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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re J.R., a Person Coming Under the
Juvenile Court Law.

H040687
(Santa Cruz County
Super. Ct. No. DP002634)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

L.S.,

Defendant and Appellant.

In April 2012, the Santa Cruz County Human Services Department (Department) filed a petition under Welfare and Institutions Code section 300, subdivision (b).¹ It alleged that the mother, L.S. (Mother), had willfully or negligently failed to supervise or protect her son, J.R. (at the time, 10 years of age; the minor), due to her substance abuse and her failure to obtain timely medical care for the minor. The minor's father, R.R. (Father), had a criminal history and his whereabouts were then unknown. He had had no contact with the minor for approximately seven years. The minor was placed in

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

protective custody. The juvenile court declared the minor a dependent child; ordered him removed from Mother's care and custody; and ordered reasonable reunification services and supervised visitation for Mother. Mother did not make progress with her case plan, did not address her substance abuse issues. At first, she only sporadically visited the minor; later, she failed to visit him for over six months. Mother's services were terminated in May 2013.

After the court set a selection and implementation hearing under section 366.26 for September 2013, the Department filed a petition seeking a change of the order under section 388 based upon changed circumstances. Father, who was living in Costa Rica with a new family, had indicated he was ready and willing to care for the minor as the custodial parent. The Department, after requesting and receiving a home study and background investigation from its counterparts in Costa Rica, asked the court to order placement of the minor with Father in Costa Rica and to dismiss the dependency. At the hearing, the Department deferred its request to dismiss the dependency pending an evaluation of the placement.

In October 2013, the court, over Mother's objection, granted the section 388 petition by ordering placement of the minor with Father. It set a further hearing to address the potential dismissal of the dependency, allowing for time to pass to evaluate the success of the minor's placement in Costa Rica. On February 19, 2014, after a contested hearing, the court dismissed the dependency pursuant to section 362.4 in what is often called an "exit order[]." (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.) In that order, the court awarded Father sole legal and physical custody of the minor and provided Mother with specified visitation rights.

Mother challenges the exit order insofar as it (1) awarded Father sole legal custody of the minor; and (2) imposed as a condition to visitation that Father had no obligation to send the minor to visit Mother in the United States until Mother first visited the minor in

Costa Rica. She asserts that the court abused its discretion with respect to these two aspects of the order.

We conclude that the court did not abuse its discretion and will affirm the order.

FACTS AND PROCEDURAL HISTORY

I. *Petition and Detention Order (May 1, 2012)*

On April 30, 2012, the Department filed a petition, alleging under subdivision (b) of section 300 that the minor was at risk as a result of the willful or negligent failure of Mother to supervise or protect him due to her untreated heroin abuse and her failure to arrange for timely medical care. Mother was arrested on January 17, 2012, for drug and drug paraphernalia possession. She was in a criminal diversion program and had failed a drug test on April 16, 2012. Further, on April 12, 2012, the minor “sustained a large, gaping laceration on his leg which exposed the fatty tissue underneath. [Mother] did not provide medical care for her son for over 18 hours_[,] increasing the risk of infection to her son. [Mother] failed to show up for a follow[-]up appointment two days later despite being . . . directed to do so by medical personnel.” The Department also alleged that Mother failed to care for her son by placing him “for the past year” with his maternal grandmother, L.M. The minor was injured while in L.M.’s care and she did not seek medical care for him. Instead, she simply called Mother.

It was also alleged that Father had not had contact with the minor for approximately seven years. Father had a substance abuse history and was convicted in 2004 on a felony drug charge and was sentenced to prison. His whereabouts were then unknown. Mother states in her opening brief that Father’s conviction “led to his deportation.” But the record on this issue is unclear. The petition simply alleges that Father’s “incarceration and/or deportation have a significant impact on his ability to appropriately care for” the minor. And the investigative report indicates that L.M. told the case worker that Father had been deported.

On May 1, 2012, the court ordered the minor detained and that temporary placement be vested with the Department. The court ordered that Mother receive supervised visitation of the minor at a minimum of two times per week.

II. *Jurisdiction/Disposition Report and Hearing (May 29, 2012)*

In its May jurisdiction/disposition report, the Department repeated and elaborated upon the allegations in the petition. It was reported that the minor had been living with his maternal grandmother, L.M.; Mother had stayed with different friends and had visited the minor. L.M. had enrolled the minor in January 2012 in an alternative school. The minor was to complete work at home and meet with the teacher every 20 to 30 days to turn in assigned work and was to attend two optional classes. As of mid-April 2012, the teacher had only seen the minor once, despite the teacher having left voicemail messages for Mother reminding her of the meetings.

With respect to the minor's serious leg injury for which Mother did not seek prompt treatment, the medical provider had explained to Mother that the injury was significant enough to have required sutures, and that Mother's approximate 17-hour delay in seeking medical treatment had greatly increased the risk of infection. Mother had argued with the medical provider in the minor's presence, stating that she had attempted to avoid her son the discomfort of receiving sutures and "would absolutely do the same thing again." She was resistant to all of the provider's treatment recommendations for her son, but ultimately consented to the treatment. The provider also indicated that Mother had "weird interactions with staff" and was suspected of using drugs. A tourniquet was found in the health facility's bathroom after Mother had used it. Additionally, it was noted that the minor had not seen a physician for a well-care checkup for four years.

The minor was placed into protective custody on April 26, 2012. He was placed with a foster family, with whom he was reportedly doing well. The minor was enrolled in the fourth grade at Calabasas Elementary School and was signed up for summer school.

After a social worker explained to Mother the Department's concerns about her drug use, she agreed to a drug test in Santa Cruz on April 16, 2012. Mother showed up for, but did not take the test. The assigned social worker, after having difficulty reaching Mother, scheduled a meeting with her to discuss the case. Mother missed that appointment.

At the jurisdictional/dispositional hearing on May 29, 2012, the court sustained the allegations of the petition and declared the minor a dependent of the court in out-of-home placement. It ordered family reunification services and supervised visitation a minimum of two times per week.

III. Six-Month Review Report & Order (November 27, 2012)

In its report filed in connection with the six-month review hearing, the Department reported that Mother had been arrested for various offenses in May and August 2012. She was assigned to a therapist and after attending several sessions ceased therapy without explanation. Mother was referred to parenting classes; she attended the first two sessions and missed the third class. She was referred to outpatient drug rehabilitation; she attended an intake session, a first session, another session three weeks later, and then ceased attending. Mother also failed to comply with drug testing. Although the court ordered semiweekly supervised visits, Mother "misse[d] many visits with her son and [was] late to [others]." The minor was very sad when Mother missed visits. "[T]he visits generally went well when [Mother] showed up."

The minor was reportedly doing well in his Watsonville foster home. He was in the fifth grade. The minor's teacher reported he was one of the better students in the class. His therapist reported that he "struggles with expressing sad feelings" and "is withdrawn when triggered by disappointments in relationship with [M]other. . . . [He] blames himself for being in out of home care." His CASA representative recommended the assignment of a person to be responsible for the minor's educational rights because Mother had not taken an interest in his educational needs.

The Department had made contact with Father in Costa Rica. He stated that he had a home and a full-time job, and that he wanted to have the minor in his care.

The court at the six-month review hearing on November 27, 2012, ordered the minor continued as a dependent child in out-of-home foster care. It ordered that Mother continue to receive reunification services and supervised visitation twice per week.

IV. 12-Month Review Report & Order (May 21, 2013)

The Department in its May 2013 report noted that it had lost communication with Mother in March 2013. The social worker indicated that Mother had not meaningfully engaged in services and had not seen the minor for several months.² It was reported that Mother had met with a drug counselor referred by the social worker. Arrangements were made for Mother to enter the Santa Cruz Residential Treatment program. Mother attended the program in February 2013, but left after one day. Mother had also failed to submit to any drug testing as requested by the Department.

Father reported that he had a stable life—i.e., he was married, employed, and not in trouble with the law. He spoke with the minor over the phone approximately every other week and had sent the minor \$150 each on two occasions in the past several months. They also communicated through Facebook.

The minor was doing well in school, earning As and Bs in all classes. The Department also indicated that it was contemplating a proposed placement of the minor with his maternal uncle once school was adjourned. The minor's therapist reported that the minor missed Mother "and struggles more when [her] whereabouts are unknown." But the therapist also reported that the minor had become more stable over the past few months.

² The Department indicated that Mother had "not seen Dylan for several months." Presumably, this, and other references in the report to "Dylan," are typographical errors and are references to the minor.

The Department concluded that Mother had “made no effective progress in addressing the concerns that resulted in [the minor’s] removal.” Accordingly, it recommended that reunification services be terminated and that the court set a selection and implementation hearing under section 366.26 (hereafter, .26 hearing).

At the 12-month review hearing on May 21, 2013, the court adopted the recommendations of the Department. The court ordered the minor continued as a dependent child; terminated Mother’s reunification services; and scheduled a .26 hearing for September 17, 2013. No appellate review from this order was sought by Mother.

V. *Section 388 Petition, Reports & Order (October 25, 2013)*

A. Reports & Petition

In the Department’s September 2013 report in anticipation of the .26 hearing, the assigned social worker, Veronica Foos, noted that the potential placement of the minor with his maternal uncle had not come to fruition. The minor was continuing to do well in a nonconcurrent home with his foster family. He was going into the sixth grade; he had done well and “had excellent class work” in the fifth grade.

Foos reported that Father had been in regular contact with the minor, calling him several times per week. Father had requested that the minor live with him in Costa Rica. The Department had contacted the Costa Rican Consulate and had requested that a home study and evaluation be performed within two months. Foos indicated that the minor was excited about the possibility of living with Father. The minor was reportedly asking for Father to speak to him in Spanish, and the minor had taken Spanish tutoring classes the past summer. The Department also reported that Father had sent money to the minor, and had most recently sent him \$250.

Mother had not visited the minor since the Department’s previous May 2013 report to the court. She had called the minor periodically but the foster mother often needed to intervene because of Mother’s being under the influence of narcotics.

Prior to the .26 hearing, the Department filed a request to modify the existing court order pursuant to section 388. It asked the court to place the minor with Father and to terminate the dependency. The Department indicated that Father's home in Costa Rica had been assessed by the equivalent of child welfare services and it had been determined that there would be no risk in placing the minor with Father. Mother contested the Department's section 388 petition.

Attached to the section 388 petition were two written requests directed to the Costa Rican Consulate from social worker Foos for a home study pertaining to Father. In the first request dated July 18, 2013, Foos outlined the background of the dependency, and requested that a home study and background investigation pertaining to Father and his girlfriend with whom he resided, A.F., be conducted to determine whether it would be suitable to place the minor in their home.³ Foos requested that the process be completed within two months. In a follow-up letter dated August 13, 2013, Foos requested—due to a claim by Mother that Father had physically abused her while they were together—that a Costa Rican child welfare services representative privately interview Father's girlfriend to ascertain whether there was any domestic violence in the home.

Also attached to the petition was a report from the Costa Rican authorities. The report was in Spanish and was accompanied by an English translation of the report. Both Father and A.F. were interviewed. Father stated that he had lived in Nicaragua until he was eight years old, and then moved with his family to the United States. He has two sisters who live in the United States. He reported that he had lived with Mother and their son, the minor. “[T]hey maintained a healthy relationship . . . were never negligent and that they were both responsible for the care of their son.” He mentioned nothing about domestic violence. He reported that he had been involved with the minor's progress

³ There is a conflict in the record as to whether A.F., the woman with whom Father resides in Costa Rica, is Father's wife or girlfriend.

throughout the minor's life, and, despite the distance, has never abandoned the relationship and "has always been ready and willing to assume responsibility [for] and custody of him." The interviewer opined that Father "seems to be ready to exercise his rights to care for and raise his son, promising to provide affection, love and to meet his basic needs."

A.F., 21 years old, reported that she had lived with Father for five years. They have a three-year-old son together. She reported that they have a stable relationship, have had no separations, and there had been no violence in the home. She stated that she was supportive of the minor's coming to live with them, saying, " 'I will see him as another child of mine.' " Father and A.F. communicated with the minor through Skype, and she had gotten to know him and had been kept up to date on the details of his life through that medium.

It was noted in the report that Father and A.F. lived in a rented apartment that was "in perfect order and cleanliness." Father had been unemployed for one year and had lived on his savings from prior employment and from money received from family in the United States. He had received an offer of employment and expected to start work August 19, 2013. (By the time of the court hearing on January 28, 2014, Father was working.) Additional contacts with members of A.F.'s family and a prior landlord were all positive. Searches by the Costa Rican authorities had indicated that neither Father nor A.F. had criminal records. The author concluded that there appeared to be no risk in the placement of the minor with Father and A.F.

A report was filed on October 8, 2013, from the minor's CASA representative. The representative reported that the minor had settled in well with his foster family, was doing very well with his studies, and was very popular in school. He had completed the fifth grade; enjoyed summer school and summer camps; was taking Spanish lessons; stayed in touch with Father through the internet; and got along well with his peers and his cousin. The CASA representative reportedly had spoken with Father on August 29, 2013.

In that conversation, Father said he was very interested in having the minor live with him. He had made arrangements for a bilingual school and had a bed and clothing for the minor. The CASA representative was supportive of the Department's plan of exploring placement of the minor with Father.

B. Hearing on Section 388 Petition

The court conducted a contested hearing on the Department's section 388 petition on October 25, 2013. It received into evidence the section 388 petition and its attached reports; a letter from the minor; a letter from the maternal grandmother, L.M., opposing placement with Father; and the CASA representative's report. The Department, at the request of the minor's counsel, modified the nature of the order it sought: It asked the court to place the minor with Father, but not terminate the dependency immediately so the placement could be monitored for a period of time with the assistance of the Costa Rican authorities.

Mother was called as a witness to testify in opposition to the petition. She indicated that she disagreed with the Department's recommendation because the minor would miss Mother's side of the family with whom he had grown up if he moved to Costa Rica. She testified that she had not visited with her son for a long time. She stated she had not been given information about visitation. But she also took responsibility for not communicating with the Department about her desire to visit her son.

The court granted the section 388 petition, as orally modified at the hearing by the Department. It vacated the prior order setting a .26 hearing, and ordered the placement of the minor with Father. It found by a preponderance of the evidence that there had been a change of circumstances and that it appeared to be in the minor's best interest for the court to adopt the proposed change to the existing order and to place the minor with Father in Costa Rica. The court also authorized Mother to receive two supervised visits with the minor prior to his leaving for Costa Rica. It set a further hearing regarding the potential dismissal of the dependency for January 28, 2014.

VI. *Reports and Dismissal Order (February 19, 2014)*

A. Report Regarding the Proposed Dismissal

The Department filed a report on January 28, 2014. It recommended that Father be granted sole physical and legal custody of the minor, that the minor remain in Costa Rica, and that the dependency be dismissed.

Mother received two supervised visits with her son before he left the country. The minor, accompanied by Foos and another social worker, then flew to Costa Rica on November 16, 2013, so the minor could begin living with Father and A.F. The minor was reportedly very happy to see Father. The social workers' Costa Rican counterparts indicated that a psychologist would meet with the minor in the home the following week. Father stated that Costa Rican schools were on vacation for two months. Foos told him the minor needed to attend school as soon as possible and encouraged Father to look for a summer program in a bilingual school.

Foos spoke with the minor four days later. The minor said everything was going well, and he was happy to be with Father. Father told Foos that he had registered the minor in a bilingual Christian school; the minor would start attendance there the next week.

Foos called the minor on December 11, 2013. He told her "he was happy with everything going on," and he had recently had an overnight visit with a school friend. He said he had spoken with Mother, and he was glad to be out of foster care.

Father was contacted by Foos on January 7, 2014. He said that Mother had been calling and on one occasion was " 'acting really weird' saying that [the minor was] in danger and . . . [was] being sexually abused. [Mother] also told [Father] that she thinks [he] is in the United States and not in Costa Rica." He told Foos that Mother was also calling his parents in San Francisco in the early morning hours to make the same allegations. He said the minor was enjoying his new home and family, his Spanish was improving, and he had made a number of friends at school.

It was noted in the report that Mother had been arrested in Santa Cruz on January 20, 2014, for possession of narcotics and drug paraphernalia, violating probation, and for driving with a suspended license.

Foos attached a January 10, 2014 report from a Costa Rican child welfare agency. Luis Eduardo Aguilar Cubillo, the licensed psychologist authoring the report, indicated that the minor appeared to be in good health and was happy; was getting along very well in his new home; and enjoyed playing with his young half brother. Father stated that the minor was enrolled in school and attended during hours similar to school hours in the United States. Father also reported that his son had made friends at school and had been on outings and invited to parties. The minor had also visited with his extended family in Limón on Christmas and New Year's Eve and had enjoyed meeting his uncles and cousins. Aguilar Cubillo concluded that there were "no reports of adaptive problems," and that Father, A.F., and their young son had all made efforts to help the minor adapt to his new home. The psychologist stated that "[a]ll of this information presumes that this is a healthy environment for his necessary development."

B. Hearing on Dismissal Request (February 19, 2014)

A contested hearing occurred on February 19, 2014. Mother (1) opposed dismissal of the dependency; (2) requested that she have joint physical and legal custody of the minor (rather than sole legal and physical custody being granted to Father); and (3) requested unsupervised visitation (rather than supervised visitation with various conditions). Lengthy discussion between counsel and the court occurred, and the court also heard remarks from Mother. No testimony was received. Before adjournment, the hearing was recessed to permit the parties and counsel to discuss a potential agreement regarding visitation. The parties were able to agree upon six specified conditions of visitation, but Mother and the minor objected to a seventh condition (discussed, *post*).

After hearing further argument, the court entered an order granting sole physical and legal custody of the minor to Father with the minor to remain in Costa Rica. It also

ordered that Mother be permitted a minimum of two visits per year, supervised by a person approved by Father, with Mother traveling to Costa Rica. And it ordered that Mother be permitted supervised visitation of the minor once a year where Father would make the arrangements for the minor's travel to the United States (under specified conditions).

DISCUSSION

I. Applicable Legal Principles

Section 300 et seq. provides “a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child’s welfare. [Citations.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As the California Supreme Court has explained, “The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

The court at the jurisdictional hearing must first determine whether the child, by a preponderance of the evidence, is a person described under section 300 as coming within the court’s jurisdiction. (§ 355, subd. (a).) Once such a finding has been made, the court, at a dispositional hearing, must hear evidence to decide the child’s disposition, i.e., whether he or she will remain in, or be removed from, the home, and the nature and extent of any limitations that will be placed upon the parents’ control over the child,

including educational or developmental decisions. (§ 361, subd. (a).) If the court determines at the dispositional hearing that removal of the child from the custody of the parent or guardian is appropriate, such removal order must be based upon clear and convincing evidence establishing that one of five statutory circumstances exists. (§ 361, subd. (c).) One such circumstance is the existence of substantial danger to the dependent child’s “physical health, safety, protection, or physical or emotional well-being” if he or she is returned to the home. (§ 361, subd. (c)(1).)

After the court has determined the child to be a dependent of the juvenile court, “[a]ny parent or other person having an interest in a child who is a dependent child” may petition the court to change, modify or set aside a previous juvenile court order based upon a change of circumstances or new evidence. (§ 388, subd. (a)(1).) If the petition alleges a change of circumstances or new evidence and it appears the proposed change may be in the child’s best interests, the court must grant a hearing. (§ 388, subd. (d).) The petitioner bears the burden of proving by a preponderance of the evidence that there are both changed circumstances or new evidence that warrant the change of the prior order, and that the proposed change is in the child’s best interests. (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.)

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation. [Citations.] 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., supra*, 190 Cal.App.4th at pp. 1122-1123; see also *In re A.C.* (2011) 197 Cal.App.4th 796, 799.) Such custody and visitation orders are made under section 362.4.⁴ In making such orders concurrent with termination of the dependency, “ ‘the

⁴ Section 362.4 provides, in pertinent part: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court

(continued)

juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child’s circumstances.’” (*In re Chantal S.* (1996) 13 Cal.4th 196, 206, quoting *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.)

A determination of whether to change an order by granting a section 388 petition “is ‘committed to the sound discretion of the juvenile court, and [its] ruling should not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination. [Citation.]” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642, quoting and citing *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Similarly, an order setting visitation parameters is reviewed for abuse of discretion. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) And an award of custody made by the juvenile court as a part of an exit order is also reviewed for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300 (*Bridget A.*), citing *In re Stephanie M.*, *supra*, 7 Cal.4th 295, 318; see also *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 711 (*Jennifer R.*).

II. *No Abuse of Discretion Has Been Demonstrated*

A. The Custody Order

Mother contends the court erred in awarding sole legal custody of the minor to Father. She asserts that the circumstances presented here did not indicate “the type of extreme dysfunction necessary for a court to deny a parent, through a sole legal custody

prior to the minor’s attainment of the age of 18 years, and . . . an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue a protective order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order determining the custody of, or visitation with, the child. [¶] Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. . . .” (§ 362.4.)

order, the ability to make decisions concerning a child's health, education and welfare based on the parent's unfitness to make such decisions." Citing *Jennifer R.*, *supra*, 14 Cal.App.4th 704, Mother asserts that the court's decision was "punitive," not in the minor's best interests, and constituted an abuse of discretion.

The mother in *Jennifer R.*, *supra*, 14 Cal.App.4th at page 710, appealed from a juvenile court order terminating jurisdiction, awarding sole legal and physical custody of the child to the father, and granting the mother reasonable visitation rights supervised by a neutral party. The mother in *Jennifer R.* had advocated for an award of joint legal custody. The dependency had been commenced as a result of the mother's substance abuse and history of mental illness; reported domestic violence; the parents' maintaining an unsafe and unsanitary residence; and the mother's having reportedly administered Benadryl to quiet her baby daughter. (*Id.* at pp. 706-707.) At the time of the twelve-month review hearing, the parents were separated; the mother was homeless; she continued to have untreated substance abuse issues; and she had recently been hospitalized in a psychiatric ward. (*Id.* at pp. 708-709.) By the 18-month review, the mother had not followed through with referrals for her substance abuse and had not been consistent with visiting the child. (*Id.* at p. 709.) In contrast, the father had visited the child frequently, had attended both N.A. and co-dependency meetings, had attended parenting classes, and had progressed to unsupervised visits. (*Ibid.*) The court returned the child to the father's custody with ongoing services. (*Id.* at pp. 709-710.) And, six months later, the court terminated jurisdiction and awarded sole physical and legal custody of the child to the father. The child had been reportedly doing well in the father's custody. In contrast, the mother had not complied with drug testing, had sporadically visited the child, and had threatened to " 'take' " the child because she claimed she had as much right to her as the father. (*Id.* at p. 710.)

The appellate court held that the court had not abused its discretion by denying the mother's request for joint legal custody. (*Jennifer R.*, *supra*, 14 Cal.App.4th at pp. 711-

714.) It rejected the mother’s contention that the juvenile court’s order was governed by the law applicable to family law custody and visitation orders, and it specifically rejected her argument that she was entitled to the presumption under former Civil Code section 4600.5, subdivision (a) (see Fam. Code, § 3080) that joint custody is in the best interests of the child. (*Jennifer R.*, at pp. 711-712.) The court explained: “The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.” (*Id.* at p. 712; see also *In re Chantal S.*, *supra*, 13 Cal.4th at p. 201 [quoting *Jennifer R.*].)

The *Jennifer R.* court further rejected the mother’s contention that there was no evidence suggesting she should be deprived of joint legal custody. It found there was ample evidence that awarding the mother shared legal custody and permitting her to participate in important decisions concerning the child’s welfare were not in the child’s best interests because of, among other things, the mother’s inability throughout the pendency of the proceedings to care for herself; her failure to make progress in overcoming the problems that had led to the child’s removal; her inconsistent and inappropriate visitation; her threat to upset the physical custody order by taking the child; her untreated substance abuse; and her extensive history of serious mental illness. (*Jennifer R.*, *supra*, 14 Cal.App.4th at p. 713.)

Jennifer R. does not support Mother’s claim of error. There is nothing in that case that suggests—as urged by Mother—that there must be “extreme dysfunction” of the type found in *Jennifer R.* for the court to properly exercise its discretion in denying joint legal custody. Mother’s premise seems impliedly based upon the view that she was entitled to a presumption of parental fitness when the juvenile court made its exit order. But the court in *Jennifer R.* rejected that view, specifically noting that the juvenile court “make[s]

its] custody determinations based on the best interests of the child without any preferences or presumptions.” (*Id.* at p. 712.)

In this instance, the court had significant information concerning Mother upon which to exercise its discretion in awarding sole physical and legal custody to Father. In the 22 months since the minor was initially placed in protective custody, Mother (1) had refused multiple requests for drug testing; (2) had failed to complete any substance abuse programs (having attended only an introductory and two other sessions of an outpatient program and having attended only one day of a residential treatment program); (3) had dropped out of contact with the Department for a period of time; (4) had failed to complete a parenting class; (5) had failed to follow up with therapy; (6) had missed many scheduled supervised visits with her son; (7) had a period of at least six months during which she did not visit him; (8) had made phone calls to her son while she was under the influence; (9) had made wild accusations in middle-of-the-night phone calls to Father’s parents; and (10) had been arrested again on drug possession charges less than a month before the final hearing. From this record, Mother failed to demonstrate an ability to care for her son or to make decisions concerning important matters affecting his welfare. (See *Jennifer R.*, *supra*, 14 Cal.App.4th at p. 713 [exit order indicated court’s ongoing concern about mother’s “ability to protect and care for Jennifer in any but the most limited circumstances of supervised visits”].)

We conclude that the juvenile court here “ ‘look[ed] at the totality of the child’s circumstances’ ” in making its exit order. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 206.) It did not abuse its discretion in its award of sole physical and legal custody of the minor to Father. (See *Bridget A.*, *supra*, 148 Cal.App.4th at p. 300.)

B. The Visitation Order

The portion of the court’s exit order under section 362.4 defining Mother’s visitation rights essentially authorized a minimum of two annual supervised visits in Costa Rica and one annual supervised visit in the United States (under certain

conditions). The visitation order contained seven provisions that were discussed by counsel during a break at the February 19, 2014 hearing. Six of the conditions were agreed upon by the parties, but the seventh (Condition Seven) was objected to by Mother and the minor. The minor did not appeal the exit order.

Condition Seven reads: “Mother shall make one visit to [the minor] in Costa Rica before [F]ather is obligated to send [the minor] to the United States under this section.”⁵ Mother challenges the visitation order insofar as it included this Condition Seven. She claims that it “effectively denied her visitation and unduly punished both her and [the minor].” Mother urges that “[v]isitation in California was essential to [the minor’s] well-being” because he had grown up there and had friends and family (his maternal relatives) there. She contends that because she does “not have the means to travel . . . the condition effectively denied her visits.”

In making visitation orders, “the court must define the rights of the parties to visitation. The definition of such a right necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation. The court may, of course, impose any other conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) Thus, for instance, in *In re Chantal S.*, *supra*, 13

⁵ The six conditions not at issue in this appeal are: “(1) Mother must arrange for local professional supervisor, including payment and number of hours of supervision. [¶] (2) All maternal relative contact/visitation must also be supervised professionally. [¶] (3) Mother must communicate contact information for visitation supervisor to [F]ather. [¶] (4) Father will then verify the qualifications of the visitation supervisor and confirm times/location of visits. [¶] (5) Father will then make reasonable efforts to arrange for [the minor’s] safe transportation and housing in the U.S. [¶] (6) Father will then arrange for visitation to occur.”

Cal.4th at page 204, the California Supreme Court held that a juvenile court making a section 362.4 exit order may properly condition a parent's visitation rights upon his or her participation in a counseling program. And in *In re R.R.*, *supra*, 187 Cal.App.4th at page 1284, the appellate court held that the juvenile court did not abuse its discretion by requiring in the visitation order that the father's visits be monitored, where the record showed that he had engaged in drug use close in time to the order and had attempted to conceal information from the agency.

The Department's counsel at the hearing indicated that the rationale for Condition Seven was that in lieu of the court's denying Mother visitation rights based upon a finding that visitation would be detrimental to the minor, it could fashion the terms of visitation to include her making a showing that she was "responsible." Counsel argued: "What we have proposed is for [M]other . . . to be responsible. As a measure of her recovery, if she's going to be able to make plans to go to Costa Rica. To be able to figure out how to save the money to go to Costa Rica. . . . [¶] . . . [¶] So if you're going to have [M]other travel to Costa Rica to visit, then you're already saying it's safe enough, that mere contact with this [M]other . . . would not be detrimental to him. Just contact. [¶] What's detrimental is contact when [M]other is not safe, contact when there isn't somebody safe around." The Department's counsel clarified that Condition Seven did not categorically require Mother to visit her son in Costa Rica before he could come to California. Rather, the condition provided that "before [F]ather would have the *duty* to make the arrangements for [the minor] to come to California," Mother had to visit the minor in Costa Rica. (Italics added.)

Early in the court proceedings on February 19, 2014, the court—after noting that it had "reviewed the file rather extensively"—recited Mother's lack of success with her case plan, failure to obtain drug treatment, failure to visit the minor, calls to the minor while under the influence, and recent arrest for drug possession. Based upon this history, it candidly concluded that "we ought to be extremely structured in what we set up for

[Father] and for [the minor]. Because we know from recent history, even as of a month ago, that the [M]other . . . is apparently still addicted to narcotics and [is] still not willing to be the sober mother that [the minor] deserves when he's going to be visiting.” With this backdrop, later in the hearing, the court agreed that the inclusion of Condition Seven was appropriate. It observed: “That way the [F]ather can have at least some assurance that the mother is in a place of sobriety in her life. And the best interest of the child, I think_[,] requires that.”

Mother's challenge to Condition Seven of the visitation order is without merit. As a practical byproduct of requiring that Mother first visit the minor before Father had a duty to make arrangements for a United States visit—which would entail Mother's making complicated arrangements for international travel that a responsible adult might undertake—the condition required that Mother get control over her substance abuse issues before visiting the minor.

The record in this case supports a visitation condition that had the rationale, noted by the court below, of providing some assurance that Mother, through gaining control over her substance abuse issues, would act in an appropriate and safe manner in visiting her son. As noted in part II.A., *ante*, Mother's performance throughout the dependency was—unfortunately—very unsatisfactory: She made almost no effort to obtain treatment for her substance abuse; did not cooperate with the Department in working on her case plan; went for a period of six months or more at the latter stages of the dependency without even visiting the minor; telephoned the minor while she was under the influence; and was arrested on further drug charges shortly before the last hearing. The juvenile court could have conditioned Mother's right to visitation on her demonstrating that she had been receiving treatment for her substance abuse issues and was thus able to visit safely with her son. (Cf. *In re Chantal S.*, *supra*, 13 Cal.4th at p. 204 [juvenile court may properly condition visitation rights upon parent's participation in counseling].) This might have been a more direct way of conditioning visitation on a showing by Mother

that she had become “responsible” and would be safe with the minor. But the fact that the court took a different approach by imposing Condition Seven does not constitute error.

The visitation component of the exit order demonstrated an attempt to balance the interests of Mother in visitation with the best interests of the minor. (*In re Jennifer G.*, *supra*, 221 Cal.App.3d at p. 757.) The order addressed Mother’s interests of maintaining contact and visiting the minor, given the practical difficulties of thousands of miles separating Mother and the minor. The court’s balancing also included a consideration of the benefits to the minor in providing for visits with Mother, including visits in the Santa Cruz area with Mother, the minor’s maternal relatives, and the minor’s friends—consideration which was tempered by the overriding concern of ensuring the safety and appropriateness of the prospective visits. The court did so with an attempt to fashion an order with appropriate conditions—including ones concerning supervision (see fn. 5, *ante*) and Condition Seven—that were in the minor’s best interests. Furthermore, the visitation order, with its seven specific conditions, was not the type of order that appellate courts have invalidated because the conditions result in making the parent’s visitation rights illusory or constituted an improper delegation of judicial authority. (See, e.g., *In re T.H.*, *supra*, 190 Cal.App.4th at pp. 1123-1124 [visitation order providing for supervised visitation based upon parents’ agreement invalid as it left power of custodial mother to determine whether father would receive any visitation at all]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-51 [visitation order giving children absolute discretion over mother’s visitation invalid]; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1477-1478 [visitation order giving sole discretion to private therapist as to nature of visitation, or whether father would receive any visitation, improperly delegated court’s authority]; *In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1690-1691 [visitation order invalid because it did not define timing, frequency, or circumstances of visitation].)

We conclude the juvenile court did not abuse its discretion in making the visitation order with the inclusion of Condition Seven. (*In re R.R.*, *supra*, 187 Cal.App.4th at p. 1284; see also *In re S.H.* (2011) 197 Cal.App.4th 1542, 1557 [“dependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation”].)

DISPOSITION

The February 19, 2014 order dismissing the dependency of the minor, J.R., is affirmed.

Márquez, J.

WE CONCUR:

Rushing, P. J.

Elia, J.