

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.T., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.T.,

Plaintiff and Appellant.

E056021

(Super.Ct.No. INJ1100660)

OPINION

APPEAL from the Superior Court of Riverside County. H. Morgan Dougherty,
Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

I

INTRODUCTION¹

Mother, Angela T., appeals from a custody order and final judgment of the juvenile court (§ 362.4), awarding sole physical custody of the child, M.T., to father, Kyle B., and supervised visitation to mother, and terminating dependency jurisdiction over M.T. We conclude the juvenile court did not abuse its discretion and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. Preliminary Information

Kyle B. began dating mother in 2001 when she was 14 and he was 22. After the maternal grandfather (MGF) pressed criminal charges against Kyle B., he sustained a felony conviction in 2002 for sexual intercourse with a person under 16. M.T. was born in November 2004 when mother was 17. Mother and father married in 2005 but separated a year and a half later and divorced. Kyle B.'s probation ended in 2007. Mother met her boyfriend, J.C., in 2007. Kyle B. remarried in 2010.

B. Detention

M.T.'s sister, A.T., was born in October 2011. A.T.'s father is J.C. The Department of Public Social Services (DPSS) for the County of Riverside filed an original dependency petition (§ 300) concerning both the children in December 2011.

¹ All statutory references are to the Welfare and Institutions Code unless stated otherwise.

The petition alleged failure to protect because mother and J.C. had repeatedly engaged in domestic violence. J.C. had an extensive criminal history. Kyle B. had not intervened to protect M.T.

DPSS learned from a confidential source that J.C. had been arrested on November 22, 2011, after J.C. had choked and slapped mother and threatened to kill her with a knife. Mother and J.C. were then observed together in public on December 3, 2011. Mother and J.C. had been involved in more than 30 incidents of domestic violence since 2007. DPSS left M.T. in the care of Kyle B. and A.T. in the care of mother, subject to conditions.

The detention report identified the maternal grandmother (MGM) as the person who initiated a DPSS referral after A.T. was born. MGM described a history of violence between mother and J.C., which mother persistently denied. MGM questioned whether J.C. was A.T.'s father. MGM said J.C. had assaulted her and broken her foot in 2009.

In October 2011, mother had made a referral against Kyle B. for general neglect. According to mother, Kyle B. had not participated in visitation with M.T. until two years previously.² Mother claimed Kyle B. and his wife, M.T.'s stepmother, were breeding dogs under crowded and unsanitary conditions. M.T. had asthma, requiring hospital visits. Mother believed Kyle B. was medicating M.T. improperly. Mother thought M.T. was uncomfortable and afraid of his father. Mother accused Kyle B. of keeping M.T. out

² The family court had previously ordered Kyle B. to have visitation two weekends a month and every Wednesday night.

of school to assist Kyle B. in his work cleaning pools. Kyle B. refused to attend therapy with mother.

Mother expressed doubts that J.C. was A.T.'s father. Mother had obtained a restraining order against J.C. because of domestic violence. Mother denied having any current relationship with J.C. The previous weekend, however, they had an altercation when mother visited J.C.'s parents' house to collect some items.

The social workers interviewed M.T. who said J.C. was a "bad person," who had slammed a car door on his grandmother's leg. J.C. had also hurt mother. M.T. confirmed that he had been coughing and he had to visit the hospital and stay home from school the next day. He denied receiving medication that made him sleepy or had other side effects. His father had three dogs and a litter of six Yorkshire puppies. The house was kept clean. M.T. liked visiting his father except he had fewer toys at his father's house than at his mother's. His stepmother was nice and cooked pancakes. M.T. was never left alone at his father's home.

A home visit disclosed Kyle B.'s home was clean and nicely furnished. Kyle B. planned to stop breeding Yorkshires because of M.T.'s asthma. Kyle B. was correctly managing M.T.'s medication. Kyle B. was concerned about mother's relationship with J.C. and had hired an investigator to document their contact.

At a Team Decision meeting on December 8, 2011, it was agreed that M.T. would live with Kyle B. Because A.T. was still nursing, she would live with mother if mother ceased contact with J.C. Mother was allowed supervised visitation and telephone contact

with M.T. At the detention hearings on December 13 and 15, 2011, the court made orders based on the recommendations of DPSS.

C. Jurisdiction and Disposition

In January 2012, DPSS recommended Kyle B. have full physical custody of M.T., mother have supervised visitation, and that the parents share joint legal custody.

Previously the family court had ordered Kyle B. to have visitation two weekends a month and on Wednesday nights.

The DPSS report included information about J.C.'s extensive criminal record involving domestic violence and other crimes between May 2006 and November 2011. J.C. denied the dependency allegations made against him. In his interview, he was uncooperative but he acknowledged having two older children. Mother and MGM said J.C. had threatened to kill them.

In December 2011, mother had entered a domestic violence shelter but she refused to participate in a DPSS interview without a lawyer. Mother was evasive about her activities and lied about her whereabouts to DPSS. She admitted that in 2007, when she had sought services because of domestic violence with J.C., she had not completed the Shelter from the Storm program. She was opposed to moving into transitional housing when she finished the 45-day stay in the current domestic violence shelter.

DPSS interviewed Kyle B. who said he had been trying to protect M.T. by intervention through the family law court and M.T.'s therapist. Kyle B. knew about "a police chase where[] [M.T.] was in the car and [J.C.] was spanking [M.T.]." M.T. had told his father J.C. was "a bad guy, he's made his mom cry, and held a dog out the

window of the car while driving” and M.T. had seen J.C. “hit his mom and made her cry.” M.T. repeated the claims that J.C. was a bad man who had hurt his grandmother. M.T. was comfortable in his placement with Kyle B.

At the contested hearing in February 2012, the court terminated jurisdiction for M.T. and granted sole physical custody to Kyle B., joint legal custody to mother and Kyle B., and weekly supervised visitation to mother. The court granted mother physical custody of A.T., subject to supervision, with services for J.C.

III

THE CUSTODY ORDER

Mother contends it was an abuse of discretion for the court to order Kyle B. to have custody of M.T. while also ordering mother to have custody of A.T. because mother was equally capable of caring for both children.

Section 361, subdivision (c)(1), permitted the juvenile court to remove M.T. from mother’s physical custody if removal was based on clear and convincing evidence of mother’s inability to care properly for M.T. and proof of potential detriment to M.T. if he remained with mother. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.) The focus of the removal statute is on averting harm, not actual danger or harm. (*Ibid.*) A reviewing court examines the record for substantial evidence to support removal. (*In re J.I.* (2003) 108 Cal.App.4th 903, 911.)

If the juvenile court found that placing M.T. with Kyle B., the previously noncustodial parent, was not detrimental to the child, the court could place M.T. with Kyle B. and order mother to have reasonable visitation. (§ 361.2, subd. (b)(1).) The

court must determine whether placement with the noncustodial parent would be detrimental to the child. (§ 361.2, subd. (a); *In re V.F.* (2007) 157 Cal.App.4th 962, 970.)

The juvenile court may make a custody or “exit” order, terminating juvenile court jurisdiction and transferring the case to family court. (§ 362.4.) The custody order may be modified if the court finds there has been a significant change of circumstances and modification serves the child’s best interests. (§ 302, subd. (d).)

“We normally review the juvenile court’s decision to terminate dependency jurisdiction and to issue a custody (or ‘exit’) order pursuant to section 362.4 for abuse of discretion (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318) and may not disturb the order unless the court “‘exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’” [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.)

Removal from mother and placement with Kyle B. was not detrimental to M.T. Mother had maintained an ongoing violent five-year relationship with J.C. Mother was uncooperative and evasive with DPSS and she resisted participating in some services. Meanwhile, although Kyle B. had been inappropriately involved with mother when she was a minor, they married after M.T. was born and Kyle B. had served his criminal sentence. After the parents divorced, Kyle B. had secured visitation rights in the family court. Kyle B. subsequently married the stepmother and stands willing and able to provide M.T. with a safe and stable home.

It cannot be established in the present case that the juvenile court made an “arbitrary, capricious, or patently absurd determination.” We recognize the court allowed

mother to have custody of A.T. because A.T. was a nursing infant and mother was participating in a safety plan in an effort to address her relationship with J.C. But M.T. is not a baby and there was evidence in the record that M.T. could be at greater risk of violence than would J.C.'s biological daughter, A.T., based on J.C. spanking M.T. during a car chase. Instead, substantial evidence supports removal of M.T. from mother and placement with Kyle B. to protect him from mother's continuing relationship with J.C.

IV

THE VISITATION ORDER

At trial, mother stipulated to a visitation order allowing her to have visitation with M.T., supervised by the MGF, on Saturdays between noon and 6:00 p.m. On appeal, mother does not dispute that she has waived the issue of whether the visitation order was reasonable. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330.) Notwithstanding the waiver, mother acknowledges she may still seek modification of the visitation order in the family court based on a significant change of circumstances. (§ 302, subd. (d).)

Even without a waiver, the evidence shows the visitation order was reasonable and not an abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) The domestic violence between mother and J.C. was pervasive for at least five years. J.C. was also physically abusive toward M.T. and the MGM. J.C. presented a continuing risk to mother and M.T. in spite of the restraining order against him. The juvenile court expressly found that M.T. was at risk.

We recognize the trial court made a passing comment about the obvious “animosity” between mother and DPSS. But the record simply does not support mother’s assertion that the trial court based its custody or visitation orders on that observation.

V

DISPOSITION

The juvenile court did not abuse its discretion in making the custody and visitation orders. We affirm the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.