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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.F. et al., Persons Coming Under the
Juvenile Court Law.

B243686
(Los Angeles County
Super. Ct. No. CK 87202)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DONOVAN F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn K. Martinez, Juvenile Court Referee. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Associate County Counsel, for Plaintiff and Respondent.

* * * * *

Donovan F. (father) appeals from the juvenile court's exit order for monitored visitation between him and his two children, son D.F. and daughter L.F. Father contends that the court erred in requiring his weekly visits to be monitored because the evidence did not support a need for monitoring, and besides that, the court undermined its order for weekly visits by requiring a monitor when none was consistently available. Additionally, father asserts the court erred when it failed to specify a minimum duration for each visit. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

L.L. is the mother of D.F. and L.F. Mother and father never married and have been separated for some years. Father has always yelled at and been verbally abusive towards her. In 2005, mother obtained a restraining order against father as a result of his vandalism, threats, intimidation, and stalking. In 2007, the children's babysitter obtained a restraining order against father as a result of his threats of death or great bodily harm and fleeing with the children. In 2010, mother again obtained a restraining order against father as a result of his threats of great bodily harm, vandalism, intimidation, and stalking.

The children came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on February 23, 2011, when a referral alleged emotional abuse by father. D.F. was nine years old at the time, and L.F. was seven years old. During a custody exchange at a police station, mother ran into the station visibly shaken and asked for help. Mother was carrying L.F., who was crying. She ran back outside where father was holding D.F., who was also crying. The police asked father if assistance was needed; father said no and began to yell. The police then invited father to go inside the station lobby to further discuss the issue, but father became belligerent and continued to yell. The children told the police that they did not want to visit their father because of his yelling. D.F. in particular said that father's yelling frightened him and made him afraid for mother. Father calmed down and the children went with him for their visit. Father had family court ordered visits with them two weekends a month.

During mother's interview with DCFS, she reported that L.F. had nightmares and anxiety and wet herself. D.F. also wet himself. The children would shake and wet

themselves when father yelled. The children's dentist told mother both children were grinding their teeth. Father was very controlling towards her and always questioned where she was going when she left the children with him. When she did not answer and walked away, he followed her, threatening her and yelling at her. Father had threatened to "kick her a--" more than once. He had never hit her or the children, however. He broke her window and kicked her car door before. She had been trying to arrange a way to exchange the children without seeing him; for example, father might pick them up from school on Friday and return them to school on Monday. She thought that if father did not see her, he might not yell as much. Father refused these requests and insisted mother be present at the exchange.

Father said he did not agree with mother's choice in men, and they therefore argue. He felt he had the right to yell if he did not agree with mother. He said mother refused his visits and did not follow the court order. He knew the children got upset over his yelling. He wanted to be part of the children's therapy "to talk about the mother's part in this problem." At the same time, father became upset when the social worker requested that he attend a team decisionmaking meeting. He said he would not agree to services, he was a good father, his family did not want DCFS's help, and he did not want his children attending counseling. Father yelled at the social worker and would not calm down.

D.F. and L.F. told the social worker that they wanted to take a break from visits with father until father got help for his anger. Every time their parents saw each other, father yelled at mother and threatened her, no matter where they were. Father also used to break things. D.F. and L.F. had nightmares from father's yelling and said they were scared for mother's safety during the visit exchanges. D.F. sometimes had "accidents" because he got so scared. Father was angry because mother had a new boyfriend; father told mother he would "cut his head off" or "rip his head off" if mother kept seeing him. During visits, father did not yell at or hit D.F. and L.F.

The children's babysitter reported that father had always been aggressive and a "bully" and has "harassed" mother and "terrorized" the children for years. She obtained a restraining order against father in 2007 because he would show up at the daycare and

threaten her. Father had yelled and caused a scene at the family's church, the school, the daycare, and the police department. She reported that, over the past year, D.F. began to wet himself because he was anxious over father's behavior. The day after the children visits with father, they seemed depressed and sad. A second babysitter reported that she had heard father threaten to kill mother or others in front of the children. She was fearful father would hurt himself or the children to seek revenge on mother. She thought he was unpredictable and explosive.

A psychologist who evaluated the children, Dr. Charles Barr, found that they had been exposed to father's rage numerous times and they were very frightened by it. Dr. Barr felt that further exposure to father's behavior would further traumatize them and increase the likelihood of dysfunction later in their lives. Dr. Barr felt that their visits with father were doing more harm than good and should be cancelled until father received treatment for his anger, or at the least, visits should be monitored.

DCFS filed a petition on March 30, 2011, alleging that father's behavior endangered the children and placed them at risk of physical and emotional harm under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c).¹ The court found a prima facie case for detaining the children from father. The children were to remain with mother at a confidential address. The court ordered monitored visits for father.

In the jurisdiction/disposition report, mother related a number of incidents in the past when father became extremely angry. In 2002, D.F. was born premature and was in the hospital for three months. Security had to escort father out of the hospital several times during that period because of his violent behavior towards nurses. In 2005, when mother was out of town, father showed up at her home and forcefully took the children from their babysitter after yelling at and threatening her. Mother heard the incident over the phone as it took place. In 2007, father picked up the children for his visit and then followed mother to a church event. He followed her around the event, yelling at her and anyone who was

¹ All further statutory references are to the Welfare and Institutions Code.

talking to her. Eventually, a church friend of mother's interceded and was able to convince father to leave. Father left the children with mother. He sped out of the church parking lot and almost hit children walking through the lot. The whole scene lasted approximately an hour. In 2008, father came to mother's home in the middle of the night obviously intoxicated. He broke the gate to her courtyard entry way and kicked in the front door when mother would not let him in. The noise woke up D.F. Mother called 911, and father left when he realized she had the police on the phone. In 2009, as mother and the children were coming home from a church retreat in the mountains, father called and was angry because he could not reach them all weekend while they were at the retreat. He was yelling and said he was heading for mother's house. Mother took the children to a park instead of going home. When she eventually returned home after a few hours at the park, she found the gate to her courtyard broken, her garage trashed, and a tree torn down in the courtyard. Mother moved in 2009 and did not tell father her new address because he would repeatedly threaten to show up at all hours of the night, and several times she hurriedly packed the children up and fled in the middle of the night.

In 2010, mother took the children to Disneyland with some family and friends, including a male friend. Father became angry when he heard her male friend went, and he told mother he was going to kill any men she had around the children. A few days later, father phoned the male friend at work and threatened to kill him. On Christmas Eve in 2010, when father called to speak to the children, he became angry when he heard people in the background. He told the children to put mother on the phone and proceeded to yell at her. She hung up and he kept calling back. The next day when they met to exchange the children, father tried to explain his behavior and grew angry again. Mother tried to drive away, and father kicked her car, hit the driver's side window with his elbow, and hit the driver's side mirror and knocked it off. The children were in father's car and witnessed all of this. They were crying and screaming.

D.F. told DCFS that father was a very angry person who yells at people all the time. He described one incident when father yelled at a grocery store cashier in front of the children and caused a scene. D.F. said he and L.F. were "afraid and embarrassed." He said

father thought he had reasons for yelling, but they usually made no sense to D.F., and he was afraid of father. He also reported the incident when father got angry and kicked down mother's door. He always felt worried and, in particular, he was sometimes worried that father would hurt someone or hit and damage mother's car again. He said he sometimes wet himself because of his worry and because he was afraid of father, and he ground his teeth. Mother reported that D.F. also had "number two" accidents during the day. L.F. said she still had nightmares and was very anxious when she thought about father, and she also ground her teeth. Every time she saw father, she was scared.

DCFS's report noted that father had a criminal history, including convictions for carrying a loaded firearm in a public place in 1995, disorderly conduct and soliciting a lewd act in 1999, and vandalism in 2008. Father denied that he was violent or had a problem with anger and he became upset with mother only when she disobeyed the court order for visitation and did not bring the children for their visits. He felt that he was the victim in that mother had decided to exclude him from the family. During one visit monitored by DCFS, father became angry when the children told him they were going on vacation with mother and her male friend. Father raised his voice and began ranting to the monitor about it. The children became upset. It took father approximately 10 minutes to calm down. During another visit, father became upset with the monitor when the two were talking about the case, and he began yelling at her in front of the children and other people at the park. There were school supplies on the table father had brought for the children, and he swept all the supplies off the table and onto the ground in his anger. The monitor was forced to end the visit early. Father cursed at the monitor and made comments about her work ethic. The monitor told father that she would no longer monitor visits for him. There had been several previous occasions when he had become very upset with her on the phone and yelled at her to the point that she felt physically ill.

At the adjudication hearing on October 27, 2011, both children testified in chambers. During D.F.'s testimony, the court was advised by staff that father was "in and out of his seat, stomping around, [and] asking to talk to his attorney." The court told father that he needed to remain in his seat and be silent during the proceedings, and once the attorneys

were finished questioning D.F., the court would send his attorney out to speak with him. Father “stomped out of the courtroom” after that.

The court sustained the petition and declared the children dependents of the court. The sustained allegations under section 300, subdivisions (a) and (b), read as follows: “The children, [D.F.] and [L.F.]’s father, Donavon [*sic*] F[.], has a history of engaging in violent verbal altercations and causing physical damage to property in the children’s presence. On a prior occasion, the father vandalized the mother’s car, breaking the car’s mirror. On a prior occasion, the father broke the children’s home’s door down while the children were at home. On prior occasions, the father has repeatedly threatened to hurt the mother and the children in the children’s presence. The children are afraid of the father due to the father’s conduct towards the children’s mother. Such violent conduct on the part of the father against the mother endangers the children’s physical health and safety and places the children at risk of physical harm, and danger.” The sustained allegations under section 300, subdivision (c), read as follows: “The children [D.F. and L.F.]’s father, Donavon [*sic*] F[.] emotionally abused the child[ren] by engaging in loud verbal altercations and physically damaging property with the children’s [mother] in the child[ren]’s presence. On prior occasions, the father has threatened to kill the mother in the child[ren]’s presence. The father’s conduct towards the mother resulted in the child[ren] exhibiting [e]ncopresis [or nightmares], anxiety, [and] Bruxism (clenching/grinding of teeth). Such emotional abuse of the child[ren] on the part of the father places the child[ren] at substantial risk of suffering serious emotional damage as evidenced by anxiety and sadness.”

The court ordered father to participate in a domestic violence program that included anger management as well as individual therapy with a licensed therapist. It ordered monitored visits for father in the DCFS office upon verification that he was attending an anger management program. The court set a six-month review hearing for April 26, 2012.

In the status report for the six-month review hearing, DCFS noted that the children had attended therapy since May 2011. Their therapist reported in October 2011 that they were being treated for symptoms of adjustment disorder with anxiety. Both children expressed a desire in discontinuing visits with father while he exhibited anger management

problems. They both expressed fear and concern about being in father's presence. They had been meeting with their therapist on a weekly basis and were making progress towards set goals. Mother reported that the children exhibited unusual behavior leading up to visits with father, including arguing and being unable to sleep. Mother had started telling the children about visits on the day of the visits so that they would not experience these behaviors. When they returned from visits with father, the children were quiet and did not want to talk about visits. The children were reportedly experiencing relief from their symptoms due to the sporadic nature of their visits with father. The children stopped therapy in December 2011.

Father had participated in 14 classes for anger management and was completing his assigned homework. Father's progress report noted that father's participation was satisfactory. The facilitator reported that he was receptive and highly focused during the sessions. The progress report contained a checkbox for "no further participation recommended," and one for "continued participation recommended." Neither box was checked.

Father had three visits with the children since the adjudication hearing. The first was monitored by maternal grandfather and no negative incidents were reported. The children said they had a great time. The second was monitored by the children's adult half sister. She reported father was appropriate and the children had a good time.

Mother was ready for the case to be closed and for the children to continue to have monitored visits with father. The children were happy therapy was over because they thought it was "boring." L.F. stated she would like to have more visits with father "when she wants to." D.F. stated he likes to visit with father. DCFS felt that the risk of abuse or neglect was still high if the children were to reunify with father because he was only in partial compliance with the case plan -- he had not completed a domestic violence program, he had not started individual therapy with a licensed therapist, and he only was in partial compliance with his anger management program. DCFS initially recommended that family reunification services for father continue for another six months. It changed its recommendation to a termination of family reunification services for father and a

termination of court jurisdiction, with a family law order granting sole legal and physical custody to mother and monitored visitation for father until he could prove to a family law court that he had completed pending court ordered programs. DCFS changed its recommendation because of father's minimal participation and visitation efforts since the October 2011 adjudication hearing. DCFS recommended that visitation occur once a week for two hours in a neutral setting.

At the review hearing, father requested a contested hearing on the exit order, given DCFS's recommendation. Father wanted to have twice monthly, unmonitored overnight visits. The court set the contested review hearing for June 1, 2012. Before the contested hearing, father and the children had one more monitored visit that went well. Father testified at the contested hearing that his anger management class was one-on-one, and he had learned, "Even if you're right, there still needs to be some form of control." He further stated: "As far as arguing in front of the kids, that is never good As I stated, I'm passionate with my children. But as I stated, in anger management class I learned that even though I'm right and should want to talk to my kids all week and every night and every day, I don't have a right to get angry and argue in front of my children and create that kind of environment. So, on that case, I was wrong and know that just can't happen." Father felt "there [was] no need to apply" what he had learned in his class during his visits with the children. Father stopped after the 14th class and felt that he had gone "way past" what the court had asked of him. He stopped because even before he started counseling, he knew his behavior was not a good thing. He said, "I don't need a stranger to tell me arguing with their mother in front of the children is a bad thing. I don't think any intelligent person needs a therapist to explain that would not be good for their children. But as I stated, I found it to be useful and got a lot out of it and just continued on."

The court terminated jurisdiction. The court found that father had not verified he made substantial progress in addressing the issue that brought the children before the court. It noted that 14 sessions of his anger management program was clearly "good," but at the same time, father thought he did not need anyone to tell him that arguing with mother was not a good thing. The court felt the most significant evidence was the facilitator's progress

report, which said father’s progress was satisfactory, but it did not check the box for “no further participation recommended.” It also felt it was significant there was no narrative of father’s progress from the facilitator.

The court granted full legal and physical custody to mother. It ordered that father should have monitored visits at least once a week. It specifically noted that it was not placing a limit on the number of visits, only setting a minimum number. The court also noted that maternal grandfather and adult half sister, both of whom had previously monitored, were approved monitors. Because both of them were not readily available, the court ordered that mother and father could mutually agree on any other monitor. Mother suggested two paternal relatives who resided in Los Angeles County to be monitors. If the parents could not agree on a monitor, the court ordered a professional monitor to be used. The parents would share the cost of a professional monitor once a month, and any further private monitoring for the month was to be funded solely by father.

As the court was making its findings, father had an outburst, stating, “You’ll all be happy if I just move back east,” and “You want to keep my kids, keep them. I’m a good father. Only reason I’m here is you all fighting against me to see my own kids. [¶] . . . Keep them. Bullsh--.” The court asked father to step out, which he did with the assistance of the courtroom deputies. Father filed a timely notice of appeal.

DISCUSSION

1. The Juvenile Court Did Not Err in Ordering Monitored Visits

Father argues that the court was wrong to require monitoring altogether. He contends monitoring was unnecessary. We do not agree the court erred.

“‘When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation. [Citations.] 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. [Citation.]’” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799; see also § 362.4.) “[T]he juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody

determinations based on the best interests of the child without any preferences or presumptions.’” (*In re Chantal S.* (1996) 13 Cal.4th 196, 206.)

We review a juvenile court’s decision to terminate dependency jurisdiction and issue 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.) We also review the juvenile court’s visitation orders for abuse of discretion. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48.) We “‘must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court’s ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.’” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) Father contends the court based its order for supervised visits on the implied factual finding that unsupervised visits would subject the children to a risk of harm, and we should therefore apply the substantial evidence standard of review appropriate for factual findings. Regardless of which standard we apply, we hold that the court did not err.

Father had a long history of angry outbursts. Mother detailed incidents dating back to 2002, when D.F. was born. These outburst always included yelling at others, usually mother, and sometimes included destruction of property. These outbursts often occurred in front of the children, who had grown afraid of him and evidenced symptoms of anxiety by the time DCFS filed the petition in this matter. Even after the court detained the children based on father’s behavior, he continued to have outbursts during his monitored visits with them. One such outburst directed at his monitor led her to declare that she would no longer monitor visits for him. Father also had an outburst in court during the adjudication hearing. Still, father asserts that because he attended 14 sessions of anger management and had four incident-free, monitored visits in six months, and because the children enjoyed their visits and showed no more symptoms of anxiety by June 2012, the court erred in ordering monitored visits. But as the court noted, there was very little information from his anger management facilitator, other than his communication that father’s participation was satisfactory. The facilitator did not include a narrative on father’s progress and did not

indicate whether father needed to continue in his anger management program. Moreover, father's testimony about what he learned in anger management was not entirely positive. Father learned that even when he was "right," he needed to control his anger. But he also said he did not need a "stranger" to tell him arguing in front of the children was bad, suggesting that he did not believe he needed anger management assistance. Further, he did not feel he needed to apply what he learned in his visits with the children. This was manifestly not the case, as there were numerous instances when he became angry with mother or others in front of the children. And, if there was any doubt about whether father had come to grips with his anger management problem, that was dispelled when he ended the contested review hearing by cursing at the court and being escorted out of the courtroom.

Father also contends that the order for supervised visits was an abuse of discretion because it was not a rational way of addressing "the negative effects of a contentious custody dispute." We disagree. Father's notion that this matter amounts to nothing more than a "contentious custody dispute" is insupportable. The evidence showed not just that he argued with mother about visitation, but that he has a much broader problem with anger. First, even with mother, he was angry not about visitation alone. His anger often related to mother's male friends or the children being around her male friends. He told mother he would cut off the head of any man she was seeing. The children knew of this threat. He became angry when the children went to Disneyland and were going on vacation with her friend. Regarding the vacation in particular, he found out about the trip from the children and became angry about it during their visit. Second, his anger was not always directed at mother. He caused a scene at the grocery store by yelling at a cashier in front of the children. He yelled at the police officer who attempted to intervene at one custody exchange. He yelled at the children's babysitter, who obtained a restraining order against him. Having a monitor plainly addresses father's anger. The monitor eliminates the need for the parents to have contact in exchanging the children, thereby eliminating the risk that father will become angry with mother in front of the children. Additionally, the monitor may ensure that father does not question the children about mother's love life or other topics

that set him off, and when he does by chance become angry, the monitor may help diffuse the situation, as she did when father found out about the vacation. Further, the monitor is there to observe and report on father's interactions with the children and his progress, which may ultimately be to father's benefit if the visit goes positively.

“[T]here are situations in which a juvenile court may reasonably determine that continued supervision of the minor as a dependent child is not necessary for the child's protection, and at the same time conclude that conditions on visitation are necessary to minimize, if not eliminate, the danger that visits might subject the minor to the same risk of physical abuse or emotional harm that previously led to the dependency adjudication.” (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 204.) In such situations, section 362.4 authorizes the juvenile court to issue appropriate orders regarding visitation. (*In re Chantal S.*, at p. 204.) This is one of those situations. Sufficient evidence supported the court's determination that, at that time, unmonitored visits were not in the best interests of the children, and therefore the court's determination also was not an abuse of discretion. Father is free to file appropriate papers before the family law court when he has sufficient evidence that he has completed an anger management program, including individual therapy, as the juvenile court ordered. (*In re John W.* (1996) 41 Cal.App.4th 961, 973; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30 [§ 362.4 authorizes court to make visitation orders that will be transferred to a family court file and remain in effect until modified or terminated by that court].)

2. The Court Did Not Undermine Its Order for Weekly Visits by Requiring Monitoring

Father contends that the court abused its discretion because no rational court would make an order for weekly visits and then impose a monitoring requirement that “almost certainly” made weekly visits impossible. Father argues this was so because the two pre-approved monitors, maternal grandfather and an adult half sister, were not available consistently, and father could not afford a private monitor. We disagree with father's premise that the monitoring requirement somehow undermined the order for weekly visits.

Father would have us believe that the court ordered only two options -- one of the pre-approved monitors, or a private monitor. But that was not the case. The court

recognized the two pre-approved monitors might not be available. For that reason, it ordered that mother and father could also mutually agree on any other monitor. This person did not have to be a private monitor, and mother even suggested two of father's relatives who lived in the county. There was no evidence mother would fail to consent to monitors other than her two relatives. Far from undermining its order for weekly visits, the court was attempting to make weekly visits possible. It did not abuse its discretion.

3. The Court Did Not Err in Failing to Specify a Minimum Duration for Visits

Father lastly contends that the court should have specified a minimum duration for his visits, and in not doing so, it has allowed mother to effectively veto any meaningful visitation. We disagree.

“The juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation The court may, however, delegate discretion to determine the time, place and manner of the visits. Only when the court delegates the discretion to determine whether any visitation will occur does the court improperly delegate its authority” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.)

The court's order does not run afoul of these principles. The court ordered that visits should occur weekly. It did not abdicate its authority to determine whether any visitation should occur at all. Moreover, even though the court could have delegated the “time, place and manner of the visits,” on its face, the order did not delegate authority to mother to determine the duration of visits. By saying nothing about the issue, the court impliedly left the issue to *both* parents. There is no basis in the order for mother to assert that she may unilaterally determine the duration of visits.

Father relies on *In re T.H.* (2010) 190 Cal.App.4th 1119. That case is distinguishable. The mother in that case objected to the father having any visitation at all. (*Id.* at p. 1123.) The exit order provided for supervised visitation, “but only upon the ‘agreement of the parents.’” (*Ibid.*) The court of appeal reversed the visitation order, noting that “[a]s the custodial parent of the children, mother could conceivably agree to only one visit a year or less without violating the letter of the court's order. This is more than simply

a delegation of the authority to set the ‘time, place and manner’ of the visitation -- it effectively delegates to mother the power to determine whether visitation will occur at all.” (*Ibid.*) Mother here has never objected to father having visitation altogether and has instead consistently provided for visitation, even when she felt terrorized by father. More importantly, the order here did not permit mother to withhold her consent to visits in the manner of the *In re T.H.* order. The court did not abuse its discretion.

DISPOSITION

The order is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.