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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ULYSSES I., a Person Coming Under
the Juvenile Court Law.

B238832

(Los Angeles County
Super. Ct. No. CK81378)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E. I.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Donna Levin, Referee. Affirmed.

William Hook, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kimberly A. Roura, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant E. I. (mother) appeals a juvenile court “exit” order. The order terminated dependency jurisdiction and granted Carlos R. (Carlos or father) sole legal and physical custody of Ulysses I., E.’s son. We shall conclude the juvenile court did not abuse its discretion in issuing the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Mother’s Children*

Mother has two children. Her older child is Ulysses, who was born in 2004 and was seven years old when this action commenced. Ulysses’s presumed father is Carlos.

For the first three years of Ulysses’ life, father was not involved in his life. Father then initiated proceedings to establish paternity. Under a stipulated family court judgment dated September 21, 2010, mother and father had joint legal custody of Ulysses, and father had physical custody of the child. The judgment further provided that Ulysses would visit mother from Saturday morning to Sunday morning each week, as well as certain holidays.

Mother’s younger child is Sarah S., who was born in 2005 and was five years old when this action commenced. Sarah’s presumed father is Manuel S. Mother and Manuel were married at one point but separated in March 2010.¹

Sarah primarily lived with mother. She visited Manuel on alternate weekends and on Wednesdays.

This appeal concerns only Ulysses. Mother does not challenge any court order to the extent it relates to Sarah.

2. *The Detention of Ulysses and Sarah*

In late August 2011, respondent Los Angeles County Department of Children and Family Services (the Department) received a referral regarding mother’s alleged general

¹ Mother and Manuel have a history of committing domestic violence against each other. In 2006, mother was convicted of corporal injury to a spouse.

neglect of her children.² The Department investigated by interviewing mother, Manuel, father, Ulysses, Sarah and mother's boyfriend Alfredo F. The investigation revealed there had been no electricity in mother's home for over a month and that the children were "dirty" when they left mother and visited their respective fathers. The Department was also informed that mother and third parties used methamphetamine and marijuana inside her home, at times in Sarah's presence. A drug test mother took on September 12, 2011, indicated she had methamphetamine in her body. The Department detained both children and placed them with their respective fathers.

3. *The Juvenile Dependency Petition and Initial Court Order*

On September 28, 2011, the Department filed a juvenile dependency petition. The petition alleged the juvenile court had jurisdiction over Ulysses and Sarah pursuant to Welfare and Institutions Code section 300, subdivisions (b) [failure to protect] and (j) [abuse of sibling]³ based on mother's history of illicit drug use, her current drug use, and the use and possession of drugs by unrelated adults in mother's home. The petition did not allege any wrongdoing by father or Manuel.

On September 28, 2011, the juvenile court held a hearing regarding the petition. At the end of the hearing, the court issued an order finding the Department had established a prima facie case in support of the petition. The order also provided, inter alia, that mother was required to take weekly random drug tests.

4. *Mother Failed to Take Weekly Random Drug Tests*

On October 24, 2011, the juvenile court held a hearing to discuss the status of the case. At the hearing, mother's counsel conceded that mother had failed to take weekly random drug tests.

² Between May 2009 and June 2011, the Department received seven referrals regarding mother's care for her children. The Department, however, concluded each time that the allegations against mother were "unfounded," or that the investigation was "inconclusive," or that the "referral was evaluated out."

³ All future statutory references are to the Welfare and Institutions Code.

5. *Jurisdiction Hearing and Order*

On January 11, 2012, the juvenile court held a hearing regarding its jurisdiction over Ulysses and Sarah. The court sustained the petition, as pled.

The juvenile court also heard arguments regarding disposition. The Department recommended that the court terminate its jurisdiction over Ulysses with “a family law order,” giving father sole legal and sole physical custody. As to this issue, the court stated: “I don’t think it is appropriate for joint legal [custody] at this time. I think it is once mother makes some efforts to remain sober, perhaps she can go to family law court, and then get joint custody.” The court, however, declined to issue a disposition order at that time.

6. *Disposition Order*

On January 18, 2012, after a hearing, the juvenile court issued an order declaring Ulysses a dependent child of the court, granting father sole legal and physical custody, and providing mother with monitored visits. The order also terminated the juvenile court’s jurisdiction. Mother timely appealed this order.

CONTENTIONS

Mother contends the juvenile court abused its discretion by granting father sole legal custody of Ulysses.

DISCUSSION

1. *Exit Orders*

Section 362.4 provides in pertinent part: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court . . . and . . . proceedings to establish paternity of the minor child . . . are pending in the superior court . . . or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child. [¶] Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court.”

Section 362.4 authorizes the juvenile court “ ‘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 Chantal S.* (1996) 13 Cal.4th 196, 203.) Such an order is commonly referred to as an “exit order.” (*In re John W.* (1996) 41 Cal.App.4th 961, 970, fn. 13.)

2. *Standard of Review*

The January 18, 2012, order was an exit order. We review an exit order for abuse of discretion and may not disturb the order unless the court made an arbitrary, capricious, or patently absurd determination. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

3. *The Juvenile Court Did Not Abuse Its Discretion in Denying Mother Joint Legal Custody*

Mother seeks joint legal custody of Ulysses. “ ‘Joint legal custody’ means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code, § 3003.)

Although both the juvenile court and family court decide issues concerning legal custody, they do so differently. As the court in *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712, explained: “In juvenile dependency proceedings the child is involved in the court proceedings because he or she has been abused or neglected. Custody orders are not made until the child has been declared a dependent of the court The issue of the parents’ ability to protect and care for the child is the central issue. The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the juvenile court, which has been intimately involved in the protection of the child, is best suited to make custody determinations based on the best interests of the child without any preferences or presumptions.” (Accord *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

Here, mother posed a danger to Ulysses' physical and emotional well being because she was a user of illicit drugs and allowed third parties to possess and use such drugs in her home. Indeed, mother does not challenge the juvenile court's order sustaining the juvenile dependency petition. We thus cannot presume that she is fit to make decisions regarding Ulysses' health, education and welfare that are in the best interests of the child.

Moreover, there was substantial evidence in the record supporting a finding that granting mother joint legal custody would not be in Ulysses' best interests. In the past, mother has not always fulfilled her "responsibility" to promote the health, education and welfare of her children. For example, mother failed to timely enroll Sarah in school in September 2011 because the child had not obtained all of the required immunization shots.

Likewise, mother at times exercised her "right" to make decisions regarding her children's health, education and welfare in a manner that was not in their best interests. In September 2011, for example, father advised the Department that mother refused to sign a consent form for Ulysses to receive counseling.

There was also evidence indicating mother and father would have difficulty cooperating to make good decisions for Ulysses. As mother's counsel conceded at the hearing on October 24, 2011, mother and father did not have a "good relationship." Indeed, father has declined to disclose his address to mother. Additionally, the record indicates that the Department was often unable to communicate with mother because her mobile phone was "off."

Under these circumstances, the juvenile court did not abuse its discretion in awarding sole legal custody to father.

DISPOSITION

The dispositional order dated January 18, 2012, is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.