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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

JOSEPH M.,

Defendant and Appellant.

G046138

(Super. Ct. Nos. DP021338,  
DP021339, DP021340, DP021341)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

\* \* \*

The juvenile court did not err by granting the mother sole legal custody, by ordering monitored child visitation for the father and terminating the jurisdiction of the juvenile court. We affirm.

## I

### FACTS

On February 24, 2011, a five-year criminal protective order—domestic violence was issued restraining Joseph M. (the father) and protecting M. (the mother). A week earlier, the family came to the attention of the Los Angeles Department of Children and Family Services as a result of a report the “father punched mother in the face and mouth. He also grabbed mother by the throat.” The mother and four children, ages four years, almost three years, 20 months and nine months, were placed in a domestic violence shelter. The third child is being assessed for autism.

The four children were declared dependents of the juvenile court in Los Angeles on May 11, 2011. Their case was transferred to Orange County on June 23, 2011.

J.M., born in 2006, was four-years-old when she told the social worker about an incident when her parents were fighting: “They were fighting too much. My daddy was fighting with her (mother) and he hit her (mother). I hit my dad on the head because he was hitting my mom. I was yelling at my dad to stop. [N.M., born in 2008] said stop daddy! I said stop! Mommy was fighting with daddy and she was crying. Then the police came and my daddy went to work.”

Another restraining order was in effect seven months prior, in July 2010, when the “mother confronted father about his infidelity. Father became angry and upset hitting and strangling mother. The police were called to the home. Father fled the scene before officers arrived.”

The mother reported she and the father met in 2005, when she was 18 years old. They married in 2006, and the domestic violence began in 2007 after their first child

was born. She also told the social worker: “He told me that I belong to him and if I ever tried to leave him, he would cut me up into little pieces then put me in a freezer, and he would bring me out once a year on my anniversary.”

The mother has tattoos representing Eastside gangs, but she denied gang affiliation to the social worker. Her criminal history consists of five crimes committed between 2001 and 2003.

The mother said the father “is a long time member of the Little Watts 13 gang; and his gang name is Sharky.” He also has five other children. One child resides with a grandmother, and the other four were “adopted privately.” His criminal history prior to the 2011 incident consists of 15 crimes committed from 2001 to 2010. Minor’s counsel described his criminal history to the court: “It seems to be mostly driving under the influence type items. There’s an attempted carjacking. There’s — but it seems to be mostly either drugs, paraphernalia, or being under the influence of some kind. [¶] The domestic violence incidents that occurred in July of 2010 and February of 2011 also came with a driving on a suspended license.”

A social study report says there was domestic violence between the father and the mother of his five other children, and states about that earlier family: “The children’s alleged father injected the children’s mother three times with methamphetamine between the dates of August 1, 2002 and August 3, 2002, despite the alleged father’s knowledge that the children’s mother was pregnant.”

At the six-month review hearing, the juvenile court noted “the history to extreme threats of violence,” and expressed concern about the level of violence. The court ruled as follows: “The court’s going to make exit orders and provide for sole legal and physical custody and primary residence for mother, and the court would provide for monitored visits for father. . . . Absent an agreement than a professional monitor to be provided at father’s expense. [¶] . . . [¶] And with that, the court would then terminate jurisdiction and all proceedings.” The court added: “The court’s going to provide for

minimum or five hours per week, again, monitored, and that's a —minimum, and that visits occur on a weekend. And the — again, parties to cooperate in the exchange of the children. . . . The court's going to order these exit orders be filed with the clerk of the Orange County Superior Court Family Law Division.”

## II

### DISCUSSION

On appeal, the father contends: “The juvenile court abused its discretion when it issued exit orders giving mother sole legal custody of the children and father only supervised visitation.”

“The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child. [Citation.]” (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) When making orders at review hearings, the juvenile court must consider “the safety of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 263.) “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.]” (*Id.* at p. 268.)

When the juvenile court terminates its jurisdiction over a minor adjudged a dependent of the juvenile court, “the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (Welf. & Inst. Code, § 362.4.) “Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court. [Citation.]” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.) Custody decisions of the juvenile court will not be disturbed on appeal ““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Juvenile court orders differ from family law court orders. “The application of Civil Code section 4600.5, subdivision (a)'s presumption that joint custody is in the

best interest of the minor is inconsistent with the purposes of the juvenile court. Although both the family court and the juvenile court focus on the best interests of the child significant differences exist. In juvenile dependency proceedings the child is involved in the court proceedings because he or she has been abused or neglected.” (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712, fn. omitted.)

The record on appeal demonstrates the juvenile court had before it records of the father’s violence with his first family as well as his continued violence with his present family. His violent behavior was conducted in the presence of the minors. He did not complete his domestic violence program or even begin counseling. Under the circumstances we find in this record, we cannot conclude the juvenile court abused its discretion.

### III

#### DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.