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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOSEPH R. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. DAWN R., Defendant and Appellant.	D056540 (Super. Ct. No. J516971A-B)

APPEAL from orders of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Dawn R. appeals juvenile court orders placing her minor children Joseph R. and Nathaniel R. (together, the minors) with their father, terminating the court's dependency jurisdiction, and issuing juvenile court custody and visitation orders. Dawn contends the San Diego County Health and Human Services Agency (Agency) failed to provide her

with reasonable reunification services. Specifically, she asserts the visitation she received—limited telephone calls to the minors who live in Hawaii—denied her the opportunity to show she could adequately care for the minors. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND[1]

In February 2008, seven-year-old Joseph and five-year-old Nathaniel became dependents of the juvenile court under Welfare and Institutions Code[2] section 300, subdivisions (a), (b) and (j), and were removed from Dawn's custody based on findings Dawn physically abused them and failed to protect them from physical abuse by Dawn's husband, Timothy B. The minors' father, John R., lived in Hawaii and had not had contact with the minors for several years. The court ordered reunification services for Dawn and John.

During the next 12 months, the parents participated in reunification services while the minors were in foster care. Visits between Dawn and the minors generally went well. Although Dawn had made progress in therapy, her visits with the minors remained supervised because she minimized and failed to take responsibility for their physical abuse, lacked insight as to how the abuse affected them, and was unable to put the minors' needs before her own. Dawn withheld information from Agency, including the nature of her relationship with Timothy.

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1 A more detailed version of the facts and procedure is recited in this court's prior opinion involving this family in *In re Joseph R*. (Mar. 10, 2010, D055480) (nonpub. opn.).

2 Statutory references are to the Welfare and Institutions Code.

John had been participating in programs that provided him with the skills necessary to properly parent the minors. He had suitable housing for them in Hawaii, and had arranged for their educational, medical and mental health needs. The minors said they wanted to live with John, who had fully cooperated with Agency and satisfied every requirement for placement.

When John came to San Diego for the 12-month review hearing, he had successful overnight visits with the minors. John and the minors had a strong parent-child bond and mutual respect for each other. The mental health professionals involved in the case recognized John's positive parenting skills and his ability to care for his children. The social worker had no concerns about placing the minors with John. The court authorized the minors to travel to Hawaii with John for a visit after the school year concluded.

At the 12-month hearing, the court found the minors would be at substantial risk of harm if returned to Dawn's care. The court placed the minors with John, but declined to terminate jurisdiction. It continued services for Dawn and ordered her visits with the minors to remain supervised, with the possibility of unsupervised visits when appropriate. Dawn appealed, and in an unpublished opinion, this court affirmed the juvenile court's orders. (*In re Joseph R.*, *supra*, D055480.)

According to an addendum report, John and the minors were receiving in-home support services, including individual therapy for the minors, family therapy and case management services. Agency investigated and approved the minors' daycare providers. Dawn was receiving family maintenance services, which included supervised visits with the minors arranged by the parents and weekly telephone calls supervised by John.

In status review reports, the social worker recommended the court terminate its jurisdiction and issue juvenile court custody orders, including awarding physical custody of the minors to John, with supervised visitation for Dawn. John had ensured the minors were receiving necessary medical and dental care, and he willingly participated in intensive in-home services to ensure the minors' safety and well-being. Dawn was communicating with the minors' school regarding their educational needs. She also scheduled their court-mandated psychological evaluations, and telephoned them daily. Dawn was now in a relationship with a man who had an open child welfare services case. In the social worker's opinion, John was providing a safe and stable environment for the minors, who had adjusted well to living with John in Hawaii. Because Dawn had made some progress toward mitigating protective issues, the social worker recommended supervised visits for her, with the hope that the parents could work together to develop a visitation plan that would allow visits between Dawn and the minors.

At a contested family maintenance review hearing on December 4, 2009, the parents were not present but were represented by counsel. After the court received in evidence Agency's various reports, the matter proceeded as a trial on the documents at the request of Dawn's counsel without any affirmative evidence. The court found Agency had provided Dawn with reasonable services, including telephone contact with the minors. The court granted physical custody of the minors to John and supervised visits for Dawn, with any modification of the custody and visitation orders to be sought in family court. The court terminated its jurisdiction.

DISCUSSION

Dawn contends Agency failed to provide her with reasonable reunification services. She asserts the court abused its discretion by finding one five-minute telephone call a week to the minors in Hawaii was sufficient "visitation" to facilitate her reunification with them.

A

Where, as here, the court places a child with a previously noncustodial parent under section 361.2, subdivision (a), continues its jurisdiction and provides services to both parents (§ 361.2, subd. (b)), it must then determine, at periodic review hearings, whether continued dependency jurisdiction is necessary. (§ 366.21, subd. (e); *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451 [procedures regarding continuation of court's jurisdiction may be invoked at review hearings].) In deciding whether to terminate jurisdiction, the court determines only whether there is a need for continued supervision, not whether the conditions that justified taking jurisdiction in the first place still exist. (*In re Janee W.*, *supra*, at p. 1451; *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1493-1494, 1496-1498, disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196, 204.)

If the court terminates jurisdiction because the minor is no longer in need of its protection, it may issue custody and visitation orders to be used as the basis for opening a superior court file. (§ 362.4; *In re Jennifer R.* (1993) 14 Cal. App.4th 704, 712.) In making such orders, the juvenile court must always consider the best interests of the minor. (§§ 202, subds. (b) & (d), 361, 362.1, 366.21, subds. (e) & (f), 366.22, subd. (a);

In re John W. (1996) 41 Cal.App.4th 961, 973; *In re Jennifer R., supra*, at p. 712.) The court's broad discretion in determining a minor's best interests will not be reversed on appeal unless the party challenging it has clearly established an abuse of discretion, that is, has shown the court made an arbitrary, capricious or patently absurd determination. (*In re Stephanie M*. (1994) 7 Cal.4th 295, 318; *In re Tamneisha S*. (1997) 58 Cal.App.4th 798, 806.)

B

Here, the purpose of the December 4 hearing was to determine whether the court's continued jurisdiction of the minors was necessary. At the time of the hearing, the minors had lived with John in Hawaii for more than five months and they had adjusted well to that home. The minors were enrolled in school, receiving necessary medical, dental and mental health care, and their negative behaviors had improved. John was participating in intensive in-home services and had provided the minors with a safe and stable home. The minors were having regular telephone contact with Dawn and enjoyed receiving packages from her. Based on this evidence, the court acted well within its discretion by finding the minors no longer needed its protection. (See *In re Sarah M., supra*, 233 Cal.App.3d at pp. 1499-1500 [jurisdiction properly terminated because minor was no longer at risk and no longer needed protection of juvenile court].)

Dawn nevertheless argues the court should have continued its jurisdiction because Agency did not provide her with reasonable services, which should have included in-person visits or communication by webcam via the Internet. However, the evidence shows that once the minors were placed with John in Hawaii, Dawn was having frequent

telephone contact with them[3] and sending them gifts by mail. Dawn was not prevented from traveling to Hawaii for in-person visits, and she provides no authority for the proposition that Agency was required to pay for her airline ticket. (See *Los Angeles County Dept. of Children Etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1091 [juvenile court not required to order Department to pay airfare for father's visits with child].) In any event, there was no showing the minors were adversely affected by the lack of in-person visits with Dawn. Further, although Agency suggested Dawn and the minors could communicate by webcam, this could not be accomplished because John lacked Internet access. Nothing in the record indicates John was in any way sabotaging Dawn's efforts to maintain contact with the minors. Because Agency facilitated contact between Dawn and the minors to the best of its ability, the visitation Dawn received was reasonable under the circumstances.

Moreover, "once the dependency court determines that further supervision of the children in the home of the previously noncustodial parent is not required, the failure to provide adequate reunification services to the other parent does not prevent the court from terminating jurisdiction under section 361.2." (*In re Janee W., supra*, 140 Cal.App.4th at p. 1455.) Thus, even if Dawn received inadequate services, she is not entitled to a reversal or a new hearing. At this point, any challenges to the nature and

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3 Although Dawn told the social worker her contact with the minors was limited to one five-minute telephone call a week, she also stated she sometimes spoke to the minors more than once on the same day.

amount of visitation she is receiving are better addressed to the family court, where both parents will have ample procedural protections for enforcement and modification of the custody and visitation orders. (§ 362.4; *In re Chantal S.*, *supra*, 13 Cal.4th at p. 213; *In re John W.*, *supra*, 41 Cal.App.4th at pp. 975-976.)

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.