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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOSHUA C., a Person Coming Under
the Juvenile Court Law.

B239282
(Los Angeles County
Super. Ct. No. CK86130)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from orders of the Superior court of Los Angeles County, Marilyn Kading Martinez, Temporary Judge. Affirmed in part, reversed in part, and remanded.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

J.C., presumed father (father) of now 16 year-old Joshua C., appeals from the juvenile court's order terminating jurisdiction pursuant to Welfare and Institutions Code section 364, subdivision (c)¹ and its exit orders granting mother, J.G. (mother), sole legal and physical custody of Joshua and failing to order mandatory monitored visitation and conjoint counseling. We affirm the juvenile court's termination of jurisdiction and its exit orders, except for its visitation order, which order we reverse and remand to the juvenile court.²

BACKGROUND

This matter returns to this court for the second time. We set forth the facts from our March 5, 2012, opinion (Court of Appeal Case No. B235651) as background:

“Mother and father were not married. Mother and father lived together until Joshua was two years old and then separated. Mother and father had conjoint custody of Joshua. On December 4, 2010, while then 14-year old Joshua was visiting father, father accused Joshua of taking \$2,000 from father and giving it to mother. When Joshua denied taking the money, father became very upset and repeatedly hit Joshua on his face and body with a closed fist. Father also struck Joshua four times on his chest and leg with a belt. Father swore at Joshua and kicked him out of the house, telling him not to return unless he had the money. Father said that if Joshua did not return with the money within one hour, he would call the police. Joshua went to mother's home and told mother what father had done. Mother took Joshua to a police station, and she and Joshua filed a report. An officer observed a red mark on Joshua's chest that was consistent with Joshua having been struck by a belt. Father was arrested, and mother obtained a temporary restraining order against father.

¹ All statutory citations are to the Welfare and Institutions Code.

² The Los Angeles County Department of Children and Family Services (Department) takes no position with respect to the visitation issue.

“The social worker who interviewed Joshua noted that Joshua’s face and neck were red. Joshua told the social worker that he did not take father’s money. Joshua reported that he was afraid of father who always mistreated and disparaged him. Joshua did not want to have visits with father because he was afraid of father.

“Father told the social worker that he could not talk about the case and that his attorney would call the social worker. Father’s attorney told the social worker that he had instructed father not to speak with the social worker without the attorney being present. By letter, the social worker invited father to be present at a team decision meeting. Father responded by letter that he would not attend the meeting because he had a criminal case pending and his attorney requested that he not make any statements about his case.

“On January 18, 2011, the Department filed a petition under section 300 that, as amended, alleged that father inappropriately physically disciplined Joshua by repeatedly striking him with a belt; that such discipline was excessive and caused Joshua unreasonable pain and suffering; that such discipline endangered Joshua’s physical and emotional health and safety and placed Joshua at risk of physical and emotional harm, damage, danger, and physical abuse; and that Joshua did not want to reside with or visit father due to father’s discipline. The juvenile court found a prima facie case that Joshua was a person described by section 300 and ordered Joshua detained. The juvenile court released Joshua to mother.

“On May 10, 2011, father pleaded no contest to a violation of Penal Code section 273(a), subdivision (b), misdemeanor cruelty to a child and was placed on summary probation for four years with seven days in jail. On May 17, 2011, father pleaded no contest to the allegations in the amended section 300 petition.

“On July 11, and 12, 2011, father filed substantively similar section 388 petitions that sought to change the juvenile court’s orders detaining and releasing Joshua to his mother. The juvenile court denied father’s section 388 petitions without a hearing on the grounds that the petitions did not state a change of circumstance or present new evidence and the proposed orders did not promote Joshua’s best interest.”

In our March 5, 2012, opinion, we held that the trial court did not err in denying father's section 388 petitions. The following facts took place after the facts set forth in our prior opinion:

Father visited Joshua in the beginning of July 2011. Before the visit started, Joshua told father that he did not want to be there. Father told Joshua to make the best of it. Father and Joshua engaged with each other as Joshua used father's laptop computer to show father YouTube videos and share music he had made. Father praised Joshua for a job well done, and told him that he was proud of him. Father and Joshua also played games on the computer.

On August 4, 2011, a social worker picked up Joshua for a visit with father. While in the car, Joshua told the social worker that he did not want to see father that day. When the social worker asked why Joshua had not called and canceled the visit, Joshua said that he knew visits were court-ordered and that he had not seen father in a while. According to the social worker, the visit went well. Father brought his laptop computer, and he and Joshua played computer games.

A week later, a social worker picked up Joshua to take him to visit father. Joshua told the social worker that he did not like visiting father. The social worker asked Joshua if he wanted to visit father that day. Joshua responded, "yes, because it is a court order." During the visit, Joshua seemed upset, and father asked him if he was okay. Joshua responded that he was "done with this," and did not want to continue visiting father. Father tried to speak with Joshua several times during the visit. Eventually, Joshua "opened up" to father, and they listened to music and watched music videos on father's laptop computer. Father was appropriate throughout the visit. Joshua did not say good-bye to father at the end of the visit. When the social worker took Joshua home, Joshua said that he was through visiting father.

The following week, Joshua called the social worker and stated that he would not attend his visit with father because he had things to do. Informed that Joshua would not attend the visit, father stated that, pursuant to a court order, only he had the authority to cancel visits.

Joshua and father began conjoint counseling sessions in August 2011. Mother complained to the social worker that according to Joshua, the focus of the first session was father's issues with his own mother and not father's and Joshua's problems. Later that month, Joshua told the social worker that he did not want to continue conjoint counseling with father because he was tired of father "blaming everyone about their problems and always talking bad about his mother." Joshua told the social worker that at the most recent counseling session, father complained that no one listened to him and that the social worker, mother, and the Department were all against him. According to Joshua, father spoke about "the abuse as 'discipline,'" and said that it was mother who had described the discipline as "abusive." Joshua was tired of talking about father's physical abuse when father appeared unwilling to accept any responsibility.

Shortly thereafter, the social worker spoke with Joshua's individual therapist. The therapist recommended that Joshua not have any further contact with father. When the social worker went to the family home to pick up Joshua for a conjoint counseling session with father, Joshua said that he would not attend the counseling session with father that day because he did not want to. The next day, the social worker received an emergency progress report from Joshua's therapist. The therapist stated that during the last several weeks, she had seen a significant decomposition of Joshua's mental health. Joshua had extremely low energy, appeared extremely fatigued, and was losing weight. Joshua's depressed mood had noticeably increased, and he had expressed suicidal thoughts and ideation. Joshua told his therapist that the increase in symptoms and feelings of suicidal ideation were related directly to contact with father. The therapist was "deeply concerned" for Joshua's mental health and physical safety and recommended to the court that all contact between Joshua and father, including conjoint counseling sessions and monitored visits, be suspended for some period of time.

At the end of August 2011, Joshua left the social worker a message that he would not attend a conjoint counseling session with father because he would be going to school for an orientation. When the social worker contacted mother, mother explained that Joshua would be going to dinner with friends after the orientation and did not want to

attend conjoint counseling with father. Mother told the social worker that Joshua's individual therapist had seen Joshua the day before and stated that he appeared happy that he had not seen his father during the past week.

A parenting class progress report stated that father had attended eight of 20 classes since July 2011, and that he needed to complete the remaining sessions to satisfy the program's requirements. Father's participation and cooperation in the class was described as "positive."

In its September 6, 2011, report, the Department stated that Joshua did not wish to live with or visit father due to father's inappropriate physical discipline of Joshua. The Department stated its concern about the amount of conflict between Joshua and father and recommended that the court suspend visits between Joshua and father. After the Department filed its report, Joshua had two visits with father in September. Neither visit went well. Father attempted to engage with Joshua, but Joshua was not interested. Joshua stated that he did not want to attend any more visits. During one of the September visits, Joshua stated that he did not want to be there because he had too much homework. Father disputed Joshua's claim that he had too much homework to visit father. Joshua became upset with father and said that "a visit should not be an obligation . . . A visit should be because I want to see you. I don't want to visit with you."

Also in September, Joshua's individual therapist prepared another report in which she stated that Joshua had become more depressed and had discussed suicide. Joshua told his therapist that he thought suicide was the only way to avoid seeing father. The therapist recommended that the court suspend all contact between Joshua and father, including conjoint counseling and monitored visits.

At the end of September 2011, father and Joshua's conjoint therapist reported that although Joshua initially did not want to engage in therapy or speak with father, he had since decided to engage in therapy and fully participate in the sessions. During the most recent sessions, Joshua had expressed his complaints about father. Father had been "very respectful" of Joshua and "actively listened" to his complaints. Nevertheless, "substantial issues" remained between father and Joshua.

At the beginning of November 2011, father's and Joshua's conjoint therapist reported on the most recent sessions with father and Joshua. According to the therapist, Joshua fully participated in the sessions and consistently expresses his complaints about and disappointments in father. Father treated Joshua respectfully, listened to Joshua's complaints, and apologized for his shortcomings. The therapist reported that "measurable progress" had been made and recommended that conjoint counseling continue to further resolve the "many issues" that remained between father and Joshua.

The Department's November 8, 2011, report chronicled additional visits between Joshua and father in September and October. Joshua did not want to attend the visits and largely did not interact with father during the visits. At the end of October, Joshua told a social worker that he wanted to discontinue conjoint counseling and visits with father. Joshua participated in conjoint counseling and visits with father because they were court-ordered. Joshua said that he did not want to have anything to do with father, that he did not trust father, and that he would be better able to deal with father when he turned 18 years old.

Joshua was doing "very well" in mother's care. A social worker found that the risk level of abuse or neglect was "moderate" if Joshua continued to live with mother and "high" if he were to live with father. The Department did not identify any current child safety concerns, and considered Joshua safe under mother's care. The Department recommended that the court terminate jurisdiction over Joshua, and issue a family law order granting primary physical custody to mother and joint legal custody to mother and father. The Department further recommended that father have monitored visits with Joshua and that father and Joshua continue to participate in conjoint counseling.

According to the Department's December 9, 2011, report, Joshua missed a visit with father in November 2011, because he did not want to see father. Two other visits went well, with father and Joshua interacting well with each other. Father and Joshua played games on father's laptop computer. Father had completed his parenting class, attending three sessions more than necessary.

A report from father's and Joshua's conjoint therapist stated that father had made substantial progress in his individual counseling, was better able to understand Joshua's complaints about father, had learned new listening skills, and had demonstrated greater patience in dealing with Joshua. Father told Joshua at a December session that it was hard for father to live in California and that he was moving to Texas to live with relatives.

At a hearing on December 9, 2011, father's counsel informed the juvenile court that father's move to Texas was temporary. To facilitate continued contact between father and Joshua, the juvenile court gave the Department discretion to allow father to have unmonitored telephone calls, texts, emails, and any other computer communication with Joshua. The next day, a social worker met with Joshua concerning communication with father. Joshua stated that he did not want to communicate with father at all. At most, Joshua would accept letters from father sent by mail.

In January 2012, Joshua gave a social worker a letter he had written to the court. The letter addressed the reasons Joshua did not want to see father or have contact with him. Joshua stated that father had physically, verbally, and mentally abused him in the past, and continued to "partially" abuse him by using almost anything he said to father against him. Joshua also did not trust father because father had accused him of stealing money from father.

In its January 26, 2012, report, the Department stated its position that the case was no longer a "safety" case as Joshua was doing "very well" in mother's care and Joshua continued to not want to visit or participate in conjoint counseling with father. The Department recommended the case be sent to Family Law Court because there were no safety issues with the family and the only service that the Department was providing was transporting Joshua to visits with father. The Department again recommended that mother have primary physical custody, that mother and father have joint legal custody, that father have monitored visits with Joshua, and that father and Joshua participate in conjoint counseling.

Near the end of January 2012, Joshua's individual therapist stated that Joshua had shown great progress and appeared more relaxed and jovial during sessions. According

to the therapist, Joshua felt less pressure and stress recently due to the suspension of his visits with father. Based on Joshua's "significant improvement," Joshua's therapy schedule was modified from weekly to bi-weekly.

On January 26, 2012, father filed a section 388 petition seeking to have the juvenile court grant him unmonitored visits with Joshua. The juvenile court denied father's petition. The juvenile court found that there was insufficient evidence that unmonitored visits with father were in Joshua's best interest. Rather, the juvenile court found, such visits were contrary to Joshua's best interest. The juvenile court noted that Joshua's well-being had significantly improved after he stopped having contact with father through conjoint counseling and visits. The juvenile court then terminated its jurisdiction over Joshua and issued a family law order pursuant to which it granted mother sole legal and physical custody of Joshua. The family law order provided that father was permitted to have monitored correspondence with Joshua. If Joshua was in individual counseling, he could have monitored visits with father in Joshua's therapist's office.

DISCUSSION

I. Termination of Jurisdiction and Custody Orders

Father contends that the juvenile court abused its discretion when it terminated its jurisdiction over Joshua and awarded mother sole physical and legal custody of Joshua. Instead, father argues, the juvenile court should have retained jurisdiction because the "difficult relationship" between father and Joshua "has the potential to be addressed given additional time in individual and conjoint counseling." The juvenile court acted within its discretion.

A. Standard of Review

We review a juvenile court's termination of dependency jurisdiction pursuant to section 364 and its decision to issue a custody (or "exit") order pursuant to section 362.4 for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285,

300.) A juvenile court's ruling is an abuse of discretion when it is arbitrary, capricious, or patently absurd. (*Ibid.*)

B. Application of Relevant Principles

Section 364, subdivision (c) provides, "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The 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. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary."

This matter came before the juvenile court pursuant to section 300 due to father's excessive and inappropriate physical discipline of Joshua. In its January 26, 2012, report, the Department stated its position that the case was no longer a "safety" case as Joshua was doing "very well" in mother's care. As of early December 2011, father had completed his parenting course, completing more than the required number of classes. Because there were no safety issues with the family and the only service it was providing was transporting Joshua to visits with father, the Department recommended that the juvenile court terminate jurisdiction and send the case to Family Law Court.

Father contends that the juvenile court should have retained jurisdiction because mother had attempted to interfere with his relationship with Joshua and there remained the possibility that his "difficult relationship" with Joshua could have been "addressed" with additional counseling. Under section 364, subdivision (c), however, the juvenile court was required to terminate jurisdiction if it determined that the conditions that initially justified section 300 jurisdiction were no longer present or likely to be present without supervision. The juvenile court did not abuse its discretion in accepting the Department's position that Joshua was no longer at risk of excessive, inappropriate

physical discipline by father, and by following the mandate in section 364, subdivision (c) to terminate jurisdiction. (*Bridget A. v. Superior Court, supra*, 148 Cal.App.4th at p. 300.)

Father contends that the juvenile court abused its discretion in awarding mother sole physical and legal custody of Joshua because there were no safety issues in the case and he and Joshua “were working in conjoint therapy and visitation toward a resolution of a difficult time in their relationship and a positive future.” The juvenile court’s award of sole physical and legal custody of Joshua to mother was not arbitrary, capricious, or patently absurd. (*Bridget A. v. Superior Court, supra*, 148 Cal.App.4th at p. 300.) As for sole physical custody, Joshua was doing “very well” in mother’s care. Joshua was happier and more relaxed, and felt less pressure and stress when he did not spend time with father. Contrary to father’s suggestion, Joshua did not willingly participate in conjoint counseling or visit father. As for sole legal custody, the juvenile court apparently awarded such custody because father had moved to Texas, and father and mother had mutual restraining orders making father’s participation in emergency and non-emergency decisions impractical. Father does not explain how the lack of safety issues or the participation in conjoint counseling or visits concerns the award of sole legal custody.

II. Visitation and Conjoint Counseling

Father contends that the juvenile court abused its discretion when it failed to order mandatory monitored visitation and conjoint counseling as part of its exit orders.³ The juvenile court did not err.

³ Father does not separately address his claim that the juvenile court abused its discretion in failing to award him conjoint counseling, instead arguing that it was an abuse of discretion to reduce “[v]isitation, including conjoint therapy . . . from mandatory to discretionary.” As stated above, the Department takes no position with respect to the juvenile court’s visitation order.

A. *Standard of Review*

A juvenile court's order concerning visitation is reviewed for an abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

B. *Application of Relevant Principles*

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation. (§§ 364, subd. (c), 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358 [87 Cal.Rptr.3d 715].) Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court. (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30 [5 Cal.Rptr.2d 208] (*Roger S.*.)” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1124.) “[I]n making exit orders, the juvenile court must look at the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th 961, 973.)

“Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt visits even after the end of the reunification period. [Citations.] Visitation may be seen as an element critical to promotion of the parents’ interest in the care and management of their children, even if actual physical custody is not the outcome. [Citation.]” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) However, “a parent’s liberty interest in the care, custody and companionship of children cannot be maintained at the expense of their well-being. [Citation.] While visitation is a key element of reunification, the court must focus on the best interests of the children ‘and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm specified in section 300.’ [Citation.] This includes the ‘possibility of adverse psychological consequences of an unwanted visit between [parent] and child.’ [Citation.]” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50.)

If a juvenile court “grants visitation, ‘it must also ensure that at least some visitation at a minimum level determined by the court itself, will in fact occur.’ [Citation.]” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505.) “[B]y failing to

mandate any minimum number of monitored visits [within a stated period of time], the court's abstract recognition of [a parent's] right to visitation is illusory, transforming the children's ability to refuse 'a visit' into the practical ability to forestall any visits at all." (*In re S.H.* (2003) 111 Cal.App.4th 310, 319; see also *In re Hunter S.*, *supra*, 142 Cal.App.4th at p. 1505 [a child may not be allowed to control whether visitation occurs]; *In re Chantal S.* (1996) 13 Cal.4th 196, 213 [a juvenile court abuses its discretion when it delegates to a third party the complete authority to decide whether visitation takes place].)

In issuing exit orders, the juvenile court ruled, "In the event—let me say also, Joshua, so long as he is in individual counseling, may also have monitored visits with his father in a therapeutic setting with Joshua's therapist only. [¶] Should those occur, Joshua and his father may have monitored visits immediately preceding the conjoint session. Or I should say immediately preceding the therapeutic—the monitored visit in the therapeutic setting." Mother's counsel subsequently prepared a family law order concerning custody and visitation that was reviewed by the parties and entered by the juvenile court. With respect to visitation, the family law order stated, "No face to face visits with minor, JOSHUA . . . and father . . . unless monitored by private agency. Monitored visits may occur without conjoint counseling. [¶] Any conjoint counseling between minor, JOSHUA . . . and father . . . shall be with JOSHUA'S therapist. If conjoint counseling occurs then monitored visits shall take place just prior to conjoint counseling sessions."

The juvenile court's order with respect to monitored visitation is unclear. Because the order appears to grant visitation, but does not provide for the terms of any visitation, other than such visitation be monitored, any such grant of visitation is illusory because it is subject to the cooperation of Joshua and mother. (*In re Hunter S.*, *supra*, 142 Cal.App.4th at p. 1505; *In re S.H.*, *supra*, 111 Cal.App.4th at p. 319.) Accordingly, the case is remanded so that the juvenile court can exercise its discretion in formulating a clear order specifying the amount and terms of visitation to which father is entitled.

DISPOSITION

We reverse the juvenile court's visitation order and remand for further proceedings consistent with this opinion. We otherwise affirm the juvenile court's termination of jurisdiction and its other exit orders.

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MOSK, J.

I concur:

KRIEGLER, J.

I concur in my colleagues' analysis concerning the propriety of the termination and custody orders. I only disagree about the need to redraft the written custody order. The reporter's transcript reveals the father's counsel had reviewed the written custody order. The clerk's transcript indicates the issue of whether to sign the order proceeded as a submitted matter. Thus, any objection to the written custody order has been forfeited. (*In re Ana C.* (2012) 204 Cal.App.4th 1317, 1326; *In re Richard K.* (1994) 25 Cal.App.4th 580, 588-590.)

Moreover, the father's counsel never asserted there was any illusory effect of the written order. No objection was interposed because there had been an improper delegation of the right to control the pace and duration of visitation. The father's counsel never even bothered to appear at the hearing where the written custody order was signed. There is no evidence to support the father's assertion that any improper delegation of visitation will occur. Thus, I would affirm the orders under review in their entirety.

TURNER, P.J.