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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JOCELYN SIAPNO,

Appellant,

v.

LYCETTE KINTANAR,

Respondent.

A137970

(Alameda County
Super. Ct. No. HF12654215)

Appellant Jocelyn Siapno (Aunt) is the paternal aunt of eight-year-old Aidan Gabriel Siapno (Child). Respondent Lycette Kintanar (Mother) is Child’s biological mother, the ex-wife of Aunt’s brother, Jay Siapno (Father). Aunt filed a petition for aunt visitation with Child pursuant to Family Code section 3102. A court commissioner denied the petition, and that denial was reviewed and upheld by a superior court judge. Aunt contends the commissioner erred by improperly granting “summary judgment,” and that the commissioner was without jurisdiction to rule on visitation. We disagree with her contentions and affirm.

I. PROCEDURAL BACKGROUND & FACTS

A detailed discussion of the facts is not necessary to resolve the issues on appeal. Aunt, in pro. per., filed her petition for visitation alleging she regularly—but, apparently, not frequently—visited Father and Child, apparently beginning in 2007, until Father’s death in February 2012.¹ She further alleged that after Father’s funeral Mother refused

¹ Father and Mother divorced in 2010.

all further visitation and any communication with Father's family. Aunt claimed her relationship with Mother was "always . . . amicable." Aunt wanted to continue her relationship with Child.

Mother, also in pro. per., filed her response to the petition and was "completely opposed" to aunt visitation. She stated her relationship with Father's family was "never favorable, let alone amicable," and that Aunt's claim of an amicable relationship with Mother was "untruthful and misleading." She detailed numerous instances of animosity, referred to Aunt and her family as "extremely dysfunctional and toxic," and argued visitation would be harmful to Child and his self-esteem.²

Alameda County's Families & Children's Bureau prepared a Child Custody Recommending Counseling Report for the court. While noting "a long history of discord between the mother and the paternal family," the counselor recommended bi-monthly visitation between Aunt and Child, subject to certain conditions.

The matter was heard by Honorable Thomas J. Nixon, Commissioner (Commissioner). Both Mother and Aunt appeared in pro. per., were sworn, and testified. After hearing both parties' testimony, Commissioner ruled: "The Court finds that given the animosity the parties have for one another and the limited time the child spent with [Aunt], (no visits at all for the last 10 months and limited visits prior to February 2012) insufficient proof exists that it would be in the child's best interest to have ordered visits with [Aunt]. Her motion is denied."

Aunt filed a "Notice of Objection to the Findings and Recommendations of the Commissioner or Motion to Reconsider or Vacate the Ruling and Set a New Trial." Among other things, Aunt claimed she did not know Commissioner was going to issue a final ruling—she believed visitation had been denied "for all time." She also objected to Commissioner Nixon's jurisdiction on the ground he lacked authority to issue a final ruling and because she never stipulated Commissioner could sit as a temporary judge pursuant to Code of Civil Procedure section 259, subdivision (d).

² Aunt refuted numerous factual claims of Mother in a reply brief.

Aunt's objections and motions came on for hearing before Honorable Brad Seligman, Judge of the Superior Court. Both parties appeared in pro. per. The court told Aunt: "[I] don't think there is a basis to challenge [Commissioner's] jurisdiction now for two reasons. One, you didn't object before the hearing and, second, . . . I don't think the visitation order is a final order." The court also clarified to Aunt that the order could be modified upon a showing of changed circumstances. The court found Commissioner had authority to make the visitation order and the order was supported by the evidence. At the end of the hearing, after having been twice told by the court the visitation ruling was not final, Aunt asked for a "trial." The court refused the request on the ground the decision had already been made. In its minute order, the court found there was "no basis to challenge the prior order" and "maintain[ed]" Commissioner's order.

II. DISCUSSION

Aunt contends Commissioner Nixon improperly granted "summary judgment," and makes numerous arguments, both procedural and substantive, based on the presumption this is a summary judgment case. Aunt is in error. This case does not involve summary judgment, but a typical request for a visitation order which was, in standard fashion, briefed, heard before a judicial officer with live witnesses, and decided. There is no procedural fault in the proceedings. Aunt was not denied a "trial," but received a proper evidentiary hearing on the merits of her motion. Finally, Commissioner's ruling is supported by substantial evidence.

Aunt also contends Commissioner lacked jurisdiction to make his visitation ruling. We need not decide whether there was an implied stipulation, by a lack of objection, that Commissioner could sit as a temporary judge. (Cal. Const., Art. VI, § 21; see *In re Brittany K.* (2002) 96 Cal.App.4th 805, 813.) Commissioner Nixon did not make a final order regarding visitation, and his findings and orders were reviewed and maintained, by a superior court judge. This is proper. (Code Civ. Proc., § 259, subd. (e) [authorizing court commissioner to make findings and recommendations to the court regarding nonfinal matters in family law proceedings].) And we note the operative order in this case is that of Judge Seligman.

III. DISPOSITION

The order denying visitation is affirmed.

Sepulveda, J.*

We concur:

Margulies, Acting P.J.

Dondero, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.