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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

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

MARIN COUNTY DEPARTMENT OF  
CHILD AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Z.A.,

Defendant and Appellant.

A140944

(Marin County  
Super. Ct. No. JV25718A)

This is a child custody dispute in dependency clothing. After the juvenile court terminated its dependency jurisdiction over Z.M. (then 13) and ordered his parents to undergo a full custody evaluation in family court, Judicial Council form custody orders (sometimes referred to as “exit orders”) granting sole custody to Z.A. (mother) were inadvertently filed in the juvenile court pursuant to section 362.4 of the Welfare and Institutions Code.<sup>1</sup> When the mistake was brought to the attention of the juvenile court, the court, on its own motion, vacated the orders. Mother argues in this appeal that the custody orders were properly entered and thus the juvenile court’s unilateral decision to vacate those orders was error. Mother is wrong, and we affirm.

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated. All rule references are to the California Rules of Court.

## I. BACKGROUND

### A. *Establishment of Dependency Proceedings*

On January 28, 2013, the Marin County Department of Child and Family Services (Department) filed a dependency petition pursuant to subdivision (b) of section 300 with respect to Z.M. Z.M.'s parents, James M. and Z.A., were never married and have always had a "contentious" relationship, "with disputes over custody arrangements, services [Z.M.] should receive, and [Z.M.]'s educational needs."<sup>2</sup> In fact, prior to the Department's involvement, the police were contacted to intervene in custody disputes between the parents on at least 16 occasions. In addition, Marin and Sonoma Counties had received 16 child welfare referrals regarding this family, only two of which had been substantiated.

The first substantiated referral, from August 2000, related to mother's anger and violence towards father, including hitting, spitting, and making threats, all in front of infant Z.M. The second substantiated referral took place in January 2013 and involved allegations of physical abuse made by Z.M. against his father. Indeed, the Department had received a string of reports involving physical abuse of Z.M. by his father from March 2012 through January 2013, including reports of Z.M. being hit in the head, punched in the stomach, elbowed, pushed, and having his hair pulled by his father. The dependency petition was ultimately filed on January 28, 2013, after a social worker

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<sup>2</sup> James M. (father) was declared to be Z.M.'s presumed father at the detention hearing in this matter on January 29, 2013. Paternity testing has also determined that he is Z.M.'s biological father. He is not a party to these proceedings. In this regard, we note that we are in receipt of a letter dated December 16, 2014, from father's trial counsel, seeking to join in this appeal and file an opposition. Briefing in this matter was completed in July 2014, and, although father's trial attorney describes a prolonged misunderstanding with counsel for the Department as the reason for her late application to this court, we are not convinced that the circumstances she recounts excuse the substantial delay. Most importantly, however, given our holding in this case, we find further briefing in opposition unnecessary. For similar reasons, counsel's request that we take judicial notice of the court file in the related family law case is also denied as unnecessary to our determination of the issues involved in these proceedings.

observed two bruises on Z.M.'s thigh which were consistent with the minor's report that his father had repeatedly struck him with his elbow. Father, however, denied any physical abuse of Z.M., stating that he believed mother was behind the accusations, that she had Z.M. "wrapped around her finger," and that she had been able to manipulate Z.M. into making false reports.<sup>3</sup>

Prior to the Department's intervention, the parents had an essentially 50/50 custody split for Z.M. that had been established in family court. At the detention hearing on January 29, 2013, Z.M. was detained from his father and placed full-time in the home of his mother. Supervised visitation between Z.M. and his father was ordered weekly for two hours.

The combined jurisdiction and disposition hearing in this matter took place on March 11, 2013. At that hearing, both parents submitted the matter and the juvenile court sustained the second amended petition (after minor additional amendments were made in open court), finding Z.M. to be a child described by subdivision (b) of section 300. Thereafter, Z.M. was declared to be a juvenile court dependent, removed from his father's care, and placed in the home of his mother. The juvenile court ordered family maintenance services for mother and family reunification services for father. Although father wanted increased contact with his son, Z.M. indicated that he was not yet ready to see father more frequently. Thus, the court maintained the once-per-week visitation order. A six-month review was set for September 9, 2013. In the interim, a court appointed special advocate (CASA) was appointed for Z.M.

#### **B. *Six-Month Review***

In its report for the six-month review, the Department described an August 2013 incident in which mother had locked Z.M. out of the house during a temper tantrum, and Z.M. had retaliated by throwing a rock, breaking the door off its hinges, and shattering a

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<sup>3</sup> In addition to allegations of physical abuse by father, the original petition in this matter also detailed mother's failure to ensure Z.M.'s regular school attendance. The minor had 20 absences and 13 tardies during the current school year and was receiving failing grades. This allegation was subsequently dropped from the petition.

vase. On another occasion, in June 2013, Z.M. ran away from a transport worker's car as he and his mother arrived for an appointment and was missing for 30 minutes before he returned. In explanation, he stated that he was having a "miserable" summer because their car had broken down and he was unable to attend his regularly scheduled activities. The transport worker believed that Z.M. had been triggered by his mother's agitation throughout the car ride, during which she repeatedly stated that the minor might not be able to engage in his summer plans and insinuated that this was due to father's failure to supply her with more money. The social worker also reported that Z.M. often communicated with the Department and his attorney through accusatory emails focused on the recipient and/or his father. However, given the content and nature of the emails, the social worker concluded that it seemed "questionable" as to whether the emails were written by the minor. Instead, Z.M. seems to be "parroting his mother and her concerns." The social worker reported that mother wanted the dependency case to be dismissed.

With respect to father, regular weekly visitation appeared to be going well at first, although Z.M. was initially somewhat reluctant to attend. However, in May 2013, Z.M. began stating that he no longer wanted to visit with his father, and his last visit was on May 17, 2013. Father continued to be prepared to meet with Z.M. each week, in case he changed his mind. In addition, father had essentially complied with the requirements of his reunification plan. In father's opinion, however, dependency should be dismissed because it made things worse for him and Z.M., and the minor was " 'just saying the things his mom is telling him to say because he is scared.' "

The minor also reported that it would be "easiest on him" if dependency was dismissed. According to the minor's therapist, Z.M. had "deep-rooted anger issues." Moreover, the social worker believed Z.M. to be "deeply affected" by his parents' " 'high-conflict' " custody dispute. Nevertheless, it was the social worker's opinion that there was no longer any protective issue, as Z.M. was not at risk of abuse by his father. The Department therefore recommended that Z.M.'s dependency action be dismissed, with "exit orders" as recommended by the minor's attorney. The Department also

requested an order that the parents participate in a full custody evaluation through Marin County Family Court.

Z.M.'s CASA also recommended that dependency be dismissed. In her opinion, there was no longer any risk to Z.M.'s safety and "the adversarial nature of the current dependency case" had "actually served to exacerbate [Z.M.]'s need to defend his mother and resist engaging with his father." Despite this recommendation, the minor's CASA emphasized that "[Z.M.] continues to experience significant emotional trauma due to his chronic exposure to domestic unrest and crisis resulting from his parents' combative behaviors towards one another."

1. *September 9, 2013, Hearing*

At the six-month review on September 9, 2013, mother supported dismissal of the case, but was opposed to the idea that "exit orders" for custody would be as designated by the minor's attorney. She sought full custody of Z.M. and believed that some sort of settlement conference or evidentiary hearing would be necessary. Father also supported dismissal if a custody evaluation in family court was ordered. He was willing to hear what the minor's attorney suggested with respect to exit orders, but wanted custody of Z.M. to be returned to how it was prior to the Department's intervention, which was close to a 50/50 split. Minor's counsel relayed Z.M.'s stated desire to have his mother granted full legal and physical custody, with no visitation for his father. However, minor's counsel also expressed the belief "that the child is not necessarily speaking for himself" and personally supported continuation of the dependency case so that Z.M. could remain in therapy.

Counsel for the Department then remarked: "I think everybody would state from his/her own perspective that this has been an extremely challenging case." Noting that all of the parties were willing to go along with the idea of dismissal, Department counsel described the situation with respect to the proposed exit orders as follows: "But the issue that we haven't even come close to being able to resolve with tremendous effort on all the parties part has to do with *what the so called exit orders are going to be*. That seems to be a subject that could be dealt with *either by mediation or by referral to a custody*

*evaluation*, because that's really *if the Court is going to make final orders* that's really where the assistance needs to be and that would be the Department's recommendation is that the parties some how reach some agreement with assistance or the Court makes a decision after some sort of custody hearing, but again the contested hearing is solely on the issue of *what the exit orders are going to be*" (italics added).

Father's attorney agreed to mediation, but expressed skepticism that any exit orders issued by the juvenile court would finally resolve the matter, stating "we will be going back to family court I'm sure after [] exit orders are put in place." Mother's attorney was also amenable to the idea of mediation. Specifically, counsel for mother indicated: "I think it is important if the case is going to be dismissed that there be some sort of proper exit order before sending it to family law court." She saw mediation in the juvenile court as appropriate "to see if the parties can come to an agreement."

After hearing the arguments of counsel, the juvenile court determined that a meeting should be set up "where we can create the exit orders . . . through mediation." If consensus was reached, the case would be dismissed with the mediated custody order in place. If no custody order could be agreed upon, however, the juvenile court indicated that it would dismiss the case with an order that the parties participate in a full custody evaluation in family court. The matter was then continued to September 30, 2013, for further hearing.

## 2. *September 30, 2013, Hearing*

At the September 30 hearing, counsel for the Department reported that the parties had failed to mediate their custody dispute. The Department was therefore in favor of dismissal of the case, with an appropriate referral for resolution of the custody issues, in accordance with the plan articulated by the juvenile court judge at the prior hearing. The CASA supervisor and attorneys for mother and the minor all indicated their agreement with this plan. Father's attorney also supported dismissal with a referral to family court, indicating that father would like any custody evaluation to include psychological evaluations for both parents. "In the context of the discussions and also recommendations," the juvenile court dismissed the case with a referral to family court,

indicating that psychological evaluations should be done as part of any family court custody evaluation to the extent deemed helpful by the professionals conducting that evaluation.

Prior to the conclusion of the termination hearing, the social worker indicated that “there are findings and orders.” Father’s attorney objected to the proposed orders to the extent they covered issues other than termination and dismissal. The court indicated that “there needs to be a formal order probably made *based on the Court’s statements here this afternoon*” (italics added). A minute order was filed which mirrored the statements made by the court and parties during the September 30 hearing. In addition, the juvenile court completed and signed a form order after hearing (JV-425) on that same date, which stated, among other things: “The respective parents are ordered to contact and work with Family Court Services for custody evaluation and if indicated, for psychological evaluations of each parent, if deemed helpful re: custody evaluation.” The form also indicated (through the checking of boxes) that both parents were “granted custody of the child under the custody order and final judgment entered this day.” Finally, preprinted on the form was also the statement: “Visitation with the child is as ordered in *Visitation Order—Juvenile* (form JV-205). The clerk of the juvenile court must file with the family court a completed *Custody Order—Juvenile—Final Judgment* (form JV-200) and *Visitation Order—Juvenile* (form JV-205).”

Three months later, on January 6, 2014, minor’s counsel submitted to the juvenile court, and the judge signed, a JV-200 Custody Order—Juvenile—Final Judgment. Pursuant to this form order, sole legal and physical custody was granted to mother, with father’s visitation rights to be “[a]s arranged by the parents.” With respect to visitation, the order also expressly stated: “It is understood by the parents that [Z.M.] cannot be compelled to visit with Father.”

Father, unsurprisingly, objected. On January 9, 2014, he filed an ex parte motion to vacate the JV-200 custody order. Specifically, father argued that the juvenile court no longer had jurisdiction over the matter since dependency had been dismissed and that the form order, which deviated significantly from what the court had actually ordered at the

September 30 hearing, had been entered in error. Noting that the family court had already issued temporary custody and visitation orders and scheduled a trial on the issue of custody as requested by the dependency court, father characterized the submission of the JV-200 as an alleged attempt by mother to circumvent that process, calling it “foul play of the highest order.” The juvenile court apparently agreed with father that the custody order was entered in error. On January 10, 2014, it issued an order vacating the custody order, which declared: “On the Court’s own motion and in response to the January 9, 2014 Ex Parte Motion to Vacate filed by attorney [for father], the Court vacates the Custody Order—Juvenile—Final Judgment that was entered on January 6, 2014. The case was dismissed on September 30, 2013, dependency was terminated and the parents were referred to Family Court Services and Family Court for matters regarding custody and visitation.”

On January 29, 2014, mother filed a timely notice of appeal from the court’s January 10, 2014, order vacating the form custody order.

## II. DISCUSSION

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation.”<sup>4</sup> (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122.) Such orders become a part of any family court proceeding involving that child and “remain in effect until they are terminated or modified by the family court.” (Id. at p. 1123.) Further, pursuant to section 302, subdivision (d), juvenile court custody orders may not be modified in family court proceedings “unless the court

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<sup>4</sup> Specifically, section 362.4 provides in relevant part: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the minor’s parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the *juvenile court* on its own motion, *may issue* a protective order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and *an order determining the custody of, or visitation with, the child*” (italics added).

finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.” (See *In re Marriage of David and Martha M.* (2006) 140 Cal.App.4th 96, 102-103.)

Mother’s assertions to the contrary notwithstanding, section 362.4 is discretionary, and thus the juvenile court is not required to enter a juvenile court custody order upon dismissal of dependency. (See § 362.4 [juvenile court “may issue” an order determining custody].) In truth, it might have been prudent for the juvenile court in this case to issue some type of *temporary* order maintaining the status quo with respect to custody and visitation pending the intervention of the family court. (Compare *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 258-259 [custody orders which indicate their temporary nature do not require a finding of changed circumstances before their modification].) However, the juvenile court was clearly not required to make the type of formal custody order that, pursuant to subdivision (d) of section 302, can only be changed in the family court upon a finding of changed circumstances.

In addition, mother’s argument that the juvenile court *did* make a specific custody order at the September 30 hearing that was simply filed three months late due to an “administrative oversight” is not well taken and, indeed, borders on the frivolous. In fact, the record is crystal clear that: (1) all parties and the juvenile court rejected the Department’s suggestion in its six-month review report that custody orders be entered “as recommended by minor’s attorney”; (2) the juvenile court indicated at the September 9 hearing that it would dismiss the case with an order that the parties participate in a full custody evaluation in family court if juvenile court mediation proved unsuccessful; (3) the parties did not mediate their custody dispute in juvenile court; (4) the juvenile court dismissed the case with a referral to family court for resolution of the custody dispute; and (5) the juvenile court did not adopt the form findings and orders presented

by the Department at the September 30 hearing, but instead held that orders should be fashioned “based on the Court’s statements here this afternoon.”<sup>5</sup>

Based on the events which occurred at the September 30 hearing, and preprinted words on the juvenile court’s form order after hearing notwithstanding, there was simply no basis in this case for the juvenile court to execute a custody order granting sole legal and physical custody to mother. Moreover, since dependency was dismissed in September 2013, the juvenile court was without jurisdiction to issue a new or modified custody order in January 2014. (See § 302, subd. (c) [“[w]hen a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, *so long as the child remains a dependent of the juvenile court,*” italics added].) Thus, the juvenile court properly vacated the form custody order when its erroneous execution was discovered. (See rule 5.560(f) [“[c]lerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on the court’s own motion or on motion of any party and may be entered nunc pro tunc”].)

Mother’s final contention, that the juvenile court’s referral of the parents to “family court services” for development of a custody plan was an improper delegation of judicial authority, is equally unavailing. It is true that the power to regulate parental visitation resides with the courts and may not be delegated to non-judicial officers or private parties. (*In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476-1477.) Here, however, the juvenile court ordered the parents to report to family court services for a full custody evaluation so that orders regarding custody and visitation could ultimately be entered by the *family court*. Thus, there was no delegation of judicial authority, just a

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<sup>5</sup> Given the utter lack of ambiguity in the juvenile court’s decision to dismiss these dependency proceedings and refer the matter to family court for the development of custody orders, this is certainly not the “rare and compelling” case in which we would consider evidence outside of the record pursuant to Code of Civil Procedure section 909. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 399-400, 405.) Thus, mother’s motion to take additional evidence filed with this court on June 18, 2014, is denied. Indeed, even were we to include the additional materials in the record, they would in no way alter our decision in this matter.

determination as to which department within the court was the most appropriate forum to hear the dispute. Manifestly, referral of this matter to the family court was proper.

Appellate courts have repeatedly held that, where there is no basis for dependency jurisdiction, any disputes regarding custody and visitation are properly resolved in the family courts. (See, e.g., *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1500 [noting that family law court is “better suited” to handle issues related to visitation which is “part and parcel of the family law court’s role”], disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196, 204; see also *In re A.G.* (2013) 220 Cal.App.4th 675, 686 [reversing order sustaining dependency petition and remanding the matter to family court to resolve custody and visitation]; *In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095-1099 [reversing custody and visitation orders issued by the juvenile court and remanding the matter to the family court for consideration of the custody and visitation issues].) Indeed, as the Fourth District has aptly stated: “The juvenile courts must not become a battleground by which family law war is waged by other means.” (*In re John W.* (1996) 41 Cal.App.4th 961, 975 (*John W.*), superseded on other grounds by statute as noted in *In re Marriage of David & Martha M., supra*, 140 Cal.App.4th at pp. 102-103.) Rather, “[i]f indeed there is ever a place for it, the place for a custody battle is in the family law courts. There the battle will not consume public resources which are better directed to children who typically do not have the luxury of two functional parents fighting for custody.” (*John W., supra*, 41 Cal.App.4th at p. 976, fn. omitted.)

In sum, both the juvenile court’s decision to vacate the erroneously-issued custody orders and its decision to refer the parents to family court for resolution of their custody dispute were entirely proper. There was no error.

### **III. DISPOSITION**

The judgment is affirmed.

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REARDON, J.

We concur:

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RUVOLO, P. J.

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RIVERA, J.

*In re Z.M. A140944*