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

In re K. C., et al., Persons Coming Under
the Juvenile Court Law.

B237624

(Los Angeles County
Super. Ct. No. CK83136)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

G. C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Marilyn Mordetzky, Juvenile Court Referee. Affirmed.

Cristina Gabrielidis Lechman, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Deputy County Counsel for Plaintiff and Respondent.

Appellant G. C. (father) appeals from the juvenile court's orders terminating jurisdiction and granting sole legal and physical custody of his sons, K. (born April 2002) and Jaydon (born August 2003), to their mother, Rachel C. (mother). Father contends the juvenile court erred by denying his request for joint custody of the children.¹ We affirm the juvenile court's custody order as well as the order terminating jurisdiction.

BACKGROUND

1. Detention and section 300 petition

Father and mother divorced in 2009. Pursuant to the terms of a family law "Child Custody and Visitation Order" dated December 8, 2009, mother and father shared legal custody of the children, mother had sole physical custody, and father had visitation "[a]t times agreed upon throughout the month by both parties (parents) with the understanding that schedules must be flexible to accommodate work and school." In addition, father had the children during 50 percent of their spring vacation in odd numbered years, 50 percent of their winter vacation every year, 50 percent of Thanksgiving vacation in even numbered years, 50 percent of the summer break every year, and any other time the parents could agree upon. The parents met at the Palmdale Sheriff's Department to exchange the children for visitation.

When father returned the children from a visit on July 18, 2010, he told mother that he had spanked the children 10 to 15 times and that Jaydon might have some marks on his buttocks. Jaydon told mother that father had spanked him at least 15 times. Mother checked both children and found they had severe bruises on their buttocks. She went into the sheriff's office for help.

Jaydon told the sheriff's deputy that father had spanked him two days before, approximately 15 to 20 times on the buttocks. He said the spanking hurt him a lot. K. told the deputy that father spanked him twice during the last week, that he cried because

¹ Father also challenged the juvenile court's order granting him monitored visitation of the children on the grounds that it was vague, unreasonable, and improperly delegated authority to mother but subsequently conceded that the juvenile court's January 20, 2012 minute order rendered the issue moot.

of the pain, and that it continued to hurt him when he sat down. The deputy observed bruising on both children and characterized it as severe. The deputy took photographs of the children's injuries, filed a child abuse report, and contacted the Department of Children and Family Services (the Department).

A Department social worker met with mother on July 22, 2010. Mother admitted to previous incidents of domestic violence with father that had occurred while the children were present. She never reported the incidents to law enforcement because she feared for her own safety and the safety of the children. Mother told the social worker that she shared joint custody of the children with father pursuant to a family law order.

The social worker met separately with each of Jaydon and K. later that same day. Jaydon said father slaps him a lot and calls him "stupid." K. said father had slapped his face several times when father was upset. K. further stated he was afraid of father and did not want to visit him.

In a telephone interview with the social worker on July 23, 2010, father admitted disciplining the children when they were disrespectful to him. He was aware that the children had bruises on their buttocks after their last visit with him but maintained he was exercising his right to spank his children. He suggested the bruising was the result of a vitamin deficiency rather than excessive discipline.

On July 27, 2010, the Department filed a petition on behalf of the children under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j),² alleging physical abuse of the children by father and domestic violence between the parents in the presence of the children.

At the detention hearing held on July 27, 2010, the juvenile court found father to be the presumed father of both children. The court further found a prima facie case for detaining Jaydon and K. from father and ordered the children released to mother's custody. Father was accorded monitored visitation three hours per week.

² All further statutory references are to the Welfare and Institutions Code.

2. Jurisdiction and disposition

In August 2010, the Department reported that father had a prior child abuse referral alleging he had hit K. with a belt in May 2008, causing bruises to his buttocks, and that he had slapped K. across the face in November 2009 and then hit him across the buttocks five times. The referral had been closed as inconclusive.

In separate interviews on August 23, 2010, K. and Jaydon each told the social worker about a domestic violence incident in which father hit mother and the children attempted to stop him. K. also recalled seeing father punch holes in the walls and doors.

Mother said that father had threatened her with a knife, thrown objects at her, and spat in her face. She also said that father had threatened her to prevent her from calling the police.

Father told the social worker that he spanked Jaydon in accordance with paperwork he had received from the Department. He said the bruising was accidental and that Jaydon bruised easily because he suffered from a vitamin B deficiency.

The social worker also interviewed the paternal grandmother, who acknowledged that father may have spanked Jaydon a little hard, but said she did not believe that father physically abused the children. The paternal grandmother accused mother of fabricating the allegations of domestic violence.

On October 4, 2010, father filed a waiver of rights and agreed to submit on an amended petition alleging that his inappropriate discipline of the children and domestic violence with mother in the presence of the children placed them at risk of harm. The juvenile court sustained the petition as amended, declared the children dependents of the court, and ordered them removed from father's care. The court ordered father to attend a Department approved program of domestic violence counseling, a Parents Beyond Conflict program or its equivalent, anger management counseling, parent education, and individual counseling with a licensed therapist to address anger management, inappropriate discipline, and domestic violence. The court accorded father monitored visits at least three hours per week.

3. Review proceedings

In October 2010, the Department reported that father had another child, Jhai C., and that Jhai's mother had left the child with father. The Department filed a separate petition on Jhai's behalf. The Department further reported that Jaydon had been tested and determined not to have a vitamin deficiency.

At the six-month review hearing, the Department reported that father had begun bi-weekly individual therapy sessions in November 2010 that covered effective discipline techniques, anger management, and domestic violence. A parent educator reported that father attended regularly and had demonstrated growth, verbally expressed accountability for his actions, and acknowledged the need to use alternative discipline techniques and anger management strategies.

Father's visits with the children were scheduled for every Thursday and Friday from 3:00 to 4:30 p.m. Father had cancelled two visits in December 2010, three in January 2011, and one in March 2011. In March 2011, father had a verbal altercation with the social worker after he informed the social worker that he had been videotaping her during the visits and that he intended to use the video as evidence against her in the juvenile court. When the social worker advised father that she would terminate the visit if he attempted to use his video camera, father shouted obscenities at her.

On March 28, 2011, K. said he did not like visiting father and did not want the visits to take place outside of the Department's offices because he was afraid of father. Jaydon also said he was afraid of father and did not want to visit with him.

The social worker reported that father had been attending counseling and classes but had shown no improvement in taking responsibility for his actions or controlling his anger. Father continued to deny that he physically abused the children and blamed their bruises on a vitamin deficiency.

At the March 30, 2011 review hearing, the juvenile court ordered the Department to obtain a letter from father's therapist addressing the subjects covered during father's sessions. The court further ordered that all future visits take place at the Department's offices and prohibited father from videotaping the visits.

At the May 16, 2011 hearing, the social worker reported that she had spoken with father's counselor, Ms. Spears. Spears stated that father's counseling had addressed physical abuse, domestic violence, and anger management. She said that father was no longer receiving services because he had completed the individual counseling.

The Department recommended that father enroll in further counseling with an individual or agency that specialized in anger management, domestic violence, and physical abuse. Father's counsel asked the juvenile court to set the matter for a contested hearing on the issue of father's progress. The court set the hearing for June 22, 2011.

At the June 22, 2011 hearing, father testified that he had completed anger management classes, a domestic violence program, and a parenting program. He said he had also participated in 20 weeks of individual counseling with Ms. Spears. Father denied having any anger management problems before starting therapy and said he attended therapy only because it was necessary to reunify with his children.

Father denied being verbally abusive toward the Department's social worker and denied videotaping any Department staff. He said that he had videotaped the visits in order to show his interaction with the children.

Following argument by counsel, the juvenile court found that father did not recognize the seriousness of his problems or why he was part of a dependency case. The court found father's progress had been unsatisfactory, ordered additional reunification services, and set the matter for a 12-month review hearing under section 366.21, subdivision (f) for September 28, 2011.

At the September 28, 2011 hearing, the Department reported that father had received completion certificates for anger management, domestic violence, and parenting education, and had participated in counseling sessions that addressed physical abuse, domestic violence, and anger management. Father's counselor, Ms. Spears, provided a letter stating that father had attended 14 parenting classes, 8 individual counseling sessions, and 14 anger management/domestic violence sessions, that father had progressed in treatment goals and objectives, and had fulfilled his treatment plan.

The Department further reported that father had been inconsistent with his visits. He cancelled several visits in April, May, and June, and had visited only sporadically thereafter. At father's request, the visits had been shortened to 45 minutes; however the visits were normally even shorter because father arrived 15 to 20 minutes late. Because of the sporadic and limited nature of the visits, the social worker had been unable to assess father's parenting abilities or the children's comfort level with him. The children were reluctant to discuss more liberalized visits because they were afraid the social worker would tell father what they said. The children's reticence led the social worker to conclude that the children were not comfortable with more liberalized visits.

Father submitted a 16-page letter dated October 8, 2010, in which he defended his use of corporeal punishment, stating it was a last resort after a week of less severe discipline. Father suggested that the photographs of the children's bruises had been altered and that Jaydon's bruises were caused by something other than the spanking.

The Department recommended terminating reunification services, a family law order granting mother sole physical custody, and monitored visits for father. Father opposed the recommendation and asked the court to set the matter for a contested hearing.

At the November 9, 2011 contested hearing, the Department reported that father's visits remained sporadic, and that he often cancelled visits or arrived late. The juvenile court admitted the Department's reports into evidence and asked father's counsel if he had any additional evidence to present. After the court denied counsel's request to have the children testify regarding unmonitored visits with father, father testified on his own behalf.

Father denied physically abusing the children. He said he had hit the children only in accordance with paperwork the Department had given him. He also denied any domestic violence with mother. Father acknowledged that at the six-month review hearing, the juvenile court advised him that he needed to participate in additional services to address the issues that had made his children dependents of the court and that he had not participated in any additional services. Father said he did not believe he had an anger

management problem and said he would never use corporal punishment on the children again.

Father's counsel then called the Department's social worker, Ms. Smith, to testify. Smith stated she had been assigned to the case in April 2011 and that to her knowledge, father had completed his court ordered counseling. She did not believe, however, that father had taken responsibility for his actions or benefitted from the programs. Smith further testified that father had been inconsistent in his visits and that in light of the inconsistency she had been unable to complete an appropriate risk assessment. When asked why she had not liberalized the visits, Smith initially stated that she believed unmonitored visits would place the children at risk; however, she later conceded that she had not observed anything during the visits that she would characterize as a moderate risk.

The children's counsel advised the juvenile court that the children did not want unmonitored visits with father and that she was therefore opposed to unmonitored visits. Counsel for the Department suggested keeping the case open and allowing father and the children to participate in conjoint counseling or father-and-me classes. Father stated, however, that he was unwilling to participate in such classes or counseling. Father's attorney advised the court that father wanted the case terminated with a family law order granting him joint physical and legal custody.

The juvenile court stated that although it was willing to keep the case open and to provide father with more services, father's refusal to participate in additional services foreclosed that option. The court found that father had not consistently and regularly visited the children and had not made significant progress in resolving the problems that led to the children's removal from his care. The court further found that the conditions justifying jurisdiction under section 300 no longer existed because the children would remain in the care and custody of their mother. The court then terminated its jurisdiction, pending receipt of a family law order according mother sole physical, legal, and primary custody of the children and according father monitored visits. The juvenile court continued the matter to December 2, 2011, for receipt of the family law order.

Father filed the instant appeal on November 16, 2011. The juvenile continued the matter on December 2, 2011, and again on December 16, 2011. On January 20, 2012, the juvenile court issued a family law order according mother sole legal and physical custody of the children and stating that father's visits with the children were to occur on Sundays from noon to 3:00 p.m. and would be monitored by a professional monitor.

DISCUSSION

Father contends the juvenile court was required to return K. and Jaydon to his custody under section 366.21, subdivision (f) unless the Department proved by a preponderance of the evidence that returning the children to him "would create a substantial risk of detriment [to their] safety, protection, or emotional well-being." (§ 366.21, subd. (f).) Section 366.21, subdivision (f) does not apply. That statute governs the permanency hearing that is "held no later than 12 months after the date the child entered foster care." (*Ibid.*) The children in this case were not placed in foster care, but remained in mother's physical custody. The proceeding at issue was governed by section 364, which applies when a child is placed under the supervision of the juvenile court but "is not removed from the physical custody of his or her parent." (§ 364, subd. (a); *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 649.)

That the juvenile court set the November 16, 2011 hearing under section 366.21 and phrased its findings at that hearing in the language of section 366.21 did not take this matter outside the scope of section 364. Father was not the custodial parent. He did not have physical custody of the children when they came under the juvenile court's supervision. The children resided with mother at the outset of the case, and they were never removed from her custody. Section 364 applies when dependent children are not removed from the original custodial home. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486,1493, disapproved on another ground by *In re Chantal S.* (1996) 13 Cal.4th 196, 204.)

Section 364, subdivision (c) requires the juvenile court to determine whether its continued supervision of a dependent child is necessary. The statute states that "[t]he court shall terminate its jurisdiction unless the social worker or his or her department

establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” (§ 364, subd. (c).) Father does not challenge the juvenile court’s order terminating jurisdiction and argued in favor of such termination at the November 2011 hearing. Father’s appeal concerns the juvenile court’s order granting mother sole physical and legal custody of the children under section 362.4.

When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child, the court may issue an order determining custody of and visitation with that child. (§ 362.4; *In re Robin N.* (1992) 7 Cal.App.4th 1140, 1146.) A custody or visitation order issued by the juvenile court pursuant to section 362.4 is treated as a permanent family law judgment. (§ 302, subd. (d).) In issuing such an order, the juvenile court must consider the best interests of the child under all the circumstances. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) We review the juvenile court’s decision to issue a custody order pursuant to section 362.4 for abuse of discretion. Under this standard, we may not disturb the order unless the court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301, citing *In re Stephanie M.* (1994) 7 Cal .4th 295, 318.)

The record here shows no abuse of discretion. Father’s excessive discipline of the children and his violent interactions with mother caused the juvenile court to assume jurisdiction over the children and to require that father’s visits with the children be monitored. Father’s persistent denial that he had done anything inappropriate prevented the Department from liberalizing his visits. At the November 16, 2011 hearing, the juvenile court stated its willingness to accord father additional time and services that could enable him to obtain unmonitored visits and possible joint custody. Father expressly stated that he was unwilling to participate in any further services and that he wanted the case terminated. Given these circumstances, the juvenile court’s order granting mother sole physical and legal custody of the children was not an abuse of discretion.

DISPOSITION

The juvenile court's custody order is affirmed, as is the order terminating jurisdiction.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST