted an order granting sole legal custody to mother.

B. *Visitation Order*

In deciding visitation issues in connection with a section 362.4 exit order, the court must consider the best interests of the child under the totality of the circumstances. (*In re Michael W.* (1997) 54 Cal.App.4th 190, 195-196; *In re John W.*, *supra*, 41 Cal.App.4th at pp. 972-973.) It is not necessary for the court to make an additional finding of detriment to the minor before visitation may be denied upon dismissal of a dependency proceeding to a parent whose reunification services have already been terminated. (*In re J.N.* (2006) 138 Cal.App.4th 450, 459-460.)⁴

⁴ Respondent argues that the disentitlement doctrine bars father from challenging the visitation order, because he repeatedly and knowingly violated the placement and visitation orders that were intended to benefit S.C.'s interests. (See, e.g., *In re C.C.*

Overwhelming evidence supported the conclusion that S.C. was afraid of father because of his behavior towards her. As discussed *ante*, the therapists and social worker uniformly reported that S.C. expressed such fear and, in their professional opinions, she was telling the truth. As also discussed *ante*, the dependency case file (which the court admitted into evidence at the hearing) is replete with accounts of the father's behavior that would reasonably lead S.C. to be afraid. The unanimous expert opinion of the professionals assessing S.C.'s and father's readiness for visitation was that visitation should not occur. Given this evidence, as well as the other evidence set forth *ante*, the court plainly did not abuse its discretion in denying visitation to father.

Father argues that the visitation order effectively violated the public policy that affords children frequent and continuing contact with both parents. For this proposition, he relies on Family Code section 3020, subdivision (b), which recites the policy of assuring that children have frequent and continuing contact with their parents after the parents' separation or divorce. Family Code section 3020, however, does not apply to a visitation order issued in dependency court. In any event, the policy it invokes does not override the juvenile court's determination that visitation with father, as of the time of the order, would *not* be in S.C.'s best interests, a determination consistent with father's disregard of her health, safety and welfare as set forth *ante*. (See Fam. Code, § 3020, subd. (c).)

Father next argues that he would have settled for "monitored visits, perhaps in a therapeutic setting, and/or supervised telephone calls," and urges that visits should have been ordered to pave the way for a transition to more contact between him and S.C. It was not an abuse of discretion, however, for the court to conclude that father should not get his way in this regard, given S.C.'s demonstrated fear and the therapists' expert opinions that she should not be forced to see him.

Father also argues that the lack of visitation undermines reunification. However, reunification services were terminated for father and dependency jurisdiction has ended.

(2003) 111 Cal.App.4th 76, 85-86.) We do not rely on the disentitlement doctrine in reaching our disposition in this appeal.

The issue before us, therefore, is not whether visitation would have promoted reunification for father, but whether the court abused its discretion in denying visitation *after* reunification was no longer a possibility.⁵

Father fails to establish error in the court's denial of visitation.

C. Court's Expectation of Modifying Visitation Order After Dismissal

Father notes S.C.'s counsel's statement at the hearing that "a court rule . . . says that when a case dismisses out of dependency that any issues regarding visitation that come up within a year of the dismissal of dependency will come back to the juvenile court." He argues that the court accepted this representation, the representation is incorrect, and he was prejudiced by the court's misunderstanding of the law in this regard.

As father points out, the juvenile court does not retain jurisdiction over an exit order, which by definition is issued when the court is terminating its jurisdiction. Rather, it is up to the family court, not the juvenile court, to consider whether to modify the order upon a showing of a significant change of circumstances and furtherance of the minor's best interests. (§ 302, subd. (d).) When the statements of S.C.'s attorney are examined in their entirety, however, her representations were not to the contrary.

At the end of the hearing, S.C.'s attorney clarified that the exit order regarding visitation could return to the same *judge*, but it would return as a "*family law*" matter. In other words, the juvenile court would *not* have jurisdiction over a request to modify the no-visitation exit order, the request would be heard in *family* court, yet, counsel believed,

⁵ In addition, as respondent urges and contrary to father's argument in the juvenile court, the judge did not impermissibly delegate judicial authority to S.C.'s therapists. The judge made the decision that visitation was not in S.C.'s best interests. Although the judge *cited* the expert opinions of S.C.'s therapists, she also heard other evidence at the hearing and admitted into evidence the entirety of the court's dependency file, and she made the decision concerning visitation herself. (See *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374; *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237.) Indeed, the judge repeatedly explained that she was *not* delegating authority to S.C., to the social worker, or to the therapists, but taking into consideration the evidence presented in order to make the necessary judicial determination.

it could be heard by the juvenile court judge sitting *as* a family court judge. No one represented that a request to modify the order would be evaluated under dependency law instead of family law, and, contrary to father's suggestion in this appeal, there is no reason to believe that anyone was under that impression. To the contrary, the court's written order expressly states that "any modification of these orders must be brought *in the family court case.*" (Italics added.)

In any event, no matter how anyone interpreted S.C.'s attorney's statements (or whether those statements were accurate even as to which judge would hear the matter), the statements did not prejudicially impact the court's exit orders. By the time S.C.'s counsel made her statement that the visitation issue could be returned to the "juvenile court," the judge had *already* decided that visitation was not then appropriate. While the expectation of being able to modify the order in the future made the judge feel "better" about the no-visitation order she had already decided to make, there is no indication that the judge would have issued a different order (i.e. granting visitation to father) but for S.C.'s counsel's statement. Nor could S.C.'s counsel's statement have affected the court's custody order, since counsel's statement pertained only to visitation, not custody.

Nor can it be said that, but for S.C.'s counsel's statement, the court would have retained dependency jurisdiction for the sole purpose of retaining jurisdiction to modify the visitation order later. The court had decided to terminate jurisdiction before S.C.'s counsel made her statement. Furthermore, as father points out, section 364 *requires* a court to terminate its jurisdiction if conditions justifying initial assumption of jurisdiction no longer exist, which the judge in this case expressly found. (§ 364, subd. (c) ["court *shall* terminate its jurisdiction," italics added].)

Father fails to establish prejudicial error.

III. DISPOSITION

The orders are affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.