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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re Andrew Y., a Person Coming Under the
Juvenile Court Law.

B233462
(Los Angeles County
Super. Ct. No. CK80618)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Angela D.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Debra L. Losnick, Juvenile Court Referee. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Angela D. (“Mother”) appeals from the order of the juvenile court terminating dependency jurisdiction over her minor son, Andrew Y. and awarding joint physical and legal custody of the child to Mother and Andrew’s father, Eric Y. (“Father”) (Welf. & Inst. Code¹ §§ 364, subd. (c), 362.4). The custody order provided that Andrew’s primary residence was with Mother, and that Father was entitled to weekly unmonitored visitation with the child consisting of six to eight hours on either Saturday or Sunday and one midweek visit. On appeal, Mother challenges the portion of the juvenile court’s order granting the parents joint physical custody of Andrew on the grounds that it is inconsistent with Father’s minimal amount of visitation, may preclude Mother from relocating with Andrew out of state, and is contrary to Andrew’s best interests. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Initiation of Dependency Proceedings

Mother and Father are the parents of three-year-old Andrew. Mother also has a five-year-old daughter, Leilani D., from a prior relationship.² Mother and Father met while they were both enlisted in the United States Navy. During their first year of marriage, they resided in Mother’s home state of North Carolina. They relocated to Father’s home state of California where Father worked as a web programmer and Mother stayed at home with the children. This matter came to the attention of the Los Angeles County Department of Children and Family Services (“DCFS”) on January 5, 2010, following a referral that alleged domestic violence in the home.

On January 8, 2010, the DCFS filed a section 300 petition on behalf of Andrew and Leilani based on allegations that Father committed acts of domestic violence against

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

² Leilani is not a subject of this appeal.

Mother in the children's presence and that Mother suffered from mental and emotional problems including suicidal ideation. At the January 8, 2010 detention hearing, the juvenile court ordered that the children be detained from both parents and placed in foster care, and that each parent be provided monitored visitation with the children a minimum of three hours or three times per week. The court also ordered the DCFS to conduct pre-release investigations on both Mother and Father with discretion to place the children with either parent.

In its January 22, 2010 pre-release investigation report, the DCFS advised the court that both Mother and Father had agreed that the children should be placed with Mother once she secured appropriate housing. As of that date, Father was residing in the family home and Mother was residing in a temporary shelter for victims of domestic violence. The DCFS recommended that the children remain in foster care until Mother moved into an approved transitional facility at which time the DCFS would release the children to her. At the January 22, 2010 pre-release hearing, Father's counsel informed the court that Mother had expressed an interest in returning to North Carolina. The court reiterated a prior admonition that neither parent was allowed to remove the children from the southern California area. The court set the matter for a contested jurisdiction and disposition hearing, keeping its prior visitation order in effect.

II. Jurisdiction and Disposition Hearing

In its February 25, 2010 Jurisdiction/Disposition Report, the DCFS confirmed that the children had been released to Mother and were residing with her at the transitional facility. The DCFS also reported that it had conducted individual interviews with the parents about the allegations in the section 300 petition, but had not interviewed the children because they were too young to make a meaningful statement.

According to Mother, she and Father had a physical altercation in October 2009, during which Father grabbed Mother and pinned her down. Mother scratched Father's leg to free herself and then left the home with Leilani. In January 2010, Mother and Father had a verbal argument about her desire to return to North Carolina for a visit. During the argument, Father threatened to keep Andrew in California if Mother ever

moved back to North Carolina. Father also threatened to kill one of Mother's friends when Mother related to him that her friend had spoken out against their relationship. After Mother locked herself in a room, Father called "911" because he was concerned she might hurt herself. The police took Mother to the hospital and she was released the following day. Mother indicated that Father was verbally abusive to her, tried to isolate her from her family and friends, and threatened to take Andrew from her if she moved away. Mother denied that Father ever threatened to physically harm her or the children.

According to Father, he and Mother had a verbal argument in October 2009, but there was never any physical altercation. Father called the police at that time because Mother began screaming at him. After talking to both parents, the police made Mother temporarily leave the home with Leilani while Father remained in the home with Andrew. In January 2010, Father again called the police because Mother locked herself in a room and threatened to hurt herself. Mother had attempted suicide once before when she was in the military and Father feared for her safety. Father denied making any threats against Mother's friends or committing any acts of domestic violence against Mother.

The DCFS reported that, in January 2010, a licensed marriage and family therapist conducted an assessment of Father and Mother in connection with the case. Although Father denied that there was any domestic violence in the home, he admitted that he and Mother argued frequently based on misunderstandings and that he often threatened to take Andrew away from her. Mother appeared anxious and depressed, and conveyed that she felt trapped in her marriage because she did not want to leave without her children. It was the therapist's opinion that Mother had a long history of emotional abuse by Father which was adversely affecting the children. The therapist believed that both parents would benefit from domestic violence education and individual counseling, and that Mother should enter a domestic violence shelter for her own and the children's safety.

The DCFS further reported that, as of February 2010, Mother was attending programs in domestic violence, anger management, and parenting education, and participating in individual counseling. Father also was attending programs in domestic violence and parenting education. The DCFS recommended that the juvenile court

declare Andrew and Leilani dependent children of the court and order family maintenance services for Mother and family reunification services for Father.

On February 25, 2010, the juvenile court continued the jurisdiction and disposition hearing. In the interim, the court granted Father monitored visitation with the children in Father's home with the paternal grandmother serving as the monitor. The court also ordered the DCFS to evaluate whether Father should have overnight visits with the children and granted the agency discretion to allow monitored overnight visitation if appropriate.

On April 6, 2010, the DCFS submitted an interim review report regarding the family's progress. Both Mother and Father were still participating in the domestic violence and parenting education programs. Father's group facilitator reported that Father was accepting responsibility for his past abusive behavior, learning positive conflict resolution skills, and strengthening his parenting skills by becoming more aware of his children's emotional needs. The children continued to reside with Mother at the licensed transitional facility, and they appeared to be happy and well-adjusted in her care. Father related that he visited the children most weekends, but they had not had any overnight visits at his home because Father was in the military reserves and often had to attend weekend training. On April 6, 2010, the juvenile court granted the DCFS discretion to allow Father unmonitored visitation with the children.

On May 4, 2010, the juvenile court held the jurisdiction and disposition hearing. At that time, the parties stipulated to an amended section 300 petition and a court-ordered disposition case plan. The court accordingly sustained the amended petition pursuant to section 300, subdivision (b), based on findings that Mother and Father had a two-year history of engaging in domestic altercations in the children's presence and that Mother had a history of emotional problems following a diagnosis of post-partum depression. The disposition case plan provided that the children be placed in the home of Mother, and that Father be granted monitored visitation with the children subject to the DCFS's discretion to liberalize. Both Mother and Father were ordered to complete domestic violence and parenting education programs and to attend individual counseling to address

case issues. At the hearing, Father's counsel argued that the visitation with the children should be unmonitored, and Mother counsel's agreed, noting that the children were asking to visit Father more often. In response, the court ordered the DCFS to provide a specific recommendation on unmonitored visitation for Father.

On May 27, 2010, the DCFS submitted an interim review report regarding Father's request for unmonitored visitation. The DCFS reported that Father's monitored visits with the children had been sporadic because Father had to attend military reserve training on some weekends and the paternal grandmother had to travel from Northern California on other weekends to monitor the visits. Since February 2010, Father had eight weekend visits with the children, including four overnight visits. The paternal grandmother reported that Father was caring and loving toward the children during the visits and the children appeared to be very attached to him. The group facilitator for Father's domestic violence and parenting education programs reported that Father was accepting responsibility for his past behavior, improving his communication and listening skills, and learning how to apply positive conflict resolution techniques to his children. The DCFS was concerned, however, that Father had attended only one individual counseling session since the disposition order. The DCFS recommended that Father's visits with the children remain monitored until he demonstrated further progress with the case plan. On May 27, 2010, over the DCFS's objection, the juvenile court ordered that Father's visitation with the children be unmonitored.

III. Status Review Hearings

In its November 2, 2010 status review report, the DCFS advised that court that the children remained in Mother's custody, and were observed to be "happy, articulate, well adjusted, and thriving" in her care. Mother had successfully completed the domestic violence and parenting education programs and was continuing to attend individual counseling. Mother's therapist reported that Mother demonstrated an increased understanding of the effects of domestic violence and the importance of providing a safe and healthy environment for herself and the children. Mother's attendance in the court-ordered programs had been consistent and she appeared to be highly motivated to act in

the best interests of her family. Father had successfully completed the parenting education program and was continuing to attend the domestic violence program. Father's group facilitator reported that Father accepted responsibility for his past behavior and demonstrated a better understanding of positive conflict resolution skills and the ability to apply them in his personal life. Father indicated that he had been attending individual counseling with a private therapist who refused to provide letters of progress, and that he intended to begin counseling with a new court-approved therapist. Father also advised the DCFS that he had served Mother with a petition for divorce in September 2010.

In its report, the DCFS further addressed Father's visitation with the children. Mother reported that the children generally were excited about visiting Father, but she was concerned about Leilani's behavior after a recent visit. According to Mother, when the children returned home from a visit on October 3, 2010, Leilani expressed that she no longer wanted to go to Father's home, but refused to provide an explanation. When Mother approached Father about Leilani's statement, Father became angry and denied in vulgar language that anything inappropriate had happened during the visit. In an interview with Leilani, who was then age three, the child stated that Father had yelled at her because she would not go to sleep and that she was sad because "Daddy's mean to Mommy" and "Daddy makes Mommy feel bad." Both Mother and Father admitted that they continued to have difficulty communicating with one another. The DCFS recommended that the juvenile court continue its jurisdiction over the children based on Father's need for additional time to complete the domestic violence program and participate in individual counseling. The DCFS also recommended that both Mother and Father be ordered to attend the "Parents Beyond Conflict" program.

On November 2, 2010, the juvenile court held the status review hearing. The court found that both parents were in compliance with the case plan, but that continued jurisdiction over the children was necessary. Over Father's objection, the court ordered the parents to participate in the "Parents Beyond Conflict" program. The court also ordered play therapy for Leilani to address case issues. The court set a further review hearing for February 16, 2011.

On February 16, 2011, the DCFS submitted a supplemental report regarding the family's progress. The DCFS confirmed that both Mother and Father had completed the "Parents Beyond Conflict" program. Mother reported that she learned about "rules for healthy communication" and "being the best parent you can be." Father reported that he learned about "time outs . . . for adults" and "making sure communication is not lost in emotions." The DCFS recommended that the juvenile court terminate its jurisdiction over both children and issue a family law order granting sole legal and physical custody of Leilani to Mother and joint legal and physical custody of Andrew to Mother and Father.

At the February 16, 2011 status review hearing, Mother requested that the juvenile court set the matter for a contested hearing regarding the DCFS's recommendation for joint legal and physical custody of Andrew. Mother's counsel also noted that the DCFS's most recent report did not contain any information about Father's visitation with the children. The court agreed the DCFS should submit a supplemental report that specifically addressed the nature, frequency, and quality of the visits. The court continued the matter for a contested review hearing on March 23, 2011. In the interim, the prior order for unmonitored visitation with Father was to remain in effect.

In its March 23, 2011 supplemental report, the DCFS addressed Father's visitation with Andrew, who was then age two. Father reported that he was having unmonitored visits with Andrew on Saturdays from 2:30 p.m. to 9:30 p.m. and on Sundays from 12:00 p.m. to 7:00 p.m. On February 19 and 20, 2011, Andrew attended a weekend visit with Father, but Father did not provide any details about the nature or quality of the visit. On Saturday, March 5, 2011, Andrew was unable to attend the visit because he was sick and both parents agreed to reschedule for the following weekend. On Sunday, March 6, 2011, Mother called Father about visiting Andrew that day because he was feeling better, but Father stated that he was spending time with his family. On March 12 and 13, 2011, Andrew cried when Father picked him up for a visit because he did not want to go. Andrew told Father that he did not like him and screamed for Mother and Leilani as Father carried him to the car. However, according to Mother, Andrew appeared content

upon his return. On Saturday, March 19, 2011, Andrew again cried when Father picked him up for a visit, but Mother noted that it was around Andrew's nap time and he may have been tired. On Sunday, March 20, 2011, both parents agreed to reschedule the visit due to bad weather, but Father never responded to Mother's suggestion of a Monday visit. Mother further reported that she and Father recently had a good discussion about Andrew's behavior and agreed that Andrew might benefit from an additional weekday visit with Father to reassure the child that Father loved him.

In its report, the DCFS indicated that the case social worker had attempted to interview Andrew about his visits with Father. However, when asked what he did with Father when they were together, Andrew put his head down and refused to reply. Andrew was animated in talking about other subjects, but remained reserved on the topic of visitation with Father. The case social worker also contacted Father to discuss the nature and quality of his visits with Andrew. Father stated that they spent time together at the park, playground, and paternal grandparents' home. Father acknowledged that Andrew initially would not want to go with him, but indicated that Andrew later "warms up" and "enjoys himself."

On March 23, 2011, the juvenile court held the contested review hearing. With respect to Andrew, Mother's counsel stated that Mother agreed with the DCFS's recommendation of joint legal custody and unmonitored weekend visitation. However, Mother's counsel contended that joint physical custody was not warranted under the facts of the case, noting that Father's visitation with Andrew was "somewhat uncomfortable at times for the child" and that a joint physical custody order would "put Mother at a disadvantage in family law court." Father's counsel argued that the custody order must be based on the best interests of Andrew, not the parents, and that there was nothing in the record to indicate that Father should not receive joint physical custody. When Father's counsel questioned why the DCFS had changed its recommendation, both the court and counsel for the DCFS confirmed that the agency had not changed its recommendation that the parents be awarded joint legal and physical custody. The DCFS was simply requesting that Father be granted six to eight hours of unmonitored weekend

visits and one unmonitored weekday visit. With that clarification, Father's counsel agreed to submit on the DCFS's recommendation. Counsel for the children also submitted on the matter without argument.

The juvenile court found that joint legal and physical custody of Andrew was warranted under the facts of the case. The court terminated its jurisdiction over both children and issued a custody order granting sole legal and physical custody of Leilani to Mother and joint legal and physical custody of Andrew to Mother and Father. The court ordered that Andrew's primary residence was to be with Mother and that Father was entitled to weekly unmonitored visitation with Andrew consisting of six to eight hours on either Saturday or Sunday and one midweek visit.³ The court noted that Mother and Father could liberalize the visits on their own or seek a modification of the order in family law court. Following the juvenile court's order, Mother filed a timely notice of appeal.

DISCUSSION

On appeal, Mother challenges the portion of the juvenile court's custody and visitation order granting joint physical custody of Andrew to Mother and Father. Mother contends that the custody order is factually inconsistent with the visitation order, may place Mother at a disadvantage in family court, and is not in Andrew's best interests. We conclude that the juvenile court did not abuse its discretion in granting joint legal and physical custody of Andrew because there was sufficient evidence to establish that the custody order was in the child's best interests.

“California has a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child's

³ The DCFS actually recommended six to eight hours of unmonitored visitation on each Saturday and Sunday, plus an additional midweek visit. However, at the contested review hearing, none of the parties objected to juvenile court's order for six to eight hours of unmonitored visitation on either Saturday or Sunday.

welfare. [Citations.] ‘The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) If a dependent child has not been removed from the physical custody of his or her parent, the court must schedule a review hearing to be held within six months of the date of the declaration of dependency and every six months thereafter. (§ 364, subds. (a), (d); *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303-304.) At the time of such hearing, the court must terminate dependency jurisdiction unless the social services agency establishes that the conditions still exist which would justify the court exercising jurisdiction over the child or that such conditions would exist if jurisdiction were terminated. (§ 364, subd. (c); *Bridget A. v. Superior Court, supra*, at p. 304.) “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, . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (§ 362.4.)

The dependency scheme accordingly vests the juvenile court with broad discretionary authority to make custody and visitation orders when terminating its jurisdiction. (§§ 364, subd. (c), 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 203-204; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) Such “exit orders” become part of any family court proceeding concerning the child and remain in effect until terminated or modified by the family court. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1223.) When deciding custody and visitation in any dependency case, the primary consideration must be the best interests of the child. (*In re Chantal S., supra*, at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The court is not restrained by any preferences or presumptions in issuing a custody order, but rather, must consider the totality of the child’s circumstances. (*In re Nicholas H., supra*, at p. 268; *In re Jennifer R., supra*, at p. 712; *In re Roger S., supra*, at p. 31.) Indeed, because “the juvenile court . . . has been intimately involved in the

protection of the child, [it] is best situated to make custody determinations based on the [child's] best interests.” (*In re Chantal S.*, *supra*, at p. 206.)

We ordinarily review the juvenile court's custody and visitation orders for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Therefore, “when a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the [lower] court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*Ibid.*) “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the [juvenile] court.’ [Citations.]” (*Id.* at p. 319.)

Mother claims that the juvenile court abused its discretion in awarding joint physical custody of Andrew because Father's minimal amount of visitation with the child is inconsistent with the definition of “joint physical custody” set forth in the Family Code. Under the Family Code, joint physical custody “means that each of the parents shall have significant periods of physical custody.” (Fam. Code § 3004.) In contrast, sole physical custody “means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.” (Fam. Code § 3007.) Mother reasons that the custody arrangement ordered in this case reflects that Mother actually has sole physical custody of Andrew and that Father has limited visitation.

In support of this argument, Mother cites to family law “move away” custody cases where the Court of Appeal looked beyond the label of the joint custody order to the “existing de facto arrangement between the parties to decide whether physical custody is truly joint or whether one parent has sole physical custody with visitation rights accorded the other parent.” (*In re Marriage of Biallas* (1998) 65 Cal.App.4th 755, 760; see also *In re Marriage of Lasich* (2002) 99 Cal.App.4th 702, 715 [where “a father has a child only 20 percent of the time, on alternate weekends and one or two nights a week, this amounts to sole physical custody for the mother with ‘liberal visitation rights’ for the father”]; *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 142 [where a father had custody of a child on alternate weekends and one weeknight each week, the mother “had, in substance,

primary physical custody of the child and the [father] generous visitation rights”]; *Brody v. Kroll* (1996) 45 Cal.App.4th 1732, 1737 [although a mother was awarded “primary physical custody” of a child, the parents had “an actual joint custody arrangement” where the father saw the child four to five times a week].) However, this is not an appeal from a family law case; it is an appeal from a juvenile dependency case. In deciding custody and visitation in a dependency case under the Welfare and Institutions Code, the juvenile court is not constrained by the definitions of joint and sole physical custody contained in the Family Code. Nor is there any requirement that the juvenile court base its determination of joint or sole physical custody on the respective amount of time that each parent is expected to spend with the child. Rather, in fashioning custody and visitation exit orders, the juvenile court’s “focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268.)

As the California Supreme Court explained in *In re Chantal S.*, *supra*, 13 Cal.4th 196, the juvenile court and the family court “have separate purposes.” (*Id.* at p. 201.) “[T]he purpose of juvenile court proceedings is to protect children who have been seriously abused, neglected or abandoned by their parents. The family court, by contrast, is designed to provide presumptively fit parents a forum in which to resolve, inter alia, private disputes about custody of and visitation with children.” (*Ibid.*) When, as here, a juvenile court hears a dependency case pursuant to section 300, the court “has a special responsibility to the child as *parens patriae* and must look to the totality of a child’s circumstances [in] making decisions regarding the child. [Citation.] Accordingly, although both courts focus on the best interests of the child, [t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases’ decided in the juvenile court. [Citation.]” (*Ibid.*) “Rather the juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.’ [Citation.]” (*Id.* at p. 206; see also *In re Roger S.*, *supra*, 4 Cal.App.4th at p. 31 [“It is one thing for a family law court to determine the best interests of the child as between two parents under [the Family Code]. It is quite

another for a juvenile court to determine the best interests of the child in a proceeding where there is the possibility both parents could lose custody or visitation rights.”]; *In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712 [The Family Code’s “presumption that joint custody is in the best interest of the minor is inconsistent with the purposes of the juvenile court.”].)

Therefore, the relevant inquiry in this case is not whether the juvenile court’s order of unmonitored visitation for Father meets the definition of joint physical custody or sole physical custody under the Family Code. Rather, the relevant inquiry is whether the juvenile court’s order of joint physical custody is consistent with the best interests of Andrew considering the totality of the child’s circumstances. Based on the record before us, the juvenile court acted well within its discretion in determining that joint physical custody was in Andrew’s best interests.

At the time the juvenile court terminated its dependency jurisdiction over Andrew and issued the custody and visitation order, Father was in compliance with the case plan. He had completed a parenting education program and a supplemental program on “Parents Beyond Conflict,” was in the process of completing a domestic violence education program, and was attending individual counseling to address case issues. The group facilitator for Father’s domestic violence and parenting education programs reported that Father had accepted responsibility for his past abusive behavior and was learning positive conflict resolution skills to apply in his personal life. Although Father had committed prior acts of domestic violence against Mother and continued to have difficulty communicating with her, there were never any allegations that Father was physically or emotionally abusive toward the children.

Father also maintained regular visitation with Andrew during the dependency proceedings. Both parents confirmed that Father began having unmonitored visits with the children immediately following the juvenile court’s May 2010 order granting him unmonitored visitation. At that time, Mother was in favor of increased visitation because the children had indicated to her that they missed Father and wanted more interaction with him. Mother reported that the children generally were excited to visit Father and

that the exchanges between the parents were going well. As of the March 2011 status review hearing, Father was continuing to have unmonitored weekend visits with Andrew, except on occasions where both parents agreed that visit should be cancelled due to the child's illness or poor weather conditions. Father reported that he and Andrew spent time together at the park, playground, or paternal grandparents' home and that Andrew seemed to enjoy himself during the visits.

Mother argues on appeal that the joint physical custody order is not in Andrew's best interests as evidenced by child's unwillingness to visit Father. In support, she notes that, on two occasions in March 2011, Andrew screamed at the start of the visit that he did not like Father and did not want to go with him, and then cried for Mother and Leilani as Father carried him away. However, Mother acknowledged to the DCFS that Andrew may have been tired and ready for a nap on one of those occasions and that the child appeared content when he returned from visiting with Father on the other occasion. Mother also points to Andrew's refusal to talk about the visits with the case social worker as evidence that he was unhappy in his relationship with Father. However, given Andrew's young age and the history of marital discord between Mother and Father, it is not surprising that the child might have difficulty articulating his feelings about the custody arrangement. Moreover, Mother advised the DCFS that she and Father had agreed that the best approach for addressing Andrew's recent discomfort was to have more visits with Father so that the child could be reassured that Father loved him and wanted to spend time with him. Thus, at the contested review hearing, Mother did not raise any objection to the DCFS's recommendation that Father be granted six to eight hours of unmonitored visitation on Saturdays and Sundays, plus an additional weekday visit.

Mother further contends that a joint physical custody order will disadvantage her in family court should she seek to relocate with the children to her home state of North Carolina. As Mother notes, in a "move away" custody case in family court, a parent with sole physical custody of a child is entitled to change the child's residence unless the court restrains the removal because it would prejudice the child's rights or welfare. (Fam. Code § 7501; *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 28-29.) In such cases, the

California Supreme Court has held that the non-custodial parent bears the initial burden of showing that the proposed relocation of the children's residence would cause detriment to them, thus requiring a re-evaluation of the children's best interests. (*In re Marriage of Burgess, supra*, at pp. 37-38; *In re Marriage of Lamusga* (2004) 32 Cal.4th 1072, 1078.) However, the Supreme Court has recognized that "[a] different analysis may be required when parents *share* joint physical custody of the minor children under an existing order and in fact, and one parent seeks to relocate with the minor children. In such cases, . . . [t]he trial court must determine *de novo* what arrangement for primary custody is in the best interest of the minor children." (*In re Marriage of Burgess, supra*, at p. 40, fn. 12.)

Mother asserts that she may decide in the future that relocation is in her children's best interests given that her family and friends remain in North Carolina and she has a limited support system in California. She reasons that the juvenile court's order for joint physical custody will place her at a disadvantage in family court by relieving Father of the burden of proving that such relocation would cause detriment to Andrew. However, as discussed, the juvenile court's primary consideration in issuing a custody order must be the best interests of the child, not the parent. The burden-shifting procedures that may apply to the parents in a family law custody case are not relevant considerations in determining what custody arrangement will best serve the child's interests in a dependency case. Furthermore, a juvenile court's exit order is not equivalent to a permanent family law custody and visitation order. (*In re John W.* (1996) 41 Cal.App.4th 961, 973 ["Juvenile court exit orders . . . are in the nature of *pendente lite* orders in family law."].) Accordingly, if Mother decides that relocation to North Carolina is in Andrew's best interests, she is free to seek modification of the joint physical custody order in the family court. (*In re Chantal S., supra*, 13 Cal.4th at p. 214; *In re Nicholas H., supra*, 112 Cal.App.4th at p. 271; *In re Jennifer R., supra*, 14 Cal.App.4th at p. 714.)

Based on the totality of the evidence, the juvenile court had a reasonable basis for concluding that an exit order granting Mother and Father joint legal and physical custody of Andrew was in the child's best interests. The juvenile court therefore did not abuse its discretion in issuing the custody and visitation order.

DISPOSITION

The order of the juvenile court is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.