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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.H., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.A.,

Defendant and Appellant.

B239461

(Los Angeles County
Super. Ct. No. CK90482)

APPEAL from orders of the Superior Court of Los Angeles County,
Marguerite Downing, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, John F. Krattli, County Counsel, James M. Owens,
Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, Plaintiff and
Respondent.

M.A. (mother) appeals from orders of the juvenile court terminating jurisdiction over her 12-year-old son, J.H., awarding custody of J.H. to father, and issuing a permanent restraining order against mother. Mother contends the juvenile court erred in terminating jurisdiction without affording mother an opportunity to participate in an Evidence Code section 730 evaluation or to engage in reunification services. Mother further asserts reversal is required because the juvenile court failed to state reasons for terminating jurisdiction as required by Welfare and Institutions Code section 361.2, subdivision (c).¹ Mother also challenges the sufficiency of the evidence to support the permanent restraining order. We reject these contentions and affirm the orders of the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

On October 26, 2011, the Department of Children and Family Services (the Department) filed a dependency petition alleging J.H. came within the jurisdiction of the juvenile court within the meaning of section 300, subdivisions (a) and (b) based on an assault committed by mother four days earlier. The detention report indicated mother engaged in a conflict for some unknown reason with a relative, later determined to be mother's cousin, on October 22, 2011, while J.H. was in mother's car.

A Los Angeles County Sheriff's incident report attached to the detention report indicated the victim stated mother telephoned her and unexpectedly threatened her. Several hours later, the victim was standing on her lawn when mother drove onto the lawn and steered directly toward the victim, who barely escaped being struck by mother's vehicle. Mother made a U-turn, drove away at a high rate of speed, made another U-turn and stopped in front of the victim's home. Mother exited the vehicle, waived a pair of scissors and threatened to kill the victim. Mother also pointed a black gun toward the sky while threatening the victim. Mother was arrested the next day. She was combative with

¹ Subsequent unspecified statutory references are to the Welfare and Institutions Code.

jail staff, was placed in a psychiatric jail unit and could not be interviewed for the detention report.

In an initial interview J.H. was cooperative at times and oppositional at other times. His oppositional behavior included spitting, breaking furniture, throwing drinks against the wall, throwing chairs and flipping tables. J.H. stated he did not want to go to a foster home and refused to speak further about the situation.

Father indicated he was available to care for J.H. and stated J.H. had stayed many times at the house where father lives with his wife and adult stepdaughter. Father denied domestic violence or drug abuse and indicated he supports J.H. financially and has had regular contact with J.H. throughout the child's life. J.H. is healthy and does well in school but is in special education classes because of his behavior. Father last saw J.H. a few weeks ago with mother at church. Mother was combative and confrontational towards father. Father suspected mother has mental health issues based on her recent aggression and anger.

The report indicated J.H. had a prior child welfare history commencing in 2001 that included allegations of neglect, physical abuse and emotional abuse by mother. The prior reports consistently were concerned about "mother's ability to appropriately care for the child due to possible mental health issues, which may have never been diagnosed. The mother is reported in the history to have allowed the child to be unsupervised for long periods of time while the mother slept up to 16 hours, which may have been due to potential depression."

The Department placed J.H. in father's care and recommended mother undergo an Evidence Code section 730 psychological evaluation and participate in mental health services.

On October 26, 2011, the juvenile court ordered J.H. detained from mother and released the child to father with family maintenance services. The juvenile court granted mother monitored visitation but indicated father was not to monitor mother's visits. The juvenile court ordered mother, who was not present at the hearing, to stay away from father, his residence and work place.

Mother was released from jail on October 26, 2011. On November 9, 2011, mother appeared in court and counsel was appointed to represent her.

A letter dated November 23, 2011, from Clear Path Counseling Center indicated mother had enrolled in a counseling program and was scheduled to participate in three group sessions per week and a monthly individual session.

The jurisdiction/disposition report dated November 28, 2011, indicated the social worker interviewed J.H. on November 17, 2011. J.H. claimed he did not remember what happened between mother and her cousin and did not respond when asked if mother had ever threatened to harm anyone. J.H. stated mother had been claiming to be a rapper for about a year. J.H. missed mother and wanted to return to her care but stated things were “great” with father and father’s wife.

The social worker indicated interviewing mother was extremely complicated, as she appeared to be mentally unstable. Mother stated she was a known rapper and everyone else was beneath her. Mother accused the social worker of having an attitude and demanded to file a complaint. Mother claimed father’s car detailing business was a front for drug sales, mother was being set up, mother had a record deal with Dr. Dre and people were out to get her money. Mother admitted she spent 14 days in a hospital after being committed on a section 5150 hold in 2007. Mother was released with a prescription for Risperidol but stopped taking it “long ago. I’m too fabulous for medication. . . . I have records all over the globe, (mother began dancing) what, what, what.”

Regarding the assault incident, mother claimed her cousin punched her through the car window. Mother had a BB gun but denied using it to defend herself. When asked if she had attempted to hit her cousin with her car, mother laughed and said she had involuntary movements and sometimes did not know what she was doing.

Mother indicated J.H. was raised by maternal grandfather until maternal grandfather’s death because mother did not want J.H. “around that bitch of a wife [father] has.”

Father told the social worker mother was normal when he was with her but she is now mentally unstable and he believes her mental health is affecting J.H.'s behavior. Mother has threatened father and father's wife. A few days before mother's arrest, mother made an unannounced visit to father's church and threatened father's wife inside the church. As father approached the church, mother began yelling she was going to a party with Dr. Dre and she wanted father to take J.H. Father avoids contact with mother and kept in touch with J.H. through maternal grandfather. J.H. acts out after visits with mother and father must work hard to redirect J.H.'s negative behavior, which father believes mother encourages. Father indicated he recently had married and is the co-owner of a mobile auto detailing business.

Father's wife told the social worker J.H. has acknowledged mother's mental condition and has informed her that mother has threatened to kill father and father's wife. J.H. stated he planned to stop mother before mother could harm father or his wife.

The report indicated mother's inappropriate statements during visits were detrimental to J.H. Prior to a visit on November 17, 2011, the social worker asked mother not to speak negatively or discuss court issues with J.H. However, at the beginning of the visit, mother stated J.H. was wearing cheap clothing and asked J.H. where he slept in father's house. Later in the visit mother told J.H. not to allow father's wife to hug him and not to listen to father's wife because "she's not on our level." On each occasion, the social worker asked mother not to speak negatively. Mother then informed J.H. she had purchased a six bedroom house with money from her record deal and father previously had done nothing for J.H. and did not care about him. When the social worker again cautioned mother, mother said she did not have to take this from the social worker because she is a rapper and people were against her because they were not on her level. When mother stated father abused her and sold drugs, the social worker asked J.H. to leave the room and warned mother the visit would be ended if mother did not engage in more positive conversation.

The Department recommended further visitation with mother take place in a therapeutic setting after mother had addressed her mental health issues. The report indicated father was not in need of services but was requesting services for J.H.

A Last Minute Information form filed November 28, 2011, indicated mother telephoned the social worker to report she had attempted to initiate contact with J.H. at church but father pushed her away. Mother requested a restraining order and stated the juvenile court's stay away did not direct her to avoid from her church or her son. The social worker informed mother she had been ordered not to have contact with father or his wife and to have only monitored contact with J.H. Mother stated she was not going to attend a different church and had every right to make contact with J.H. whenever she saw him.

Father advised the social worker mother approached them as they left church on November 27, 2011. Father sensed mother was going to make a scene and walked away. Father denied pushing mother. Father's wife indicated J.H. walked away from mother as mother hugged him. J.H. later asked why mother makes scenes in public.

On November 28, 2011, father filed an application for a restraining order to protect father, his wife and J.H. at their residence, church, place of employment and J.H.'s school. The application indicated that on November 27, 2011, mother approached father, J.H. and father's wife and aunt at church "being very loud saying J.H. was her son and that she can hug him anytime she wants. I took J.H.'s arm to get him to come with me. [Mother] grabbed him back and then started to say I was putting my hands on her which I was not. I then let my son go and told him to just come on[,] let's go[,] while [mother] continued to rant and hold him. Since this [is] not the first time she has done this[,] I am convinced it will continue."

On November 28, 2011, the juvenile court issued a temporary restraining order and continued the matter to December 23, 2011, for a contested adjudication.

On December 12, 2011, the Department filed an ex parte application for an order directing that mother's visits with J.H. take place in a therapeutic setting and that her visits be suspended until she addressed her mental and emotional issues by obtaining a

psychological evaluation and enrolling in therapy. The application indicated mother “continues to engage in inappropriate conversations and displays unsuitable behavior in the presence of the child . . . during the monitored visits.”

Mother’s visit of November 23, 2011, initially had been pleasant until mother questioned J.H. about where the social worker had picked him up, discussed her criminal case and berated father’s wife. When mother stated father was “going to jail for breaking my jaw,” the social worker terminated the visit. A short while later, father telephoned and stated J.H. had been upset by the visit.

During a monitored visit on December 8, 2011, mother spoke about people hating her and being set up, discussed her various music projects and spoke negatively about father’s wife. When mother ignored the monitor’s warning and told J.H. father had broken her jaw and was going to jail, the monitor ended the visit. Later that day, father’s wife advised the social worker J.H. entered the home in tears and stated mother wants to make sure father goes to jail.

At a hearing on December 16, 2011, counsel for J.H. stated J.H. wanted to see mother but a therapeutic monitor had not yet been identified. The juvenile court admonished mother not to say negative things about father, granted the Department’s application and directed the Department to arrange visits with mother in a therapeutic setting. The juvenile court ordered a psychological evaluation of mother.

On December 23, 2011, the juvenile court received the social reports into evidence and sustained the dependency petition as amended.² The juvenile court requested a supplemental report to address the possibility of terminating jurisdiction with a family

² As sustained, the dependency petition alleged mother engaged in a violent altercation with child’s maternal cousin in which mother attempted to strike maternal cousin with a vehicle while the child was a passenger. Mother brandished a pellet gun and scissors, threatened to kill the maternal cousin and was arrested for assault with a deadly weapon. A second count alleged mother has mental and emotional problems, including a section 5150 hold at College Hospital as a result of which mother was prescribed medication to address her mental and emotional issues. Mother failed to take her prescribed medication which renders mother incapable of providing regular care and supervision.

law order and whether the therapist assigned to evaluate mother had received the documents needed to perform the evaluation. The juvenile court continued the matter to January 18, 2012, for a contested disposition hearing and an order to show cause on father's application for a permanent restraining order. The juvenile court stated it would not issue a permanent restraining order until mother's psychological evaluation had been completed.

On January 18, 2012, the Department filed a Last Minute Information form which indicated the psychological evaluation had not yet been assigned to an evaluator and mother had failed to maintain contact with the Department after the social worker monitored a telephone call between mother and J.H. on December 22, 2011. However, on January 10, 2012, mother called the administrator and requested a visit with J.H. The report further indicated the Department was not aware that mother was participating in services and mother had been "caught on tape under the influence of a controlled substance and displaying inappropriate sexual behavior in the presence of what appeared to be a teenage disabled child." The Department recommended against termination of jurisdiction as mother had not yet undergone a psychological evaluation and father was receiving family maintenance services to address J.H.'s behavior.

On January 18, 2012, the juvenile court indicated it had discussed the matter with the parties prior to taking the bench and its tentative decision was to terminate jurisdiction with a family law order granting father custody of J.H. Mother's counsel asserted mother was participating in services at Project Impact, she wished to have J.H. returned, and it was not in J.H.'s best interest to close the case without giving him a chance to reunify with mother.

J.H.'s counsel argued there was no need for the Department to be involved in the services being provided to J.H., noting father had enrolled J.H. in therapy and counseling. Father's counsel asked the juvenile court to terminate jurisdiction with an order for visitation in a therapeutic setting until J.H.'s therapist approved other monitors. Counsel noted the Department had not yet found an appropriate therapeutic monitor.

Deputy county counsel indicated the Department had no objection to termination of jurisdiction if visitation remained monitored and mother completed a mental health assessment and commenced individual counseling before her visits were liberalized.

Counsel for mother stated mother had not seen J.H. since December 16, 2011, when he was present in court. Counsel was concerned mother would not have any visitation if jurisdiction were terminated. Father's counsel indicated the agency providing J.H. therapy would be able to make an appropriate plan for visitation.

The juvenile court modified the order for visitation in a therapeutic environment to permit "visitation with a licensed professional monitor" to provide mother additional visitation options.

The juvenile court found, by clear and convincing evidence, there was substantial danger if J.H. were returned home and there was no reasonable means to protect the child without removing him from mother's custody. The juvenile court found father "is a parent to this child, with whom the child was not residing at the time this petition was filed. [Father] desires custody of his son. By clear and convincing evidence, the court finds the placement with [father] would not be detrimental to the safety, protection and emotional well being of J.H. Therefore, the court is going to order that J.H. is placed with his father, . . . the previously noncustodial parent."

Over mother's objection, the juvenile court terminated jurisdiction with a family law order granting father sole legal and physical custody of J.H. The juvenile court stayed termination to January 27, 2012, for father's counsel to submit a family law order. The juvenile court vacated the order directing mother to undergo a psychological evaluation. The juvenile court issued a permanent restraining order to remain in effect until January 18, 2015.

CONTENTIONS

Mother contends the order terminating jurisdiction must be reversed for failure to state reasons supporting the order as required by section 361.2, subdivision (c). Mother further contends the juvenile court abused its discretion in terminating jurisdiction without first obtaining a psychological evaluation of mother or affording mother an

opportunity to participate in family reunification services. Mother also claims the evidence was insufficient to support a permanent restraining order.

DISCUSSION

1. *No abuse of discretion in the order terminating jurisdiction.*

Section 361.2 governs placement of a dependent child with a previously noncustodial parent. It states: “(a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).)

If the juvenile court places the child with the previously noncustodial parent, it then “decides whether there is a need for ongoing supervision. If there is no such need, the court terminates jurisdiction and grants that parent sole legal and physical custody.” (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1135; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 315, fn. 19; § 361.2, subd. (b)(1).)

When a child is placed with a previously noncustodial parent, the decision whether to provide reunification services is discretionary. (See *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651; *In re Erika W.* (1994) 28 Cal.App.4th 470, 475-476.) If the juvenile court retains jurisdiction it may (1) provide reunification services to the parent from whom the child was removed, (2) provide services solely to the parent assuming physical custody to allow that parent to retain later custody without court supervision, or (3) provide services to both parents and, in a later review hearing under section 366, determine which parent, if either, will have custody of the child. (§ 361.2, subd. (b).)

Section 361.2, subdivision (c) requires findings, either in writing or orally on the record, as to the basis for the juvenile court’s determination under section 361.2, subdivisions (a) and (b).

Mother contends the juvenile court failed to specify the basis for the order terminating jurisdiction as required by section 361.2, subdivision (c) and claims this court cannot make an implied finding mother should not be granted family reunification services. (*In re V.F.* (2007) 157 Cal.App.4th 962, 972-974.) Mother asserts the juvenile court terminated jurisdiction without any explanation for its decision and despite the fact the Department recommended mother receive reunification services and participate in a psychological evaluation. Mother requests remand with directions to conduct a hearing, exercise discretion consistent with the law and issue a statement of reasons as required by section 361.2, subdivision (c).

We find no need to order the relief requested by mother. The record indicates the juvenile court had section 361.2 in mind when it placed J.H. in father's custody. The juvenile court followed the language of the section and rejected the notion that placement with father would be detrimental to J.H. Consequently, there was no reason for the juvenile court to state the basis for its ruling under section 361.2, subdivision (a).

Although the juvenile court failed to state reasons in support of its decision to terminate jurisdiction, that omission appears to have been harmless. Contrary to mother's arguments, the record indicates the juvenile court thoughtfully considered the decision to terminate jurisdiction. The juvenile court asked the Department to address termination of jurisdiction in a social report. When the Department filed a report recommending continued jurisdiction, the juvenile court indicated it had discussed the matter with the parties off the record and was inclined to terminate jurisdiction. The juvenile court then considered the argument of the parties and decided there was no need in this case for continuing dependency jurisdiction. Remand to permit the juvenile court to state reasons in support of this decision for the record would constitute an idle act. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078-1079.)

Mother claims supervision was necessary because J.H. was in the process of becoming acclimated to living with father. However, mother told the social worker J.H. was raised by maternal grandfather until maternal grandfather's death. The social reports also indicated J.H. was a frequent overnight visitor in father's home throughout the

child's life and father maintained a relationship with J.H. through maternal grandfather. Thus, J.H. was beyond becoming acclimated to father. In fact, the record indicated J.H. was safe in father's care, father was meeting J.H.'s needs and had enrolled J.H. in counseling, and J.H. described his relationship with father and father's wife as "great." In sum, the record supports the juvenile court's finding there was no need for continuing dependency court jurisdiction over J.H.

Mother complains the juvenile court terminated jurisdiction without the benefit of the psychological evaluation of mother it previously had ordered. However, the juvenile court properly could reconsider the order for a psychological evaluation. The final social report indicated mother had failed to maintain contact with the Department. Also, nothing in the social reports suggested mother was amenable to a psychological evaluation. Given this record, and absent any evidence indicating jurisdiction remained necessary, we find no abuse of the juvenile court's discretion in termination of dependency jurisdiction with a family law order.

2. *Substantial evidence supported the issuance of the permanent restraining order.*

Mother claims the only facts alleged as the basis for the restraining order related to the incident at church on November 27, 2011, which did not support father's assertion mother has "caused one or more of the persons to be protected to fear physical or emotional harm." Mother notes the stay away order issued by the juvenile court at the detention hearing did not address church or J.H. Also, although father's application claimed mother had engaged in previous similar incidents, he failed to identify any such prior occurrence. Mother concludes substantial evidence did not support issuance of the permanent restraining order.

Mother's argument is not persuasive. Section 213.5 permits the juvenile court to issue, ex parte or upon notice and a hearing, a restraining order "enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, . . . destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing

the peace of any parent, legal guardian, or current caretaker of the child”
(§ 213.5, subds. (a) and (d).)

Where a juvenile court issues a permanent restraining order after notice and a hearing, “[p]roof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these.” (Cal. Rules of Court, rule 5.630(h)(2).) An order issuing a restraining order is reviewed under the substantial evidence test pursuant to which the evidence is viewed in the light most favorable to the order and all legitimate and reasonable inferences are indulged to uphold the order. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.)

Here, in addition to the incident described in father’s application, the jurisdiction report included father’s statement that, a few days before mother was arrested for assaulting her cousin, mother made an unannounced visit to father’s church and threatened father’s wife inside the church and yelled at father as he approached the church. Thus, as father stated in his application, mother has engaged in similar conduct on prior occasions. Also, father’s wife told the social worker J.H. informed her that mother has threatened to kill father and father’s wife and J.H. planned to stop mother before mother could harm father or his wife.

Based on mother’s propensity for violence, as demonstrated by the pending criminal charges related to the assault upon her cousin, her mental instability, her combative and aggressive conduct with respect to father and father’s wife, the juvenile court properly issued an order restraining mother from unauthorized contact with J.H., father and father’s wife.

Mother argues the juvenile court issued the restraining order without first obtaining the previously ordered psychological evaluation of mother. However, such an evaluation is not a prerequisite to issuance of a restraining order.

DISPOSITION

The orders of the juvenile court are affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.