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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R. M. et al., Persons Coming Under
the Juvenile Court Law.

B258619
(Los Angeles County
Super. Ct. No. CK96259)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T. B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Margaret S. Henry, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother T. B. appeals from the order entered on the termination of this dependency case in which the juvenile court awarded joint physical and legal custody to mother and the respective fathers of her two children. Mother does not present any argument about joint legal custody but contends that the court erred by awarding joint physical custody with equal time to her and the fathers. According to mother, she should have received primary physical custody with the fathers having visitation every other weekend. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Referral, Dependency Petition and Detention

On October 17, 2012, the Department of Children and Family Services (DCFS) received a referral that mother's son R. M., then eight years old, had "disclosed that his mother slapped him in the face last week and she continued to hit him as he was on the floor with her fist. [R.] sustained marks and bruises on his face and it is stated that he still has them. After child was hit by mother, he called his father and asked to be with him. Father contacted child's mother and they agreed that child will be residing with him. Child is with father." R.'s father reported that the paternal aunt and R. had informed him about the incident. R. told a DCFS social worker that "mother punches and slaps him often, leaving bruises on his body." He was afraid of mother and wanted to stay with his father. Another social worker observed marks and scars on R.'s shins, and R. stated that the marks were "from a belt buckle done by his mother about three to four weeks ago." A forensic examination of R. led to a suspicion of physical abuse. Mother acknowledged hitting R. with a belt about six months prior and using corporal punishment approximately every six months but otherwise said the reports were false. An examination of R.'s younger sister Hazel R., then 17 months, did not reveal any signs of child abuse, and Hazel's father reported that he had never seen mother physically discipline either child. DCFS placed Hazel with her father.

On November 1, DCFS filed a Welfare and Institutions Code section 300¹ petition under subdivisions (a), (b) and (j) alleging, as interlineated, that “[i]n October of 2012, . . . mother . . . inappropriate[ly] physically disciplined . . . [R.][] by striking the child’s face. In September of 2012, the mother struck the child with a belt, inflicting marks to the child’s legs. On prior occasions, the mother struck the child with belts and the mother’s fists, inflicting marks and bruising to the child’s body. The inappropriate physical discipline of the child by the mother endangers the child’s physical health and safety and places the child and the child’s sibling, Hazel, at risk of physical harm, damage, danger and physical abuse.”

At the detention hearing, also on November 1, the juvenile court found a prima facie case for detaining the children and released them to their respective fathers. The court ordered DCFS to provide family maintenance services to the fathers and family reunification services to mother, including referrals for individual counseling and anger management and parenting classes. It ordered monitored visitation for mother.

2. *Jurisdiction, Disposition and Termination*

The December 6 jurisdiction and disposition report included an interview with R. in which he stated that he initially had been afraid to tell the truth about mother’s treatment of him because she “will get mad at him and hit him.” R. said that, “‘Sometimes I don’t do anything wrong and she yells at me or socks me or slaps me. She hits me with the belt too. . . . I have a scar from the buckle of the belt and sometimes when she socks me[,] there is a bruise where she hits me.’” R. wanted to visit mother but not live with her. He wanted to live with his father. He thought mother was “‘mean and scary.’” He said, “‘It’s always dark. She doesn’t turn on the lights at night and I’m scared to be there when she leaves me and Hazel alone. It’s not safe.’” R. reported that mother “‘pops Hazel on the hand when she cries or does something. My mom yells at her too.’” Mother now acknowledged hitting R. twice with a belt, not with the buckle, but denied other conduct. Both fathers indicated they wanted full custody of their child.

¹ Statutory references are to the Welfare and Institutions Code.

R.'s father had concerns regarding mother's physical discipline of R. and also her inattention to his need for medical and dental care. Hazel's father reported that mother would show up at his house at night unannounced "when she should be in the house with her child protecting and watching over her." R. had behavioral problems at school and required dental work, as he had 13 cavities.

At the jurisdiction and disposition hearing, also on December 6, the juvenile court sustained with interlineation the allegations against mother under section 300, subdivisions (a), (b) and (j). The court declared R. and Hazel dependents of the court, removed them from mother's custody and ordered them placed with their respective fathers. It continued to order DCFS to provide family maintenance services to the fathers and family reunification services to mother, as well as monitored visits for mother. It gave DCFS discretion to liberalize mother's visits and also ordered sibling visits.

In a June 6, 2013 status review report, DCFS reported that mother had complied with all of the orders in connection with family reunification services. Mother, however, "badgered [R.] to say he wants to come home to live with [her]," causing him "stress and confusion." R. "disclosed that mother and maternal grandmother have frequently asked the child to inform [the social worker] that he wants to live with his mother because his father does not have enough money to take him out and buy things for him." An interim review report from June 27 indicated that R. was not ready to participate in conjoint counseling with mother. Mother continuously reported that she wanted her children returned to her care, but stated several times to the social worker, "[Y]ou don't know how bad R. is." (Boldface omitted.)

In a November 25 status review report, DCFS reported that Hazel was residing alternate weeks with mother and her father. Mother had concerns about Hazel's returning from her father's care with a diaper rash and not bathed. DCFS reported concerns about R.'s father, who had moved several times since July and once did not tell DCFS where he was living. R.'s father also exhibited anger issues. R.'s father moved R. to the paternal aunt's home and agreed to provide some financial support but failed to do so. At a section 364 hearing on December 5, the juvenile court permitted R. to have overnight

visits at the maternal grandmother's house with mother and Hazel present. The court also ordered that Hazel spend Christmas with mother, but Hazel's father did not comply with the order. The court granted mother additional visits to compensate for the lack of the Christmas visit.

A March 6, 2014 interim review report indicated that R. was living with the paternal aunt, as his father was homeless, and Hazel was splitting time between the homes of mother and her father. The paternal grandmother also appeared to stay with R. R. said "that he would like to live with his father but his father does not have his own home. However, R. believes that his father will get one when he is ready. He also stated that he would like to stay with mother . . . and his sister on the weekends." R.'s father did not fully comply with certain orders of the juvenile court regarding R.'s needs. DCFS reported concerns with Hazel's father based on his failure to comply with the order for the Christmas visit, his criminal history and his use of a bed with no railing for Hazel. Hazel's father "was uncooperative and oppositional" with the social worker. Mother cooperated with DCFS, continued her therapy and completed a parenting class with respect to Hazel. At a March 6 progress hearing, the court granted mother unmonitored visits with R. starting at one hour a time. The court ordered DCFS to work out a schedule for Hazel with both parents and address termination of jurisdiction.

In a June 5 status review report, DCFS indicated that R. was residing with the paternal aunt and paternal grandmother. Hazel was residing alternate weeks with mother and her father. Mother completed her required services and was in conjoint counseling with R. R. began overnight visits in May with mother and Hazel and "made it clear that he would like to continue living with both his mother and father." R.'s father told the social worker that he had secured an apartment but did not provide documentation. DCFS received a referral regarding R.'s paternal grandmother as to R. and was investigating it. An open referral also existed on Hazel's father to ensure that the provisions for Hazel at his home were sufficient and that he was rendering adequate care.

On June 12, DCFS filed a section 387 petition as to R. alleging that the paternal grandmother had physically abused him and his father had failed to protect him, as well

as that his father had a history of illicit drug use and was a current user of marijuana, being under the influence at times while R. was in his care. R. was staying with mother for an extended visit. At the detention hearing on the petition, also on June 12, the juvenile court released R. to his father and ordered that R. not be left alone with the paternal grandmother. Mother was to continue unmonitored visits with R.

In the July 15 jurisdiction and disposition report on the section 387 petition, DCFS indicated that R. was residing with his father. R.'s father recently married and rented a home in which R. had a bedroom. Mother was consistent in her visits with R. and wanted "her son with her full time and [to] allow weekend visits with [the father] and she would ensure that R. receives the help he needs to bring up his failing grades[,]" which mother attributed to R.'s living with father. R.'s father was following the order not to leave the child alone with the paternal grandmother. The father did not believe his marijuana use, due to back pain, interfered with his ability to care for R. and said he did not smoke in R.'s presence. R. knew his father smoked marijuana. R. expressed that he wanted "to have his time split equally between each parent." A further evaluation of Hazel's father's home revealed proper living arrangements for Hazel.

On July 17, the juvenile court dismissed the section 387 petition, as the allegations had not been substantiated. R.'s father provided a medical marijuana card. DCFS reported on July 25 that R. "has been consistent with his choice on wanting to live with both Mom and Dad. Both parents' homes have been assessed and it appears to be in the child's best interest for the case to be closed with a family law order in place Furthermore, [DCFS] respectfully recommends that the case of Hazel . . . can be safely closed with a family law order in place." DCFS further noted that "[a]ll referrals pertaining to this family have been closed. [Hazel's father's] referral was closed out as 'unfounded' and [R.'s father's] referral was closed out as 'inconclusive.'" According to DCFS, the social worker "conducted an assessment to determine the potential for future abuse or neglect to the children . . . , and the risk is 'low' with a recommendation to close the case. Mother . . . and fathers . . . have addressed the issues that brought the family to the attention of DCFS and [the] [c]ourt." DCFS recommended termination of jurisdiction

as to both children with family law orders granting mother and the respective fathers shared physical and legal custody. The parties attempted to mediate the matter to reach a custody agreement, but mother would not consent to more than weekend visitation for the fathers, as she and R.'s father and to some extent Hazel's father informally had arranged before the dependency proceedings.

On August 14, the juvenile court terminated jurisdiction over both children and awarded mother and the respective fathers joint legal and physical custody. Under the custody orders, the children were to reside with mother and their respective fathers on alternate weeks, and mother and the fathers were to follow a specified holiday schedule. Mother timely appealed.

DISCUSSION

In terminating jurisdiction, the juvenile court has authority to make custody and visitation orders. (§ 362.4.) “When the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30, fn. omitted.) “Although both the family court and the juvenile court focus on the best interests of the child, the juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child's circumstances.” (*Id.* at pp. 30-31.) We review a custody order pursuant to section 362.4 for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Mother contends that the juvenile court abused its discretion in awarding joint physical custody with equal time to her and the fathers. She argues that the court instead should have awarded her primary physical custody and granted the fathers only alternate weekend visitation because the children needed the safety, structure and stability that only mother could provide them. We disagree. Mother's physical abuse of R. brought the children to the attention of the juvenile court, and the fathers cared for their respective child during the dependency proceeding while mother completed the required services to regain the ability to care for the children. Although DCFS had concerns about both

fathers during the dependency proceeding, the issues were resolved or sorted out in a manner that demonstrated the children could safely reside with their father as well as with mother. R., age 10 at the time of termination, repeatedly expressed that he wanted to live with both mother and his father, had been living with his father since the initial referral when he was eight and recently had increased the time he spent in mother's care. Hazel, age three at the time of termination, lived with her father, or alternating between mother and her father, from the initial referral when she was 17 months. As a result, both children were accustomed to alternating time between mother and their father. Mother attributed R.'s issues in school to living with his father, but the court implicitly found that any issues in school related to R.'s being in the care of his father were outweighed by the benefits of equal time for R. with his father or attributable, at least in part, to other factors, including the dependency proceeding and mother's prior treatment of him. We will not second guess this implicit factual resolution.

Mother also contends that the juvenile court improperly applied the joint physical custody presumption of Family Code section 3080 to award her and the fathers equal time, rather than focusing on its "special responsibility to the child as *parens patriae*" (*In re Roger S.*, *supra*, 4 Cal.App.4th at pp. 30-31) as required in a dependency proceeding. The record, however, does not support her contention. The court did not refer to, let alone rely on, a presumption of joint physical custody, and nothing that mother has quoted in her brief suggests otherwise. In awarding joint physical custody with equal time to mother and the fathers, the court looked at the totality of the circumstances of the children and the parents throughout the dependency proceeding, which was the proper review for a custody determination on termination of jurisdiction. (*Ibid.*; see *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [appellate court presumes trial court followed applicable law and implies findings necessary to support the judgment].)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, Assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.