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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Q.B. et al., Persons Coming Under the
Juvenile Court Law.

B260055
(Los Angeles County
Super. Ct. No. DK05157)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

APPEAL from the orders and judgment of the Superior Court of Los Angeles County, Tony L. Richardson, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, and Tyson Nelson, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

The mother, Chrystal M., appeals from the September 5, 2014 judgment declaring the child, Q.B., age 14 years old, a juvenile court dependent pursuant to Welfare and Institutions Code section 360.¹ The dispositional order placed the child in both her home and the residence of the father, R.B. The child resided with the mother when dependency proceedings began. The mother contends the juvenile court had no authority to change this arrangement. We affirm.

II. FACTUAL AND PROCEDURAL HISTORY

The child and his four younger half-siblings lived with the mother. The parents were divorced. The father remarried and lived in New Jersey. He was in the United States Army Reserve. The mother had a past and current history of abusing alcohol. On occasions, she was under the influence of alcohol while the children were in her care and supervision. She did not believe she had an alcohol problem.

At four years of age, the child was placed in the father's care. This occurred because the mother abandoned the child and his half-siblings in North Carolina. The father was a single parent on active military duty in Hawaii. The child had special needs. The child thrived in the father's nurturing and supportive care and made substantial emotional and academic improvements. In 2007, when the father was deployed to Iraq, the child was moved to New Jersey to live with the paternal grandmother. The educational and emotional support that the paternal grandmother provided the child enabled him continue to make strides both behaviorally and academically. In 2010, the child, who was then 10 years old, began to miss the mother and his siblings. The father and the child discussed the youngster's wishes to live with mother, who now resided in

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

California. Supporting the child's feelings, the father facilitated the move.

The gains the child had made in the father's care were lost after the youngster returned to the mother's home. Both the child's behavior and schoolwork deteriorated. Further, the mother interfered with the child's relationship with the father. She did not allow the child to talk freely when the father telephoned. And she often told the father the child was unavailable to talk. From age 12 to 14, the youngster asked to move back with the father in New Jersey. But although she often complained she could not handle the child's behavior, the mother refused to accommodate the move back to New Jersey. The father and the paternal grandmother purchased airline tickets for the child but the mother did not let the youngster use them.

On April 10, 2014, the child's four-year-old half-brother was discovered missing when the mother was taking a six-hour daytime nap. The 4-year-old half-brother was found, unsupervised, trying to climb a fence to get into a school daycare center. On April 16, 2014, while under the influence of alcohol, the mother called the police because she was feeling overwhelmed by the children's behavior. Officers came to the home and talked to the mother and the children. On April 18, 2014, the mother's blood alcohol level was 0.22 percent.

On May 15, 2014, the Department of Children and Family Services (the department) filed a section 300 petition. The children were not detained. As the father was deployed, he could not attend the detention hearing. However, the father requested custody of the child with placement in New Jersey. On July 2, 2014, the juvenile court found under section 300, subdivision (b) that there is a substantial risk the child would suffer serious physical harm or illness in the mother's custody. The juvenile court reached this conclusion because of the mother's failure or inability to supervise or protect the child adequately. In addition, the juvenile court found a substantial risk to the child's welfare because of the mother's inability to provide regular care due to her substance abuse. The child spent two months of the summer of 2014 in New Jersey in the home of the paternal grandmother, who was a certified foster parent. The child wanted to remain there and did not want to reside with the mother.

In connection with the dispositional hearing, the father requested full custody. Both the father and the child wanted the youngster to live with the maternal grandmother for the present. At the conclusion of the deployment, the child desired to live with the father. The department recommended a home-of-parents order with the father having primary custody. The child's counsel joined the recommendation. The mother requested sole custody.

On September 5, 2014, the juvenile court declared the child a dependent of the court and placed him in home-of-parents. The father was granted primary custody but visits were to be as arranged between the parents. The juvenile court stated, "This minor is . . . 14 years old, certainly at an age where he can express what his desires are, and certainly at an age where he is in the position to be somewhat protective of himself." The juvenile court found that placing the child in the father's home as the primary residence was "appropriate and warranted" under the circumstances. The juvenile court further found that continued supervision of the child was unnecessary and terminated jurisdiction pending receipt of a juvenile custody order. That order was to detail the visitation arrangements agreed upon between the parents. The termination order was stayed pending receipt of a juvenile custody order which would specify the visitation arrangements agreed on by the parents. The department was ordered to arrange for the child to be sent to New Jersey to the father's home. The matter was continued to September 19, 2014, for receipt of the family law custody order and a progress report on the child's relocation to New Jersey.

The child's move to New Jersey was delayed because the mother did not timely provide his birth certificate and other necessary documents. On September 19, 2014, the juvenile court ordered the mother to provide those documents, and the matter was continued for submission of a family law order and a progress report. On October 23, 2014, the mother filed a notice of appeal of the judgment and dispositional orders. On November 18, 2014, the juvenile court received an order reflecting joint legal and physical custody and a visitation schedule which complied with the dispositional order. The juvenile court then lifted the stay of termination of jurisdiction.

III. DISCUSSION

The mother contends the juvenile court lacked authority to place the child in both her and the father's separate residences. She argues that, because the child was not removed from her custody, section 361.2 did not authorize placing the youngster in the father's home.² We disagree with this contention.

The juvenile court had authority to make the custody order under section 362, which provides in part, "[T]he court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child [who was adjudged a dependent of the court]." And section 362.4 provides in part that, upon termination of jurisdiction over a dependent child, "[T]he juvenile court . . . may issue . . . an order determining the custody of, or visitation with, the child." The juvenile court termination order must be filed in a family law proceeding. Our Supreme Court explained: "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 Chantal S.* (1996) 13 Cal.4th 196, 203; accord, *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.)

In a dependency case, the juvenile court's custody and visitation orders focus on the child's best interests. (*In re Chantal S., supra*, 13 Cal.4th at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review the custody order for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re C.B.* (2010) 190 Cal.App.4th 102, 123.) Custody determinations are not disturbed in a dependency proceeding in the absence of an arbitrary, capricious, or patently absurd exercise of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at pp. 318-319; *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.)

² The department advised us that it took no position on the mother's appeal.

The juvenile court did not abuse its discretion when it placed the child in the father's home designating it as the youngster's primary residence. There is substantial evidence the father and paternal grandmother provided the child with excellent care and the emotional and educational support the youngster needed to excel in school. In the mother's home, the child's behavior and academic performance declined. The mother found him so hard to handle, she called the police on one occasion to deal with the child. The mother had a history of obstructing the child's relationship with the father when the youngster lived in her home. The result was entirely different when the child lived in the father's home. There, the father supported the child when the youngster desired to return to the mother's home. It is reasonable to infer the father would insure the child experience the visitation with the mother that was agreed on in the family law custody and visitation order. But if the child's principal residence was with the mother, no such inference is available. While there, the mother took steps to interfere with the interaction between the father and the child. Moreover, the child did not wish to live with the mother. In the near term, the child wanted to live in the paternal grandmother's home until the conclusion of the father's deployment. Once the deployment ended, the child wished to return to the father's home. This shows the child shared a strong, loving bond with the father. The evidence supports a conclusion the order placing the child in both parent's custody and granting primary residence to the father was in the youngster's best interests. Thus, the juvenile court acted well within its discretion.

IV. DISPOSITION

The judgment and orders are affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

GOODMAN, J.*

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