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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B234417
(Los Angeles County
Super. Ct. No. CK82337)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SAUL S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Nancy O. Flores, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Melinda White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Saul S., father of Martha S. (Father), appeals from the order awarding sole legal custody of Martha to Martha S.'s mother (Mother). Father contends that the juvenile court abused its discretion by failing to award him joint legal custody of his daughter. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Welfare and Institutions Code Section 300 Petition and Detention of Martha*

Pursuant to a 2008 family law court order, Mother had sole legal and physical custody of Martha, and Father had monitored visitation with his daughter. On May 20, 2010, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300, subdivisions (b), (d) and (j), as to Martha and her two half-sisters, alleging that Father, Mother's "male companion[,]” had sexually abused Martha's two half-sisters and her cousin for whom Mother was the legal guardian.¹ "The children's mother knew of the sexual abuse . . . by the male companion and failed to take action sufficiently to protect the child[ren]. The mother allowed the male companion to return to the child[ren]'s home. Such sexual abuse of the child[ren] by the male companion and the mother's failure to protect the child[ren], endangers the child[ren]'s physical and emotional health and safety, creates a detrimental home environment and places the child[ren] and . . . Martha[] at risk of physical and emotional harm, damage, danger, sexual abuse and failure to protect." At the time of the petition, Martha was 3 years old, her half-sisters were 10 and 12 years old, and her cousin was 14 years old.

At the detention hearing, also on May 20, 2010, Mother and Father denied the allegations. The juvenile court found a prima facie case that the children are persons described in section 300, reasonable efforts had been made to prevent or eliminate the need for removal from the home, a substantial danger to the physical or emotional health

¹ Statutory references are to the Welfare and Institutions Code. This appeal involves only Martha. As a result, her cousin, who is the subject of a companion petition, and her half-sisters are referred to only as necessary to explain the factual and procedural background of the case.

of the children is present and no reasonable means exist to protect them without removal. The court ordered Martha detained, her half-sisters released to their father and monitored visitation for Mother and Father with Martha. At a prerelease investigation hearing on May 28, 2010, the court ordered Martha, and her cousin, placed with Mother's cousin.

2. *Adjudication and Disposition*

At the adjudication hearing on August 26, 2010, Martha's cousin testified that she had lived with Mother for seven years before being removed from the home. When she was in the fifth grade, 10 or 11 years old, and living with Mother, Father, who was dating Mother, brought her to his apartment to pick up some videos and, while they were there, told her that he loved her, hugged her and touched her buttocks. Another time, while she was at Mother's house, Father touched her buttocks while hugging her goodnight. On a third occasion, Father touched her breast while purportedly checking her seatbelt in the car.

One of Martha's half-sisters testified that Father had touched her on four occasions that she could remember. The first time, when she was in third grade, Father was lying with her and Martha's other half-sister in bed under the blanket. Father "put his hands on top of [her] private part[,]" which she meant as her vagina. The second time she was on a jet ski at a lake with Father, who asked her to back up toward him and then moved the bottom half of his body against her. The third time was at a construction site where Father was working, and he had her scoot back to him and then made "weird noises." The fourth time, also at a construction site where Father was working, Father rubbed his hands in a circular motion over her buttocks.

After hearing the testimony, the juvenile court continued the hearing to September 13, 2010. At the continued hearing, Martha's other half-sister testified that, while at a lake with Father when she was eight years old, Father had touched her when she was under the water and rubbed "his private part" against her while she was on the jet ski. Father also watched one of her cousins change clothes in the car. Father touched her one time over the shoulder strap of her seat belt while they were in his car. Mother testified that in 2006 Martha's half-sisters reported to her that Father had patted their

buttocks. They also reported in 2008 that Father had touched them at the lake. Mother then terminated her relationship with Father and obtained the order from the family law court requiring that Father have monitored visitation with Martha. She monitored Father's visits with Martha but did not intend to continue her relationship with him. Mother said that, although, after 2008, Father had come to the house, he did not see Martha's half-sisters or cousin. The girls, however, testified that they had seen Father on several occasions at the house.

Based on the testimony, the juvenile court determined that Martha was a child described by section 300, subdivisions (b), (d) and (j), and continued Martha's placement with Mother's cousin.² The court continued the matter to September 28, 2010 for disposition.

At the September 28, 2010 hearing, the juvenile court found by clear and convincing evidence that removal of Martha from Mother's care was required and ordered unmonitored day visits for Mother and monitored visitation for Father. The court also ordered family reunification services for Mother, including parent education, individual counseling and a sexual abuse awareness program, and for Father, including parent education, individual counseling and a sexual abuse program for perpetrators.

3. *The Progress Review Hearings and Return of Martha to Mother's Care*

In a progress report dated November 29, 2010, DCFS indicated that Mother's counseling program had explained that she "has come a long way and we have seen much improvement in the way she handles unexpected situations with her children. She is attentive and actively participates by openly expressing her emotions and concerns. At this point she needs two individual sessions to attend before finishing. At this time [the counselor] feels that [Mother] should be granted full parental rights; she now has the

² The sustained allegations as referenced in the petition and subsequent DCFS reports refer to Mother's failure to protect the children. With regard to Mother's failure to protect, the juvenile court stated at the adjudication hearing, "The court's view is Mother didn't fail to protect with respect to the sexual abuse. She didn't know about it until after it happened; however, then the problem became she didn't protect them subsequent to that."

tools to raise her daughters to become responsible young adults.” Mother also completed a parenting class. Although Mother reported that she had participated in a sexual abuse treatment program, she was unable to explain what she had learned to address sexual abuse in her family and said she was unsure whether the abuse had occurred. Father was participating in a parenting class and a sexual abuse treatment program, which was an educational, not a therapeutic, program. He did not speak with the social worker or report to any individual counseling. DCFS stated, “Based on mother’s partial compliance with case plan goals and lack of insight and knowledge of the sexual abuse, DCFS recommends that [the] children remain in placement until mother/legal guardian fully addresses such issues. Without insight and knowledge as to sexual abuse [the] children may be at risk or re-victimized if returned to mother/legal guardian’s care at this time.” Given the report of one of Martha’s half-sisters that “she feels safe with her dad and knows he will protect her from [Father][,]” fearing that Mother “will not be protective against [Father]” and give him access to the children, “it is of DCFS concern the children’s safety; therefore DCFS is recommending for mother not to be the monitor for father[’]s visit[s] with . . . Martha . . . and monitored visits for father . . . to be monitored by DCFS approved monitor.”

At the progress hearing, also on November 29, 2010, the juvenile court continued Martha’s placement with Mother’s cousin, ordered that Mother and Father could visit Martha together and set a review hearing pursuant to section 366.21, subdivision (e), for January 24, 2011.

In the status review report prepared for the January 24, 2011 hearing, DCFS indicated that Mother had participated in individual counseling: “[Mother] has been attending individual therapy since 12/15/10. [Mother] attended five weekly sessions and has been consistent in her attendance. [Counselor] recommends that [Mother] continue with her individual therapy despite that she has expressed a commitment to protecting her children and preventing any future incidents from occurring. [Mother] has also begun to gain understanding of her emotions and behaviors as a result of the reported incident.” Father did not yet enroll in individual counseling but completed 10 of 12 weeks of a

parenting class and a course “address[ing] the dynamics of intra-familial sexual abuse and education regarding sexual abuse.” Mother reported that she had been monitoring Father’s visits with Martha and that “Martha enjoys spending time with both of them.” Father stated, ““My intention is not to take Martha away from her mother. I just want to have visitation rights. I want to have the opportunity to take [Martha] with me once in a while and have overnight visits with her.””

DCFS reported, “An assessment tool was conducted for mother and the risk for abuse and neglect has been reduced from high to moderate. This assessment further indicates that there are no threats to the immediate safety of the children and the family has several strengths to work with. The mother’s compliance and quality of the care given to her children demonstrate that she can safely care for the children at this time. [¶] At this time, [Mother] is in compliance with the case plan, as she is actively participating in her court orders. She has completed parenting class and sexual abuse awareness program and continues to participate in individual counseling. [Mother] is employed and has secured a safe and appropriate living arrangement for her and her children. She has had four months of successful overnight visits and there have not been any child safety or risk factors that would impede in returning the children home to their mother/legal guardian . . . [¶] At this time, [Father] is participating in his court orders. [Father] has completed sexual abuse program for perpetrators and continues to participate in parenting education. However, [Father] has not yet enrolled in individual counseling. At this time, [Father] continues to have monitored visits and it is not in the best interest of . . . Martha to be returned to her father’s care. Due to father’s partial compliance of the court orders, it would be detrimental to return the child back to the home of father.” DCFS recommended that Martha and her half-sisters and cousin be returned to Mother’s care and that family reunification services continue for Father.

At the January 24, 2011 review hearing, the juvenile court gave DCFS discretion to release Martha to Mother and ordered the matter continued to February 23, 2011.

DCFS reported on February 23, 2011 that it was recommending Martha’s release to Mother on the conditions that (1) Mother not be permitted to monitor Father’s visits,

(2) Father not go to Mother's home or property and (3) the social worker could make unannounced home visits. In addition, Mother will continue individual counseling, provide good care and supervision of Martha and make sure that Martha continues counseling. Father became upset that Mother would no longer monitor his visits with Martha and that he would have an independent monitor. Father stated, "'This is not right, what are you doing to me and my daughter?'" "'Will you be following me throughout the stores while we go shopping.'" Father did not like that his monitored visits were to "take place in a neutral setting on a consistent basis." He then canceled two visits. He also requested a change in the monitor based on his belief that Martha was scared of the current monitor, and DCFS accommodated his request. At the February 23, 2011 hearing, the juvenile court continued the matter to March 10, 2011.

At the March 10, 2011 hearing, the juvenile court, after hearing testimony from the social worker and finding that Mother had complied with the case plan, returned Martha to Mother's care and ordered that Mother receive family maintenance services. It directed Mother to attend individual counseling and to ensure that Martha participated in counseling, prohibited Mother from monitoring Father's visits with Martha and gave DCFS discretion to make unannounced home visits. The court scheduled a hearing under section 364 for June 21, 2011.

4. *Termination of Jurisdiction and Award of Legal Custody to Mother*

In the report prepared for the June 21, 2011 hearing, DCFS recommended that the juvenile court terminate jurisdiction over Martha and family reunification services for Father and award Mother sole physical and legal custody of Martha. According to DCFS, "Mother has demonstrated that she is able to meet the needs of [Martha]." Martha completed her counseling and was observed as "a content child and does not display any behaviors of concern. She shows to be attached to her mother and enjoys the monitored visits she has with her father."

DCFS reported that, "[a]lthough . . . [F]ather is attending his counseling programs, [he] has not been able to complete these programs." In counseling, Father "denies that any sexual abuse occurred and will not discuss issues regarding sexual abuse. [¶] . . .

[Father] has been adamant about his innocence and has stated that he did not commit the sexual abuse actions” “[F]ather is very focused on the denial of the sexual abuse allegations and therefore they have not been able to move forward in treatment.”

Father did not complete a Live Scan for DCFS, preventing DCFS from investigating a police report that Father had failed to register as a sex offender in 2008 and had been arrested for rape in 2004. Father came to the DCFS office on several occasions to complain about his monitored visitation and in those visits “displayed paranoid and obsessive behavior while under the supervision of DCFS. He has also showed to have a difficult time controlling his anger.” Father explained to DCFS “that he would like to have unmonitored visits with his daughter . . . and would like his case to be closed. He stated that he is seeking joint legal custody with the mother over . . . Martha. He stated that he does not want to be a ‘Santa Clause of a Father’ (someone just having short visits; bringing gifts to the child only).”

At the June 21, 2011 review hearing, the juvenile court terminated jurisdiction over Martha and stayed termination pending receipt of a family law custody order. On June 27, 2011, the court lifted the stay as to its termination of jurisdiction and entered a custody order, awarding sole legal and physical custody of Martha to Mother, with Martha to have her primary residence with Mother, and providing Father with monitored visitation on Saturdays and Sundays for four hours a day, “or as otherwise arranged among the parents and the approved third party monitor.” Father filed a notice of appeal.³

DISCUSSION

Father contends the juvenile court erred by awarding sole legal custody of Martha to Mother, instead of joint legal custody to Mother and him, when it terminated jurisdiction. We disagree.

³ Father’s notice of appeal states that he is appealing from the juvenile court’s June 21, 2011 order. We liberally construe Father’s notice of appeal to include the June 27, 2011 custody order and order terminating jurisdiction. (Cal. Rules of Court, rule 8.100(a)(2).)

In terminating jurisdiction, the juvenile court has the authority to make custody and visitation orders. (§ 362.4.) “When the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30, fn. omitted.) “Although both the family court and the juvenile court focus on the best interests of the child, the juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child’s circumstances.” (*Id.* at pp. 30-31.) We review a custody order pursuant to section 362.4 for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

The juvenile court’s decision to award sole legal custody to Mother maintained the custody arrangement in place before commencement of the dependency proceedings as to Martha based on the 2008 order from the family law court, which gave Mother sole legal and physical custody of Martha and Father monitored visitation. Nothing occurred during the dependency proceedings to merit a change in the custody arrangement established by the family law court in 2008.

DISPOSITION

The order awarding sole legal custody to Mother is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.