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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.C. et al., a Person Coming Under
the Juvenile Court Law.

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

A141846

(Del Norte County
Super. Ct. No. JVSQ13-6017, JVSQ13-
6017)

J.B. (Mother), mother of N.C. and M.C. (the Twins), born in January 2007, appeals from orders at a 12-month review dismissing the Twins’ dependency cases, and directing continued visitation between Mother and the Twins. We have previously ruled on Mother’s appeals from orders at: the April 2013 disposition (*In re N.C.* (May 5, 2014, A138503) [nonpub. opn.] (*N.C. I*)); the October 2013 six-month review (*In re N.C.* (June 24, 2014, A140027) [nonpub. opn.] (*N.C. II*)); and a November 2013 interim review (*In re N.C.* (July 28, 2014, A140372) [nonpub. opn.] (*N.C. III*)). We are concurrently ruling on the Mother’s appeal, and the appeal of B.B. and Y.B. (Maternal Grandparents), from orders at the February 2014 interim review (*N.C. IV*).¹

¹We take judicial notice of the records, briefs, and opinions in these other cases.

Mother contends that the court prejudged issues at the 12-month review, that the Del Norte County Department of Health and Human Services (the Department) did not provide her with reasonable reunification services, and that the court abused its discretion in denying her funding for expert assistance. We disagree and affirm.

I. BACKGROUND

At the February 2014 hearing we reviewed in *N.C. IV*, the court asked, “What is different now than when this court took jurisdiction 13, 14 months ago? [¶] . . . [¶] The kids are doing well. They are thriving, so why do I have to keep this case in dependency? [¶] I mean, that’s what I’m asking you, and that’s what I expect a really good answer on April 11th, because the statute requires if there’s no substantial progress in resolving the conditions that led to dependency, the court shall terminate services and make an exit order. And I just want everybody here to know that I’m thinking of terminating services and making an exit order. [¶] I have not decided to do that yet, but I need evidence of substantial progress being made in the conditions that led to removal. [¶] . . . [¶] So we have exactly 42 days before the 12-month review And so far I’m not seeing anything that tells me that we’re on track here, and I’ll wait until then.”

The 12-month reports by CASA and the Department recommended that the Twins’ cases be dismissed. CASA indicated that Mother had been late to another visit with the Twins, and had falsely alleged that Father was hindering the Twins’ participation in school activities. “CASA has observed a steady improvement with the girls’ attitudes and development while remaining in their Father’s home. [¶] . . . [¶] Ideally it would be beneficial for the girls to have visitation with [Mother], however, due to [Mother’s] continued pattern of unfounded allegations, CASA is concerned that unsupervised visits or overnight visits would bring the additionally high risk of [Mother] bringing forth more unsubstantiated allegations of abuse. This would significantly harm the progress to these girls’ mental health and developmental years. [¶] . . . The children remain at risk for emotional trauma, not only with respect to allegations, but with [Mother’s] history as well as with the Maternal Grandparents absconding with the girls.”

Similarly, the Department was concerned that “[M]other continues to create false realities. For example she told the girls’ school the court said she could attend field trips and volunteer in the classroom and she has the court order to prove it. She has told this social worker that last time in court, she was given unsupervised visits and she could start having them at her home. She continues to say things such as this to various people she encounters in order to get what she wants.” The Department opined “that there is no safety or risk concern that requires the Department’s involvement or the Court’s supervision. This appears to be a family law matter” The Department recommended that Father and Mother be given joint legal custody of the Twins, with sole physical custody to Father, and visitation for Mother to be arranged through mediation.

Mother filed a brief requesting that the court retain jurisdiction and furnish her additional reunification services. She argued that she had not received reasonable services because “[f]unding for counseling has not been provided,” but advised that “she is now participating in counseling as was most recently ordered by the Court on February 28, 2014.” Mother was then “seeing Dr. Kathie Mathis as her family therapist,” and she attached weekly reports from Dr. Mathis dated March 22, April 1, and April 7.

In her April 1 report, Dr. Mathis stated that Mother had consulted her by telephone and email more than 20 times, beginning in April 2011. They most recently communicated on January 5, March 23, and April 1, 2014. Mathis believed that Mother and the Twins were “victim[s] of domestic abuse.” Although Mathis’s consultations with Mother began before Mother absconded with the Twins, it was her “professional opinion now AND for the years I have worked with [Mother], that she poses **NO** risk to her children.” Mathis thought Dr. Singer’s report was invalid because Singer had not administered Mother’s psychological testing correctly. Mathis wrote, “I also think that some of the ‘behaviors’ that have been put on [Mother] by others are those that might show up due to her Lupus.”

Mother requested that Mathis be appointed as her expert witness for the 12-month review hearing, and that funding be provided for the cost of Mathis’s attendance. Mother

advised that Dr. Jenesky, the expert who had previously been appointed for her, died on March 20.

The 12-month review began on April 11, and had to be continued to May 2 because the Department's report was untimely. At the April 11 hearing, the court said it would not allow testimony at the 12-month review without an offer of proof showing that the evidence would be different from what was contained in the reports. The court stated that "whatever I decide in this case is going to be based on the totality of the circumstances, including the history of the case, how the children are doing now, Dr. Singer's report, Dr. Jenesky's report, any reports that were filed by counsel for the children, the CASA reports. The Court has plenty of information. And the purpose of live testimony would need to be carefully detailed if we're going to have it."

The court denied Mother's request for appointment of an expert, noting that it had "a plethora of reports and data." The court said it would permit the Department to respond to Mother's brief, which was filed the day before the hearing, but it would not accept any further filings other than offers of proof unless "something that happens in the interim is an entire game changer."

Mother filed an offer of proof as to the testimony of five witnesses, including her and Father. Dr. Mathis would testify that "the manner in which the MMPI II was administered to [Mother and Father] and the procedures followed by Dr. Singer were negligent at best. Standard protocol was not followed, the testing results invalid and therefore reliance upon Dr. Singer's testing results is highly questionable." Mathis would compare the results of her testing of Mother to those of Singer and Jenesky, and testify to "the importance of facilitating and maintaining the strong bond between the twins and their mother through frequent and continuing contact." Robin Harte-Lehman, the social services aide who observed Mother's visits with the Twins for the past year, would testify that she had spoken to case social worker Deidra Ward about "her recommendation that Mother's visitation be increased and that unsupervised visits should be allowed." Ward's testimony would establish that Mother received inadequate services and that the Department was biased against her.

At the start of the May 2 hearing, the court said that it had “read and considered the reports, all of them . . . And I have been on . . . this case since . . . jurisdiction was taken. So I’m completely familiar with the file. And . . . I am planning to terminate the dependency.” After confirming that no one, including the Twins’ attorney, other than Mother objected to that result, the court said it would allow Mother “some limited testimony,” and mother called visitation monitor Lehman-Harte as a witness.

Contrary to Mother’s offer of proof, Harte-Lehman testified she did not believe that Mother should have unsupervised visits with the Twins. As we said in *N.C. II*, the court ordered Mother to bring only one bag of items for the visits because the visits “should be an opportunity for you to relate to your kids and not be Santa Claus. . . .” Harte-Lehman testified that Mother was “still bringing tons of stuff” to the visits. But she said, “I pick my battles,” and “overall, [Mother’s] been good” about following the rules. When asked about Mother’s parenting abilities, Harte-Lehman said, “She parents all right.” When asked whether she had observed any behavior by Mother that caused concern for the Twins’ welfare, Harte-Lehman said, “No. For the most part, she’s pretty good.” Harte-Lehman confirmed that the Twins loved Mother and wanted to spend more time with her.

When the court continued the hearing to May 9, Mother spoke up from the audience saying she had a declaration to submit, and the court responded, “No more filings.”

Mother testified and called Father as a witness when the hearing resumed on May 9. Father said that he was trying to retain a reunification therapist, and would submit to mediation with Mother if he did not have to be in the same room with her. Mother’s counsel asked him, “Would you agree, though, that it’s in the best interest of your daughters to figure out some way to be able to co-parent with [Mother]?” [¶] A. I would not agree with that. [¶] Q. How do you intend to raise your daughter with [Mother] without ever communicating with her? [¶] A. Well, since we quit communicating, it’s been great.” Father was asked whether he “agree[d] that it is in [the Twins’] best interest to maintain that bond with their mother?” “A. No, I wouldn’t. Q. Why is that? A.

Because I've seen all the things that she's done to them. . . . And I know what she will do to them. So I do not feel it's in their best interest."

Mother testified that she trusted Father, and understood his feelings about her. She said she had put aside her feelings against Father "long ago. And I am ready and willing to, you know, get along with [Paternal Grandmother] and [Father] and everyone in his family. That has to be done. [¶] And my only concern is my kids. And it's not okay for the kids to hear or even feel the tension, you know, between parents. And I've totally put that aside. I think that we should, you know, start getting along." She said, referring presumably to Dr. Mathis, that she had been seeing a therapist "continually" as the plan required.

The court dismissed the dependency cases, gave Father and Mother joint legal custody of the Twins, and the Father sole physical custody. The court explained its reasons at length:

"I . . . observed at the . . . [jurisdictional] hearing that the father, the alleged molester of these children, that at least one, and I think two, of his adult daughters by a previous marriage were sitting shoulder to shoulder with him in court. And it's my experience that, you know, people don't start molesting. It's sort of a lifelong pattern. And in my mind . . . if he's a molester, he molested his previous daughters, and they wouldn't be sitting shoulder to shoulder with him in court; in fact, they'd be doing everything in the world to make sure he never gets another chance to do it again. That's just kind of my common sense approach to this thing.

"But, still, in spite of all that, I decided to keep an open mind

". . . [T]he record now appears pretty clear that these kids are doing well. They're developmentally on track. They appear to be 'normal' and interact with other kids and other adults in normal ways. . . . [B]y and large, they're normal, middle-class kids. . . . They're engaged in normal kid activities, and it's very clear from CASA, reading the reports and the social services report, these are not kids that are acting like they have been molested.

“ . . . I’m finding there’s no more need to intervene. . . . They’re not being molested, period. And they weren’t molested. So that I want set [aside].

“As to . . . why am I dismissing dependency[,] . . . [t]hese are middle-class kids. They’re financially fine. They show no signs of abuse. They have parents who are decent people in their own right; they just are poisonous to each other. . . .

“But, sadly, the Court and the social services system and batteries of lawyers and armed experts and unarmed experts can’t really do anything to alleviate this poisonous atmosphere that they have. So there’s no more need to continue with this ponderous, expensive social services system. . . .”

The court later added, “I am persuaded that after all this time the mother still lacks insight as to what she did, how she tried to gain leverage in the custody battle and doesn’t really understand. . . . I’m deeply saddened by it, but there’s nothing I can do about it.” However, the court declined to follow the Department’s recommendation that future visitation between Mother and the Twins be resolved through mediation, saying: “That’s not fair to the mother. . . . [Mother] will be essentially powerless; she will have no power, no leverage no way of being empowered because dad is hostile to the idea of mediation. [¶] . . . [¶] . . . I’m going to make an exit order that keeps the existing visitation . . . schedule.”

The court stated the terms of visitation as follows: “Monday . . . 3:30 p.m. to 5:00 p.m.; Wednesday, 3:30 p.m. to 5:00 p.m.; Friday 1:45 p.m. to 3:45 p.m. [¶] Visits will be supervised by the Family Resource Center or Child Care Council” The Department expressed concern about “whether or not the FRC or the Child Care Council will be willing to work with mother again. We’ve had some issues in the past, obviously.” The court responded, “That’s for another time and another place.” The court filed visitation orders for the Twins stating that visits at the specified times would be supervised by the Child Care Council.

On May 19, the court on its own motion set a hearing for May 28 “for clarification of some confusing language and/or terms of the [exit] order.”

Father and Mother appeared without counsel at the May 28 hearing, where their animosity toward each other was apparent. Mother interrupted Father so many times the court had to tell her “to let him speak or I’m going to have you physically removed from the courtroom.” A Child Care Council representative testified that the Council was unwilling to provide supervised visitation for the Twins because “[w]e’ve given [Father and Mother] multiple tries in the past,” and “they couldn’t follow the parent agreement.” The court noted that it had limited jurisdiction to change the exit order, and said, “[T]he best I can do is order visitation as per the order at the Family Resource Center” The minutes for the hearing stated: “The Court is ordering visits to take place at the Family Resource Center on the days and times previously ordered.”

II. DISCUSSION

A. Threshold Argument

Mother contends that we must reverse the orders at the 12-month review if we reverse the orders at the February interim review, but the February orders have been affirmed in *N.C. IV*.

B. Prejudgment of Issues

Mother argues, as she did in *N.C. I*, that the court improperly prejudged the issues she disputes. This argument is based in part on remarks made by the court at the February 28, April 11, May 2, and May 9 hearings. On February 28, the court said that it was “thinking of terminating services” but had “not decided to do that yet.” On April 11, the court said, “I don’t expect to hear any live testimony, especially if its going to be something, like, oh, I want to continue the reunification plan or this or that or the other thing.” It also said, “I’m continuing this case because I have to, but I have no doubt that I am ready to proceed today. The law just won’t allow it.”

At the beginning of the May 2 hearing, the court said, “I’m completely familiar with the file. And . . . I am planning to terminate the dependency.” At the beginning of the May 9 hearing, after reiterating that it had read all the reports in the case and “reread Dr. Singer’s report, all 80-some-odd pages of it[,]” the court said, “I intend to terminate services.” The court then told Mother, “I do intend to finish today. So I’m going to give

you one hour to put on any evidence you want to put on.” The court added: “For the record, I’m an assigned judge. I live 250 miles from this courthouse, and this is my third appearance . . . on the 12-month review. [¶] I have repeatedly taken the position that these children do not now need to be under the care, custody and control of the department of social services for the reasons I will reiterate when I make my findings.”

We have carefully reviewed the transcripts and find no impropriety. The statements Mother sees as indicative of judicial bias and prejudgment of the issues we view as a service to the parties and our court. The judge stated his thoughts bluntly and thoroughly throughout the case, which made his findings, and the reasons for them, very clear to all concerned. His candor enabled Mother to do what she could to address his concerns at the 12-month review. Although the court said it was not inclined to take testimony, it allowed Mother to call three of the five witnesses she identified, and accepted offers of proof as to the testimony of the other two.

Mother emphasizes in particular that the custody order and final judgment the court filed on May 9 listed the hearing date as April 11, and was signed by the court on April 11, when the 12-month review began. She believes this shows that the hearings on May 2 and 9 were meaningless, and that the result was a *fait accompli*. We think this simply shows that the court heard nothing in those subsequent hearings that changed its mind as to the correct ruling. We are not persuaded the court made two five-hundred mile round trips just to ignore Mother’s evidence and arguments.

Here, as in *N.C. I*, the record as a whole fails to substantiate the allegations of bias and prejudgment. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 590–591; *In re Marriage of DeRoque* (1999) 74 Cal.App.4th 1090, 1097, fn. 2.)

C. Reasonableness of Services

Mother argues that she did not receive reasonable reunification services, and thus that she is entitled to further services. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1453.) She contends that the visitation she was given with the Twins was “illusory” because responsibility for the visits was improperly delegated to the Department. We again reject this argument for the same reasons we stated in *N.C. III*. She notes that

Father failed to fulfill some of his obligations under the case plan, and argues that those failures interfered with her ability to reunify with the Twins. However, Father's performance under the plan had nothing to do with whether Mother received adequate services.

Mother contends that "although she had been ordered to participate in individual counseling," the Department "failed to provide her with a list of individual counseling agencies," and thus "essentially delegated the burden of finding and obtaining suitable services to her," " 'when the public clinic declined to provide the needed evaluation.' " But, as we observed in *N.C. IV*, the Department offered Mother free counseling from "County Mental Health." Hence, this is not a case where "the public clinic declined to provide the needed evaluation." Moreover, Mother was previously acquainted with Dr. Mathis, and was receiving counseling from her. No failing on the part of the Department or prejudice to Mother has been shown.

Mother contends that the court failed "to guard against the influence of class and life style biases" (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 606–607) in connection with provision of a therapist for her because the Twins were, as the court stated, "middle class" and "financially fine" only "to the extent that they were placed with [Father]." She writes, "[A]s the court was well-aware . . . [she] was not 'middle class' in that she was unemployed and had medical problems . . . and therefore was not even able to afford a therapist for *herself*" But the Department offered her free counseling, and she evidently had the means to obtain counseling from her preferred source, Dr. Mathis. No "class bias" is apparent. The Twins' financial security was just one of the valid reasons the court identified for its finding that they would not be at risk if their dependencies were terminated.

D. Refusal to Appoint Another Expert for Mother

Mother contends that the court abused its discretion when it declined her requests to appoint Dr. Mathis as her expert and pay for Mathis to attend the 12-month review.

After the court received Dr. Singer's October 2013 report, it granted Mother's request to retain Dr. Jenesky to perform a psychological evaluation of her. The

Department raised various objections to Jenesky's retention. The court said it authorized Jenesky's report "to level the playing field" after Dr. Singer's critical evaluation of Mother. The court explained that "in this somewhat difficult case, especially in view of the allegations that . . . social services is biased against the mother, the judge is biased against everybody . . . I'm operating on the basis that I need more information, not less."

When the court ruled at the 12-month review, it had Jenesky's report, which, as we stated in *N.C. III*, concluded that Mother " 'appear[ed] to be capable of meeting requirements of a reunification plan and properly parenting her children.' " The court also had three reports supporting Mother from Dr. Mathis, and an offer of proof as to Mathis's testimony.

On this record, the court could reasonably conclude that Mother required no further expert assistance.

III. DISPOSITION

The orders at the 12-month review, including dismissal of the cases, are affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.