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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.K. et al.,

Defendants and Appellants;

T.M., a Minor,
Appellant.

A142109

(Alameda County
Super. Ct. No. OJ13021034)

T.M. entered the dependency system when her father beat, hit, and kicked her. The juvenile court placed T.M. with mother, a noncustodial, nonoffending parent living in Colorado. It then terminated jurisdiction without requiring further supervision of T.M.’s progress and without providing further services to either parent. Father appeals the placement and termination orders. We affirm, as the record supports the juvenile court’s decisions. The threat of physical harm from mother’s abusive ex-husband was likely in the past, the threat of emotional harm was not significant compared to other cases in which children are taken from one parent and placed with the other, and the mother stood ready to offer T.M. an adequate home and the support she needed.

BACKGROUND

Mother and father were never married. Their child, T.M., spent time with both parents prior to kindergarten. Starting in 2007, T.M. lived primarily in her paternal grandmother's home in California. Father claims to have taken T.M. from mother, in Colorado, to protect T.M. from domestic violence being inflicted by mother's ex-husband. Mother viewed this as a tactic by father to isolate T.M. from mother. Mother claims she made efforts to regain custody of T.M., but could not, at that time, afford to engage the court system. She did however manage to locate T.M. and have phone contact with her.

Six years later, in 2013, T.M. was taken into protective custody in Alameda County after father beat her with a belt, hit her, and kicked her. A resulting criminal restraining order prevented father from having unsupervised visits with T.M. When mother learned of the dependency case, she stated a desire to take custody of T.M. Meanwhile, T.M. was placed in foster care.

The county Children and Family Services department had mother evaluated as a caregiver and recommended placement with her and termination of dependency jurisdiction.

A joint jurisdiction and disposition hearing occurred in April 2014. The juvenile court took jurisdiction and ordered placement with mother, pursuant to Welfare and Institutions Code section 361.2, finding no detriment to placing T.M. in mother's home. After the parties agreed to a visitation schedule in mediation and agreed T.M. would move in with mother after June 30, 2014, the juvenile court considered whether to supervise the case further or to terminate jurisdiction. After hearings in June and July of 2014, the trial court terminated jurisdiction, awarding legal custody to both parents and physical custody solely to mother.

Father has appealed, challenging the placement with mother and the termination of dependency jurisdiction. T.M. also appealed, but abandoned her appeal, making it

known she does not now oppose the placement with mother and she takes no position on whether jurisdiction should have been terminated.

DISCUSSION

Placement with Mother

Parents have a fundamental interest, protected by the federal Constitution, in parenting their children. (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1400.) In light of this, if a juvenile court removes a child from one parent, it must inquire whether a noncustodial, nonoffending parent desires custody of the child. (Welf. & Inst. Code, § 361.2, subd. (a).) “If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. . . .” (*Ibid.*) “The nonoffending parent does not have to prove lack of detriment.” (*In re C.M., supra*, at pp. 1400, 1402.) Rather, the party opposing placement with a nonoffending parent has the burden to show” it, and to show it by clear and convincing evidence. (*Ibid.*) “Clear and convincing evidence requires ‘a high degree of probability, such that the evidence is so clear as to leave no substantial doubt. [Citation.]’ [Citations.]” (*Id.* at p. 1401.) On appeal, we ask if substantial evidence supports the juvenile court’s finding regarding detriment. (*Id.* at p. 1402.)

Father argues there was evidence of physical and emotional detriment. He testified at the disposition hearing he believes that if mother obtains custody, T.M. could suffer physical harm at the hands of mother’s former husband and could suffer emotional harm from shifting her ties away from her paternal relatives in California.

T.M. has been conflicted about with whom she wants to live and told her therapist she did not want to make that decision. At the outset of the dependency case, T.M. told the responding social worker she wanted to relocate to be with her mother in Colorado, feared father, and feared the paternal relatives would not protect her. T.M. felt “okay”

and “comfortable” with mother, with whom she had spent significant time before kindergarten.

At the disposition hearing, however, T.M. testified she wanted to live with her father or her paternal grandmother, who lived with father. She, at this time, viewed her connections to the paternal relatives as stronger and more recent. Since first grade, about 2007, she had lived primarily in her paternal grandmother’s home. Father was around, though T.M. never lived with him alone. T.M. saw herself continuing to grow up, as she had for the past several years, in California. T.M. said she was fine visiting mother, but would not prefer moving to Colorado permanently. If she had to go, though, she would.

T.M. said she did not have the same “special bond” with her maternal relatives and said she did not “really trust” mother. T.M. thought if she had to tell mother something personal, mother might not keep it private. T.M. also thought “my mother’s suppose[d] to help me and stuff” and mother might not “help that much.” There was one incident where mother told other family members something T.M. hoped mother would keep secret. T.M. realized, however, this may have been for her own protection.

During the visits after the dependency began, T.M. did not experience any trust issues. T.M. also developed a “pretty close relationship” with her half sister, with whom she shares a bedroom when in her mother’s Colorado home. The evidence additionally shows mother stood ready to offer T.M. therapy to help her cope with making the move to Colorado. A Colorado child welfare worker assessed mother’s home and found it adequate.

T.M. also testified about domestic violence she witnessed when she previously lived with mother, before kindergarten. She said mother’s former husband was abusive to T.M. and her half siblings and got into physical fights with mother. During a recent, court-approved visit with mother, however, T.M. did not see the former husband, though she knew he had come to pick up his children, T.M.’s half siblings, for visitation. During the visits with mother since the dependency started, T.M. has not experienced fears

related to the former husband. A therapist still remained concerned that T.M., even if not diagnosed with PTSD, might express symptoms of the disorder if exposed to the former husband.

The chief of operations of a Colorado housing program, who happens to be mother's sister, testified mother has a state housing voucher obtained as a result of having suffered domestic violence and that, to keep it, she needs to participate with a domestic violence shelter. If the ex-husband returns to the home, mother will lose her voucher. Mother's sister believes the ex-husband has not returned, and also stated she believes the domestic violence ended seven years ago, mother no longer relies on the ex-husband as a support, and no longer sees him (though her children do). Mother herself testified the ex-husband never stays at the home and that, for at least the last three years, he has resided in a city on the other side of the state.

Given this evidence, the trial court's finding of no detriment was amply supported.

As to emotional harm, a child will understandably wish to remain in a home with relatives they already know and have reservations about moving in with a parent the minor knows less well. But these typical concerns are not "sufficient to constitute substantial evidence of the high level of detriment required under section 361.2(a)." (*In re C.M.*, *supra*, 232 Cal.App.4th at p. 1403.) A child's preference, without more, is not the deciding factor in these cases, even when the child is a teenager. (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1265.) Furthermore, even the prospect of mental health issues does not support a detriment finding unless there is also a showing the new parent "would not be willing or able to obtain recommended therapeutic services." (*Id.* at p. 1263.) In exceptional cases, a child might have such unusually strong bonds with siblings that relocation to another state would have a devastating emotional impact on the child. (See *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 [*affirming* finding of detriment when social worker believed there would be, and when children cried and became depressed at prospect of separation]; *In re C.M.*, *supra*, 232 Cal.App.4th at

p. 1404 [characterizing *In re Luke M.*].) That is not the case here, especially in light of T.M.’s changing preferences as to placement.

Turning to the likelihood of physical harm, the evidence showed the previously dangerous ex-husband was now divorced from mother and was not allowed in mother’s home—though he could drive up to it to pick up his own children for visitation. There was otherwise no evidence of recent or current danger. T.M. was not scared. In light of this, there was not sufficient evidence of likely future detriment compelling the trial court to find detriment. (*In re C.M.*, *supra*, 232 Cal.App.4th at pp. 1403–1404 [nonoffending parent’s earlier conviction for domestic violence not relevant because not current and not the basis of the court taking jurisdiction].)

Termination of Jurisdiction

After placing a child with a noncustodial, nonoffending parent under section 361.2, the juvenile court has several choices. It can retain jurisdiction and supervise the placement, either requiring an in-home assessment or provision of services to one or both parents. The juvenile court can also award legal and physical custody of the child to the nonoffending parent and terminate dependency jurisdiction. (§ 361.2, subd. (b)(1)–(b)(3); *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651.) The focus is on the need for supervision with the new parent, not whether the offending parent has yet to fix the problems that led to dependency. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 99.) Whether to supervise placement or terminate jurisdiction is discretionary, and we generally review the decision for abuse of discretion. (*In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1288; *In re Shannon M.* (2013) 221 Cal.App.4th 282, 28; *In re A.J.* (2013) 214 Cal.App.4th 525, 535, fn. 7; see *In re A.B.* (2014) 230 Cal.App.4th 1420, 1435 [“the court has complete discretion”].)

There can be an abuse of discretion if the court applied an incorrect legal standard. (*In re Shannon M.*, *supra*, 221 Cal.App.4th at p. 289.) Father’s main contention is the juvenile court applied the wrong standard because the only reason it stated on the record

to terminate jurisdiction was that T.M. would be “safe.” Father cites appellate cases considering a broader range of other factors. (See *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134 [*affirming* order of supervision given child’s limited interactions with the new parent, the parents’ conflict, the need for the child to have therapy with each parent which could not occur without continued jurisdiction, and deep bond with old parent who was making excellent progress on her reunification plan].) He then contends the juvenile court should have considered these factors, but did not.

The juvenile court heard arguments on termination over two hearings.¹ At both, counsel for the father and child argued supervision was desirable because of the lack of an established relationship with mother, because of fears over the ex-husband re-emerging, and because it would assure T.M. got the therapy she needed and the involvement of paternal relatives all said they envisioned. At the first hearing, the juvenile court stated it did not believe further monitoring was necessary. The court said it could not live with itself “if we dismissed this case if there were safety factors” and that it did not “see any safety factors fortunately.” At the second hearing, the juvenile court ordered dependency terminated “because there was no safety issue warranting continuing juvenile court supervision.” It then granted joint legal custody to mother and father and sole physical custody to mother.

Having reviewed the record, the juvenile court was well aware of counsels’ arguments and did not misunderstand or misapply the applicable legal standard. Section 361.2 requires the court to state “the basis for its determination” under subdivisions (b), but it does not require the court to expound upon any list of factors. (§ 361.2, subd. (c).) Nor does it require the court to use magic words, such as “ ‘there is no need for continuing supervision’ ”—a belief the juvenile court here nonetheless

¹ We have no transcript of the second hearing. Instead, the parties prepared a settled statement.

expressed when it said monitoring was unnecessary. (*In re A.J.*, *supra*, 214 Cal.App.4th at p. 538; *In re J.S.* (2011) 196 Cal.App.4th 1069, 1082.)

Furthermore, we review a court's discretionary *decision*, not its stated reasons or its failure to state all of its reasons. (*In re A.J.*, *supra*, 214 Cal.App.4th at p. 538.) In the absence of contrary evidence, we presume the juvenile court properly followed established law, and, if applicable, considered all relevant factors in its decisionmaking. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 254; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1249; Evid. Code, § 664.) If a court's decision is correct on any basis, we must affirm the ruling regardless of whether the correct basis was actually invoked. (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) That the juvenile court here apparently focused on T.M.'s safety is not evidence the trial court did not consider the termination decision holistically.

Finally, father contends it was also an abuse of discretion for the juvenile court to terminate jurisdiction just a week and a half after T.M. went to reside with mother. It was not.

First, section 361.2 contemplates the court taking swift action in certain cases, allowing it to bypass supervision and terminate jurisdiction. (§ 361.2, subd. (b)(2); *In re A.B.*, *supra*, 230 Cal.App.4th at p. 1435.) Second, while the juvenile court might not be faulted had it chosen to supervise T.M.'s move to Colorado, there was ample evidence suggesting supervision was not necessary. The ex-husband was, by all accounts, out of mother's home and was not going to interact with T.M. The Colorado child welfare worker reported mother was employed and offered a stable home. And mother provided assurances she was prepared to assist T.M. in obtaining therapy to address her general adjustment issues and any other issues that might arise.

DISPOSITION

The placement and jurisdiction termination orders of the juvenile court are affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.

A142109, *In re T.M.*