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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re G.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

D069689

(Super. Ct. No. EJ3979)

APPEAL from an order of the Superior Court of San Diego County, Daniel G. Lamborn, Judge. Affirmed.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Phillips, Chief Deputy County Counsel, and Lisa Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

According to defendant and appellant A.D. (mother), one afternoon she left her two-year-old daughter G.C. (minor), unattended. By her own admission, mother had ingested marijuana, taken a migraine pill and gone to sleep; mother's boyfriend stated that he was asleep next to her. While apparently left on her own, minor walked through a second story window, which was not secured. Minor fell out of the window onto concrete and sustained a depressed skull fracture as well as intracranial and subarachnoid hemorrhages.

Minor spent almost two months in the hospital.

Prior to minor's release from the hospital, plaintiff and respondent San Diego County Health & Human Services Agency (the agency) filed a Welfare and Institutions Code¹ section 300 petition on minor's behalf. At a detention hearing, the juvenile court ordered that, on her release from the hospital, minor be detained with her father, C.C. (father). Although he lives in Arkansas with his parents, when he learned about minor's injury, father traveled to San Diego with his mother and they attended to minor at the hospital.

Thereafter, at a contested jurisdictional and disposition hearing, the juvenile court made a true finding on the petition, removed minor from mother's care, placed her in the sole legal and physical custody of father, and terminated jurisdiction.

As we explain, the juvenile court did not err in granting the father sole physical and legal custody of minor.

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

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. September 2015

As we indicated, on September 10, 2015, according to mother she smoked some marijuana, took a migraine pill, and fell asleep.² When mother went to sleep, she thought her boyfriend was watching minor, who was in the living room of her second story apartment, watching cartoons. However, mother's boyfriend told police he was in the bedroom asleep next to mother. Minor was found by maintenance workers on the concrete below mother's apartment, unconscious; they summoned emergency assistance and went to mother's apartment. At the hospital, minor was diagnosed with a major brain injury and was placed in a medically induced coma for two to three weeks.

Minor had difficulty eating liquid or mashed food, and a feeding tube was placed through her nose; eventually, minor was able to eat mashed foods and drink from a sippy cup. While in the hospital, minor did not have control of her extremities and was in constant motion; her physicians determined she would need a great deal of physical therapy, speech therapy and occupational therapy.

When law enforcement officers responded to the scene of minor's fall, they smelled a strong odor of marijuana on mother. Mother conceded her home had not been child proofed, but, nonetheless, while minor was still in the hospital, mother would not allow a social worker into the home to assess its safety. Mother declined to participate in voluntary services offered by the agency.

² Mother told a social worker she smoked marijuana to address her irritable bowel syndrome and did so only when someone else watched minor. The social worker asked to see Mother's medical marijuana card, and Mother indicated she would produce it at a later time.

Mother is the mother of four older children, each of whom is in the care of maternal grandmother, who is their guardian.

B. November 2015

On November 17, 2015, the agency filed a petition under section 300, subdivision (b)(1), alleging that, by virtue of mother's failure to supervise minor, minor was a dependent child. At that point, minor was still hospitalized.

A hospital social worker reported that mother had not visited minor on a regular basis in the hospital and that, on one occasion, when she did visit, she appeared under the influence of marijuana.

In contrast, minor's father had traveled with his mother from their home in Arkansas and attended to minor while she was in the hospital. According to the social worker's report prepared for the juvenile court's detention hearing, she observed father and minor during an occupational therapy session and father seemed genuinely concerned for his daughter's well-being. According to the social worker: "The father would comfort [minor] and would cover her with a blanket. The father would clean her secretions from her mouth and place a stuffed animal next to her. Every time [minor] was uncomfortable, he would tend to his daughter."

Given minor's substantial and immediate needs and concerns about mother's ability to meet those needs, the agency recommended that, upon release from the hospitable, minor be detained in father's custody. The agency made this recommendation although it was aware mother had accused father of both perpetrating domestic violence on her and being a convicted felon while the couple lived with his parents in Arkansas.

The juvenile court ordered that minor be detained with father upon her release

from the hospital pending a contested jurisdictional and disposition hearing.

C. January 2016

The juvenile court conducted a jurisdictional and disposition hearing on January 27, 2016. The agency recommended that the court take jurisdiction, remove minor from mother's care, grant the father sole legal and physical custody of minor, and terminate jurisdiction. The social worker reported that father was realistic about the burdens of caring for a special needs child and felt he was capable. The father provided minor with her medications and was making her therapy appointments; when minor had a bout with diarrhea in the social worker's presence, the father changed minor's diaper but did not appear overwhelmed. The social worker observed that minor had all the basic necessities, was well cared for and healthy, and did not appear uncomfortable or scared in her father's care.

The social worker testified that, because the father's family was in Arkansas where he had a job waiting for him, if granted custody, it was likely father would take the child back to Arkansas. According to the social worker, minor's physician approved her travel by airplane to Arkansas. The social worker did not have any concerns about placing minor with father. Since minor's release from the hospital, father had taken minor to her medical appointments and had not missed any appointments, as far as the social worker knew.

Mother raised a number of issues regarding father, including accusations of domestic violence. The agency investigated the claims and determined that they were not substantiated. In doing so, the agency nonetheless found that there was a great deal of hostility and conflict between mother and father and that, shortly before the jurisdictional

and disposition hearing, father had obtained a restraining order against mother. For his part, father expressed concern to a social worker that minor's fall was not accidental or unintentional.

Father enrolled minor in an Early Start program in San Diego and received a referral to similar programs in Arkansas as well as for occupational, physical and speech therapists. The social worker had no doubt about father's ability to provide a safe and appropriate home for minor and did not oppose father returning to the state of Arkansas with minor.

The juvenile court found clear and convincing evidence minor was a dependent, removed custody from mother and placed the child in father's care. The juvenile court concluded it was in minor's best interest to move with father back to Arkansas, granted sole legal and physical custody to father, and ordered visitation via Skype and under supervision in Arkansas. Finally, the juvenile court terminated jurisdiction over minor. Mother filed a timely notice of appeal.

DISCUSSION

On appeal, mother does not challenge the juvenile court's orders finding jurisdiction or ordering that minor be placed in father's care. She concedes, as she must, that the record fully supports those orders. However, mother argues the juvenile court abused its discretion in giving father sole legal and physical custody of minor. We find no abuse of discretion and affirm.

Under section 361.2, subdivision (b)(1), when terminating jurisdiction over a child, the juvenile court has the authority to issue custody and visitation orders, which will remain in effect until modified or terminated by the superior court or in a domestic

relations proceeding. In particular, the juvenile court may make a nonoffending parent both the physical and legal custodian of the dependent. (§ 361.2, subd. (b)(1).) "When making a custody determination in any dependency case, the court's focus and primary consideration must always be the best interests of the child. [Citations.] Furthermore, the court is not restrained by 'any preferences or presumptions.' [Citation.] Thus, for example, a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child's best interests for a variety of reasons. [Citation.] By the same token, a finding that the parent from whom custody was removed no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not necessarily determinative of, the best interests of the child." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review decisions under section 361.2, subdivision (b)(1) for abuse of discretion. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.)

Here, contrary to mother's argument on appeal, there was ample evidence that supported the trial court's custody determination. Given mother's history with her four older children, her neglect of minor, and father's evident willingness and ability to provide minor with the extraordinary level of care she needs, there is no dispute that placement with father was appropriate. More importantly, given minor's intense needs and the extreme level of conflict between mother and father, as well as his likely residence in Arkansas, the joint legal custody which mother seeks on appeal was just not practical. This child plainly needs a parent who can make a host of important decisions on her behalf, without undue delay or any cross-country further conflict.

We also note that the juvenile court's order did provide for visitation by way of Skype and under supervision, if mother went to Arkansas to visit minor. As the agency points out, the provision for reasonable visitation fully vindicated mother's parental rights. (See *In re Marriage of Harris* (2004) 34 Cal.4th 210, 227.)

In sum, the trial court's order was plainly in minor's best interests.

The order is affirmed.

BENKE, Acting P. J.

WE CONCUR:

IRION, J.

PRAGER, J.*

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