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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.H. et al., Persons Coming Under the
Juvenile Court Law.

B233285
(Los Angeles County
Super. Ct. No. CK81578)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, David R. Fields, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Deputy County Counsel, for Plaintiff and Respondent.

A mother asserts the juvenile court abused its discretion when at the time it terminated dependency court jurisdiction, it failed to return her children to her care and custody, and designated the children's father's home as their primary residence. We find no abuse of discretion, and affirm.

BACKGROUND

Family history

Appellant T.H. (mother) has two children, D.H. (born September 2002) and C.H. (born September 2007). The family came to the attention of respondent Department of Children and Family Services (DCFS) after A.H., the children's father and mother's estranged husband (father, who is not a party to this appeal) alleged mother hit D.H. with a belt.

Mother and father met as teenagers. They married in 2002 and lived in Michigan. Their relationship was rocky; they broke up and reconciled several times. Each alleged, at varying times, that the other spouse had threatened or committed acts of domestic violence against him or her. The couple separated after C.H. was born in 2007, not long after father moved to California to join mother and D.H. A Michigan court order gave mother sole legal and physical custody, but the couple agreed that mother would care for the children during the week, and father would care for them on weekends. Father claimed that, in April 2008, mother left the children in his care, claiming she needed a break. He cared for the children between April 2008 and April 2009. Mother denied having voluntarily relinquished custody to father. DCFS reported that father said in August 2009 mother filed a request with a California family law court to modify the prior custody order, and grant physical custody to father, a request she later withdrew. Thereafter, mother and father verbally agreed to return to their previous arrangement, placing them with mother on weekdays and in father's care on weekends.

Detention

In mid-March 2010 father saw bruises on D.H.'s back and complained to the police that mother had physically abused the seven year old. D.H. said mother hit her with a belt with spikes on it because her homework had not been done correctly. She was

afraid to return to mother's care. D.H. said she had often been subjected to mother's "whippings" in the past. C.H. was not hit. Father said he had noticed marks on D.H. as early as Thanksgiving 2009, but mother and D.H. told him the marks resulted from D.H. falling during play. Mother was arrested. A week later, she took drug tests on two consecutive days, testing positive on the first day for opiates and hydrocodone.

During DCFS's investigation, mother denied hitting D.H. with any object, and claimed father hit the child with a belt. She said, apart from spanking her daughter or tapping her on the hand, she only used "time out[s]" to discipline her children. Mother claimed father was violent and had beaten her up several times, that D.H. had told her that father abused her and that she feared for her children's safety. She also said father smoked marijuana and used hallucinogenic mushrooms. Father denied having used any illegal drugs or to have engaged in any domestic violence. He claimed mother had been violent with him when they met to exchange the children. D.H. told a DCFS social worker she was afraid of, and did not wish to live with or see, her mother. She said she had seen mother hit father, bang on his door and try to break a window in his home.

DCFS filed a Welfare and Institutions Code section 300 petition, alleging the children were at risk due to mother having struck D.H. with a belt, and the parents' violent altercations. (Welf. & Inst. Code, § 300, subds. (a), (b), (j).)¹ The children were placed temporarily in father's care on the condition that he submit to a drug test. He tested negative. The court ordered family maintenance services and mother was given monitored visits at a neutral location.

Jurisdictional and dispositional proceedings

In late March, D.H. told a DCFS social worker she was doing well, happy to be living with father and did not want to see mother. C.H. appeared to be very attached to his father, allowing no more than a few feet of distance between them and wanting constantly to be held. However, in mid-April, DCFS said D.H. had changed her story,

¹ Further statutory references are to the Welfare and Institutions Code.

claiming mother hit her just once with a belt. She had seen her parents fight in the past. D.H. also told DCFS she liked living with father, but wanted to live with mother because mother promised ““she was going to be better and not hit me anymore.”” Mother admitted once hitting D.H. with a belt. She told DCFS that, although father had done drugs in the past and had hit D.H., she believed the children were safe with him now.

Mother visited the children regularly; the children were happy to see her and enjoyed the visits. Both parents wanted sole custody. DCFS recommended that the children be placed with father, who appeared currently to be the parent able to provide the more stable and suitable placement.

In April 2010, the parents pleaded no contest to the petition which, as amended, charged the children were at risk of harm because: (1) mother inappropriately disciplined D.H. by striking her on the back with a belt; (2) the parents had a history of domestic violence and of engaging in verbal altercations in the children’s presence; and (3) of sibling abuse as to C.H., based on mother’s physical abuse of D.H. (§ 300, subds. (a), (b), (j).) The trial court sustained the petition as amended, declared the children dependents of the court and placed them in father’s care. The parents were given family maintenance services. Mother was ordered to participate in individual and joint counseling, to address parenting, anger management and domestic violence issues, referred to the Department of Mental Health, ordered to submit to random drug tests and given monitored visitation. Father was ordered to participate in counseling, including parenting.

Reunification and section 388 petitions

In July 2010, mother filed the first of three section 388 petitions. She requested that the juvenile court modify its orders to grant her unsupervised, overnight visits. She also complained that DCFS was not complying with the court’s orders, providing her only one two-hour monitored visit per week even though the court had ordered three such visits per week. Mother also informed the juvenile court she had completed a parenting class and had passed her random drug tests. She also provided a letter from her counselor who said mother was mentally sound and rational, had demonstrated good

decisionmaking abilities, and posed no risk to herself or others. The petition was set for hearing in September 2010.

In its report for the section 388 hearing, DCFS said mother had visited the children regularly, and her visits were appropriate. Two unsupervised day-long visits with the children in August “went well.” A third visit was disrupted after DCFS received an emergency referral alleging that J.B., father’s live-in girlfriend had used a belt on C.H. because he had “accidents in his pull ups.” The allegation of physical abuse by J.B. was deemed unfounded after an examination revealed that the marks on C.H. had been caused by rubbing from his pull-ups. J.B. agreed to take a parenting class. DCFS also reported that D.H. thought it would be “okay” to have overnight visits with her mother. Following a hearing, the juvenile court ordered that mother’s visitation again be monitored, and gave DCFS discretion to liberalize visitation. The court also ordered that J.B. not be left alone with the children.

In late September 2010, mother filed a section 388 petition requesting that father undergo paternity testing. That petition was summarily denied. Also in late September, a counselor declined to facilitate joint counseling for mother and D.H. because the child did not need it.

In a status review report filed in October 2010, DCFS observed that the children remained placed with father, who parented appropriately, met the children’s daily needs and had completed six of 10 parenting classes. Father had also moved to Upland, and D.H. had been performing better academically since that move. He had signed a lease, and he and J.B. planned to move from their one-bedroom apartment to a two-bedroom unit in late October. Mother maintained regular and appropriate visitation. DCFS reinstated mother’s unsupervised visitation in late September. Mother was attending counseling for parenting, anger management and domestic violence issues, and was making positive progress. All of her random drug tests had been negative.

A DCFS social worker made an unannounced visit to father’s house in October 2010. She was impressed with how organized the home was, and observed father play appropriately with C.H., help D.H. with her homework, and discipline or redirect the

children using a firm voice. D.H. told the social worker she preferred to live with father and attend school in Upland, and to stay with her mother on weekends. C.H. was too young to voice an opinion. In its report DCFS observed that “[b]oth parents have been fully compliant with the Court orders.” The children were reportedly in good health, developmentally on target and emotionally stable. DCFS noted that the risk level to the children was low if they remained in father’s care, and recommended the court give mother unmonitored overnight visits. Mother was given unsupervised weekend visits. J.B. completed a parenting class in late October.

Mother filed her third section 388 petition in November 2010 seeking immediate reunification with the children. She noted she had completed the court ordered parenting and counseling, regularly visited the children, had negative drug tests and said she posed no risk to D.H. On the other hand, mother claimed the children were in great danger in father’s care, presumably because of an incident in which father had allowed D.H. to ride in the front seat of his car. She also said the children wanted to return home and live with her. Mother refused to discuss her section 388 petition with DCFS. A hearing was set in December for the petition.

When interviewed in preparation for the section 388 hearing, father explained that the children usually rode in the back. He once let D.H. ride in the front seat after juice was spilled on the back seat. Mother had asked D.H. to pose for a picture and made such “a fuss” that father transferred D.H. into the back seat before leaving the parking lot. Father told DCFS that mother called every day and that he sometimes had to end the calls because mother made D.H. cry. He said mother manipulated the children using fear and control, and it had caused D.H. to lose some focus at school. He also told DCFS that D.H. only told mother she wanted to live with her in order to make her happy. D.H. confirmed this, and also told DCFS that mother asked all the time whether she wanted to live with her. If D.H. replied that she wanted to stay with father, mother became angry and then her brother got “all the fun.” D.H. told DCFS she “lov[ed] living with” and wanted to stay with father and to see her mother for weekend and overnight visits. She was afraid that if she went back to live with mother the same things would happen again.

DCFS noted that J.B. had completed eight of 10 sessions of a parenting course, and recommended that the children remain in father's care.

Staff at D.H.'s school told DCFS mother had tried to sign the child out of school using the superseded 2008 court order granting her custody. The school refused to release D.H. to mother because it had a copy of the order in the instant case. The school also told DCFS that D.H. was having difficulty getting along with her peers, and was participating in play therapy. Initially D.H. cried a lot at school because she was unsure whether she would be allowed to stay with father.

Mother's section 388 petition was denied in early January 2011, after the juvenile court found that the proposed modifications would not promote the children's best interests.

In late April 2011, DCFS reported that father had moved into a bigger apartment. Both children seemed "very bonded" to him and were developing appropriately. Father and J.B. had completed parenting courses. Mother had also completed the court required parenting and individual counseling components of the case plan, and all her drug tests had been negative. She had visits with the children on alternate weekends, and the visits were appropriate. Father said D.H.'s academic performance had improved since they had moved to Upland. D.H. reiterated that, if she could not live with both her parents, she preferred to remain with father during the week and see her mother on weekends. Each parent wanted custody of the children. DCFS noted that both parents had fully complied with the case plan. It recommended the juvenile court terminate jurisdiction with a family law order in place leaving the children in their father's care, where the risk level was low, and to stay with mother on weekends and holidays.

In late July 2011, the juvenile court entered a final custody order, vesting both parents with shared legal and physical custody to father, designating father's home as the children's primary residence and granting mother liberal visitation. This appeal followed.

DISCUSSION

Mother asks this court to reverse the juvenile court's July 2011 exit order,² because the juvenile court erroneously gave father legal and physical custody of the children, even though mother did "what was asked of her, . . . was an appropriate caretaker and [D.H.] reported that father's girlfriend had hit the children with a belt." Mother's assertions lack merit.

In the first place, mother's contentions are based on inaccurate facts. It is true that in May 2011 the juvenile court's initial exit order gave mother only shared legal custody after she failed to attend a hearing. But subsequently, and at mother's behest, the court reconsidered that order and gave the parents shared legal and physical custody, designating father's home as the children's primary weekday residence. Second, mother's assertion that J.B. "hit the children with a belt," is presumably predicated on alleged physical abuse of C.H. by J.B. which DCFS investigated and deemed unfounded. In addition, notwithstanding the unfounded allegation, J.B. had agreed to attend and did complete a parenting class. The only genuine issue on appeal is whether the juvenile court's placement order constitutes an abuse of its discretion. It does not.

When the juvenile court terminates jurisdiction in a dependency case, it may issue an exit order for custody and visitation. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202–203 (*Chantal S.*)) The court has broad discretion to fashion an exit order. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4.) When making a custody determination the juvenile court focuses on the best interests of the child. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673. Based on the "totality of [the] child's circumstances" (*Chantal S.*, at p. 201.) We review exit orders for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) We will not disturb such an order "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or

² Exit order is a term used by juvenile courts when, cases leave the juvenile dependency system, usually pursuant to section 362.4. (See *In re John W.* (1996) 41 Cal.App.4th 961, 970 (*John W.*))

patently absurd determination.” (*Id.* at p. 318; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) The test for abuse of discretion is whether the juvenile court exceeded the bounds of reason. If two or more inferences can reasonably be deduced from the facts, we may not substitute our decision for that of the juvenile court. (*In re K.D.* (2004) 124 Cal.App.4th 1013, 1018.)

The evidentiary record in this case supports the juvenile court’s conclusion that the children’s best interest would be served by placing the children in the parents’ shared legal and physical custody, and designating father’s home as their primary residence. From at least the time the children were detained in March 2010, father provided them a stable, supportive home environment, appropriately met their needs, and fully complied with the court ordered case plan. Both children are described as “very bonded” to their father, particular C.H. who is apparently reluctant to let father out of his sight. D.H. is enrolled at school and, after floundering a bit at first, is progressing well academically.

Mother appears also to have made progress, and has also fulfilled the requirements of the case plan. But, indications of problems remain with regard to the development of her parenting skills. She calls father’s home daily and, on occasion, father is forced to end those calls early because mother has said something to cause D.H. to cry. She persistently asks D.H. whether she wants to live with her and, unless D.H. tells her what she wants hear, shows D.H. her unhappiness and anger. As a result, D.H. sometimes tells mother she wants to live with her even though she does not mean it, in order to avoid upsetting mother. With the exception of one instance in April 2010, throughout this case D.H. has been steadfast regarding her desire to live with father during the week, attend school in Upland, and to stay with mother on weekends. As the juvenile court noted, both parents have demonstrated their love for their children and both appear able to parent appropriately. The evidentiary record supports the juvenile court’s discretionary determination that the children’s interests are *best served* by not removing them from the stable, supportive environment father has provided, with frequent extended visits for mother.

Furthermore, the exit orders are not permanent. In the event circumstances change or mother encounters difficulty arranging a reasonable visitation schedule in the future, she remains free to seek recourse in the family law court. Custody orders issued by the juvenile court may be modified. (§ 361.2, subd. (b)(1) [“[t]he custody order shall continue unless modified by a subsequent order of the superior court”]; see also § 362.4.) Juvenile court exit orders are akin to *pendente lite* family law orders. (*John W.*, *supra*, 41 Cal.App.4th at p. 973; *In re Hirenia C.* (1993) 18 Cal.App.4th 504, 518] By terminating its jurisdiction, the juvenile court has done no more than to transfer the forum for any future custody dispute from the dependency court arena to family court. (§ 362.4; see also *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.)

Accordingly, the judgment must be affirmed.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.