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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JASMINE U., a Person Coming
Under the Juvenile Court Law.

B254222

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK98636)

Plaintiff and Respondent,

v.

ALFRED U.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Teresa Sullivan, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

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INTRODUCTION

Father, Alfred U., appeals from the juvenile court's orders taking jurisdiction over his four-year-old daughter Jasmine U. (Welf. & Inst. Code, § 300, subd. (b)),¹ but declining to remove the child from mother's custody (§ 361, subd. (c)(1)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *family history*

Jasmine's parents are mother, Kimberly P., and father who is mother's live-in boyfriend. Mother has two sons, Richard S. and Jeffrey P., who are not parties to this appeal. The Department of Children and Family Services (the Department) received a report in July 2013 that mother had assaulted father by slapping and pushing him. The caller stated that mother's breath smelled of alcohol. According to father, mother tried to sneak out of the house with Jasmine and Richard with a plan to panhandle their way to Arizona or Oregon. Jeffrey reported mother was planning to go to Utah to " 'end it.' " Mother returned as soon as she realized she did not have baby supplies, food, or clothing. Jeffrey grabbed his siblings from the car and gave Jasmine to father. Irate, mother began punching father in the face. Jeffrey called law enforcement. Jasmine and Richard witnessed the incident. Mother was previously arrested for battery on a spouse and is under a court order to stay away from father and Jasmine.

A year earlier, mother was convicted of driving under the influence of alcohol. Seven-year-old Richard was with her, holding a fast-food cup filled with beer. Mother suffers from bi-polar disorder, post traumatic stress disorder, and depression. She also has a history of domestic violence. She reported that father is not a threat to the children. She stated both that she wanted father to remain in her house and care for the children, and that she is waiting for father to move out of her house.

According to father, mother tried to flee California a week before the most recent incident, and was gone for six days. Mother hits him but is not "physical with the

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

children.” He denied ever striking mother. The police have been to the house “a few times” because he and mother argue. Notwithstanding that mother is “always” threatening to take Jasmine and leave the state, father never sought legal custody of his daughter. Nor did he seek a restraining order, although this is not the first time mother has been physical with him. Father’s reasoning was that they lived in mother’s mobile home and he did not “feel [it was] right.” Father and mother planned to dissolve their relationship once father is approved for social security benefits. Until then, he cannot afford to move. He stated he understood that Jasmine would remain with mother and *the parents* “*would work out a visitation schedule.*”

The court detained Richard and ordered Jasmine released to father pending the next hearing. The Department filed a petition alleging (1) the parents’ history of violent altercations in the children’s presence; (2) mother’s history of substance abuse and emotional problems escalating to physically aggressive behavior, and her criminal history that includes domestic battery and driving a vehicle under the influence; and (3) father’s failure to protect the children from mother’s behavior. After negotiations, all allegations concerning father were stricken from the petition.² Father then argued, as he was non-offending and Jasmine has not been affected by mother’s problems, that the juvenile court should dismiss the petition. The court scheduled a contested adjudication hearing.

² The juvenile court sustained the petition’s allegation that “The children’s *mother* has a history of substance abuse and is a recent abuser of alcohol. The *mother* has a diagnosis of PTSD and major depression and a history of escalating to physically aggressive behavior when drinking alcohol. The *mother’s* criminal history includes a conviction for Domestic Battery and Driving Under the Influence of Alcohol. Such conduct by the *mother* places the children at substantial risk of physical harm.” (Italics added.)

2. *post-detention*

a. *mother*

Mother entered Tarzana Treatment Centers and enrolled in classes. She produced six negative drug-test results, but once failed to appear for a test. She was reportedly doing very well, and was dedicated to the process and to staying focused on her goals. In September 2013, mother entered a sober living facility and so the juvenile court ordered the Department to assess whether Richard could live with her there.

By early December 2013, the Department found, as mother was actively participating and compliant in her recovery program, that Richard could be placed with her in the sober living facility on the condition mother remained there in full compliance with her court ordered programs and continued to test clean for drugs and alcohol.

b. *father*

In late November 2013, the social worker went to father's house to take the children to visit mother. When she arrived, Jasmine was wearing the same clothing from the previous day and her hair was not combed. Richard appeared well-groomed, but he "had a very bad odor" and complained that he was cold. Richard revealed that father treated him and Jasmine "bad," but would not give details.

Attached to the Department's December 4, 2013 interim report was a letter dated November 25, 2013 from Pamela P., a child advocate and mother's Alcoholics Anonymous sponsor. Pamela reported that the children were poorly groomed at the courthouse with father. Father admitted he had not bathed them. Jasmine's waist was irritated from the diaper adhesive and she had a dirty ring on her stomach along the diaper rim. Pamela gave Jasmine a foam doll to distract the child, but father tore the doll's head from its body. Pamela described how father became irate at mother's testimony, and, with the children in tow, confronted mother in the courthouse parking lot, shouting "belligerent vulgarities, pointing his left index finger towards [mother]" and threatening to prevent mother from talking to her children again. Although Pamela tried to calm him down, father "continued escalated in anger, walk[ing] viciously towards [mother]" while yelling. Believing father intended to cause mother bodily harm, Pamela

stepped in between the two. Richard began to cry. Pamela concluded that father was “capable of causing bodily harm to [mother] and emotional harm to both children.” Although the children became upset, Pamela reported that father had no regard for their emotional well-being. He also demonstrated “extreme[ly] poor parental skill” by failing to see to the children’s daily hygiene needs.

At the adjudication hearing in December 2013, mother pled no contest to the petition and *father submitted to the juvenile court’s jurisdiction*. The court sustained the petition finding the children to be described by subdivision (b) of section 300. The court ordered reunification services for mother. The court awarded mother unmonitored visitation with Jasmine based on the report of mother’s progress in her case plan and her success in her sober living facility.

Turning to the disposition, the court admitted into evidence, among other things, the Department’s December 4, 2013 interim report with Pamela’s letter attached. At the close of the hearing, the court placed Richard in mother’s custody and Jasmine in both parents’ custody under the Department’s supervision, explaining that it was maintaining jurisdiction to “make sure that the children are safe.” The court ordered the Department “to work with both U[.] father and mother to have a written visitation schedule for Jasmine.” Father’s appeal ensued.

CONTENTIONS

Father contends the juvenile court (1) should have dismissed the petition, (2) erred in failing to remove Jasmine from mother’s custody, and (3) erred in leaving the visitation details to the Department to arrange.

DISCUSSION

1. *The juvenile court did not err in rejecting father’s request to dismiss the petition in favor of family law jurisdiction.*

Father contends based on *In re A.G.* (2013) 220 Cal.App.4th 675, that the juvenile court erred in refusing to dismiss the petition because he is nonoffending and Jasmine is not at risk of harm in his custody, with the result this case belongs in the family court.

A.G. is distinguished. There, as soon as the juvenile court sustained the petition and removed the children from the mother's custody based on her severe mental illness, the court granted the father sole legal and physical custody on the ground there was "no evidence these [minors] are at risk in [the father's] custody." (*In re A.G.*, *supra*, 220 Cal.App.4th at p. 682.) The court then terminated its jurisdiction and filed its custody order in the family law court. (*Id.* at p. 682.) The appellate court affirmed explaining that while the mother was unable to care for the children, the father had always been "capable of properly caring for" them. (*Id.* at p. 683.)

Here by comparison, the juvenile court could not reasonably conclude from this record that father is capable of properly caring for Jasmine absent court supervision. Rather, father was named in the petition as originally alleged and only removed from the petition after negotiations. The record contains evidence that father was not taking appropriate care of Jasmine. Both the social worker and Pamela independently found Jasmine to be unkempt and ungroomed. Richard smelled and told the social worker that father treated the children badly. Pamela related an event in which father displayed severe anger and a lack of appropriate control, which conduct frightened the children. From this record, the court could reasonably conclude that its continued supervision was required.

Not only has father failed to demonstrate he is "capable of properly caring for" the children (*In re A.G.*, *supra*, 220 Cal.App.4th at p. 683), but he has failed to demonstrate his ability to protect them. "[A]lthough the prospect for the nonoffending parent to avoid the court supervision is not totally hopeless, he or she must go to the extraordinary length of pursuing all judicial protections available in the civil and criminal courts in order to establish his or her zeal, as well as ability, to protect the minor. Lesser measures have not been enough to reassure the Court of Appeal that the welfare of the minor can be protected without the aid of the court's juvenile dependency jurisdiction." (*In re V. M.* (1987) 190 Cal.App.3d 753, 757.) The record reflects father's full knowledge of the dangers mother posed to the children and yet he continually allowed mother to drive while drinking with Richard in the car; twice allowed mother to try to leave the state with

the children; and repeatedly engaged in violent altercations with mother in front of the children. In the latest incident leading to the instant petition, it was Jeffrey or mother, but *not father*, who called the police. Father has declined to commence proceedings in the family law court, stating he did not feel it was right as he is financially dependent on mother. Father's apathy in caring for and protecting the children assures neither the juvenile court nor this court that the children can be protected without juvenile court supervision.

Father contends this case should be referred to family law court. However, referral is only appropriate when both parents are fit and capable of raising the children. "The two courts have separate purposes. The family court is established to provide parents a forum in which to resolve, inter alia, private issues relating to the custody of and visitation with children. In that setting, parents are presumed to be fit and capable of raising their children. [Citation.] The juvenile court, by contrast, provides the state a forum to 'restrict parental behavior regarding children, . . . and . . . to remove children from the custody of their parents or guardians.' [Citation.] . . . [A]lthough both courts focus on the best interests of the child, '[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases' decided in the juvenile court. [Citation.]" (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) This case appropriately remains in the juvenile court as mother continues to pose a risk to the children, and father has submitted to juvenile court jurisdiction but failed to demonstrate his ability to protect Jasmine.

2. *The juvenile court did not err in fashioning its visitation order.*

Father contends the juvenile court erred in placing Jasmine in the custody of both parents. He focuses on mother's "flight risk" and her long history of referrals and interactions with "child welfare authorities" to argue that the juvenile court erred in failing to remove Jasmine from mother's custody under section 361, subdivision (c)(1) and failing to place the child with him.

However, the juvenile court's findings sustaining the petition are not at issue here. "A finding of parental abuse is not sufficient by itself to justify removing the child from

the home. [Citations.]” (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 811.) Rather, after declaring a child a dependent, the juvenile court may only remove a child from offending and nonoffending parents by following section 361, subdivision (c). That statute reads: “A dependent child *may not* be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, *unless the juvenile court finds clear and convincing evidence* of any of the following circumstances listed in paragraphs (1) to (5), inclusive . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c) & (c)(1), italics added.) “[O]ur dependency system is premised on the notion that keeping children with their parents while proceedings are pending, *whenever safely possible*, serves not only to protect parents’ rights but also children’s and society’s best interests.” (*In re Henry V.* (2004) 119 Cal.App.4th 522, 530, italics added.)

Here, mother has taken significant steps to address the conduct that caused the jurisdiction in the first place. By the time of the disposition hearing, mother was complying with her case plan, living in a sober community, and had had custody of Richard for a month without incident. Thus, the juvenile court could reasonably have concluded that Jasmine’s “physical health can be protected without removing [her] from [mother’s] physical custody.” (§ 361, subd. (c)(1).) Stated otherwise, because mother was successfully complying with her case plan, the juvenile court necessarily did not find clear and convincing evidence that mother posed a substantial danger to Jasmine’s physical health, safety, protection, or physical or emotional well-being if the child were returned to mother’s custody. (§ 361, subd. (c) & (c)(1).) Maintaining joint custody was the only reasonable order.

3. *The juvenile court did not err in ordering the Department to work with the parents to fix a visitation schedule.*

Father contends that the juvenile court erred by leaving to the Department the responsibility of working out a visitation schedule. To the contrary, “[i]n a dependency proceeding, the juvenile court has the power and responsibility to define a noncustodial parent’s *right to visit* with his or her child after the minor has been adjudged a dependent child of the court and has been removed from parental custody. [Citations.] This does not mean the juvenile court must specify all the details of visitation. The statutory scheme contemplates that the . . . county welfare department (§ 272) has discretion in recommending and implementing visitation ordered by the court. . . . ‘The juvenile law system envisions a cooperative effort between the . . . [county welfare department social worker] and the juvenile court. . . . [¶] The Department . . . acts as an arm of the court in the best interests of the minor. . . . [¶] It [is] within the Department’s role as a representative of the state and as an arm of the court, as empowered by the Legislature, to exercise limited discretion in the administration of the juvenile court’s visitation order.’ [Citation.] [¶] Thus . . . the juvenile court may delegate to the . . . social worker the *responsibility to manage the details of visitation, including time, place and manner thereof*. [Citations.] . . . [T]he ministerial tasks of overseeing visitation as defined by the juvenile court ‘can, and should, be delegated to the entity best able to perform them, here the department of social services.’ [Citation.] ‘Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.’ [Citation.] Only when a visitation order delegates to the . . . county welfare department the absolute discretion to determine *whether* any visitation occurs does the order violate the statutory scheme and separation of powers doctrine. [Citations.]” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373 - 1374, italics added, fn. omitted.)

Here, the juvenile court never removed Jasmine from either parent’s custody with the result that the parents had joint custody of the child and the court was under no obligation to determine the specifics of visitation. Notwithstanding, the juvenile court

did not give the Department complete discretion to decide whether visitation should occur at all. The court exercised its judicial authority and ruled that mother had a right to unmonitored, overnight visits, and assigned to the Department the responsibility to work with the parents to arrange the details of time, place, and manner of visits. (*In re Moriah T.*, *supra*, 23 Cal.App.4th at p. 1375.) Otherwise, father told the social worker in May 2013, that he understood that the parents would work out a visitation schedule. He can hardly be heard now to complain that the court ordered just that.³

³ Father also contends that the juvenile court did not specify where Jasmine was to live. However, the court's orders make it clear that the child was to live with both parents and the Department was to work a visitation schedule out with the parents.

DISPOSITION

The orders appealed from are affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.