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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

T.G.,

Defendant and Appellant.

A145404

(Contra Costa County
Super. Ct. Nos. J1401180, J1401181,
J1401182 & J1401183)

I.

INTRODUCTION

T.G. (mother) appeals from jurisdiction and disposition orders pursuant to which the juvenile court removed N.J. (age 11), A.J. (age 9), T.C. (age 6), and Z.J. (age 3) from mother’s home and placed these children with their noncustodial fathers. (Welf. & Inst. Code, § 361.2, subd. (b)(3).)¹ Mother contends that the juvenile court erred by (1) denying mother’s request to represent herself; (2) appointing a guardian ad litem for mother; and (3) delegating the issue of visitation to the Contra Costa County Children and Family Services Bureau (the Bureau). We reject these contentions and affirm the orders.

¹ Statutory references are to the Welfare & Institutions Code, unless otherwise indicated.

II.

STATEMENT OF FACTS

A. The Dependency Petitions

On Saturday, November 1, 2014, mother left the four children home alone all day, while she went to work. N.J. made breakfast for her siblings and was responsible for watching them while mother was at work. Mother called once during the day and warned N.J. that she would “whoop all your asses” if the house was not clean. When mother returned after dark, she yelled and cussed at N.J. because the house was not clean, and because she had found out T.C. and Z.J. had gone out trick-or-treating in the neighborhood and that Z.J. was naked when he went out, which made her very angry. Mother then had the three older girls stand in a line and gave each of them a “whooping” with a vacuum cord, hitting them between 15 to 20 times. The beatings left visible marks and welts. N.J. video recorded seven minutes of the beatings on her cell phone. After mother left the house to get a pizza, N.J. called 911.

When a police officer arrived at around 8:30 p.m., N.J. answered the door and was visibly upset. The officer asked if mother was home, and N.J. said she went out to get pizza. The girls described the “whoopings” they had received with a vacuum cleaner cord, and one of them said she had also received a beating a few days before. While the officer was talking to the children, he heard the garage door and the children said, “The pizza is here.” Mother entered the home from the garage with a pizza in her hand and appeared surprised to see the officer. The officer asked if mother had hit any of the children for punishment and she responded, “No, I don’t hit my children. I was asleep and I don’t know why they called the police.” The officer asked why mother had left the children alone when she went to get the pizza, and she responded, “I don’t know what you are talking about, I was asleep upstairs.” Mother was arrested and taken into custody. Z.J., the three-year-old, was released to his father who lived nearby. The three girls were put in a foster placement.

On November 3, 2014, a social casework specialist conducted an interview of mother at the detention facility. Mother said that the children are supposed to be with

their dads on the weekends but that rarely happened. Mother was pregnant and reported that she did not take medication, abuse drugs or alcohol. She told the social worker she has two older children who live with their father in Sacramento. The social worker asked about the November 1 incident. Mother said that she ordered pizza for the kids' dinner and then went to bed, and she claimed she did not know why a police officer came to her door. When the social worker said N.J. called 911, mother said the kids had accidentally called 911 in the past. The social worker told mother that N.J. had videotaped mother giving the girls a "whooping" with a vacuum cleaner cord. Mother responded, "I don't know about a vacuum cord." When the social worker said that the girls had marks on their bodies, mother responded "I don't recall."

Once the social worker started talking about the allegations that had been made, mother repeatedly stated she did not recall, became increasingly defensive, and stated she wanted to end the interview. When the social worker explained the court process, mother questioned why she was acting as though mother was not going to get her kids. She said that working with the Bureau was voluntary and she did not want to. When the social worker said that the process was not voluntary, mother repeated that she wanted to end the interview.

On November 4, 2014, the Bureau filed juvenile dependency petitions for each of the four children. The Bureau alleged that the court had jurisdiction over the three girls under section 300, subdivision (a) [causing serious physical harm], and subdivision (b) [failure to protect]. The Bureau alleged that the court had jurisdiction over Z.J. under section 300, subdivision (b) [failure to protect], and subdivision (j) [abuse of a sibling]. The physical harm allegations were directed solely against mother, based on the November 1 incident. Allegations of failure to protect were directed at mother and the respective father of each child. The Bureau alleged that mother created a risk of serious harm by failing to provide adequate supervision for the children and leaving them home unsupervised from before breakfast until around dinnertime. As to each father, the Bureau alleged that he placed his child at risk by failing to ensure there was adequate

supervision in mother's home, and by failing to protect the child from mother's inappropriate physical discipline.

B. The Detention Hearings

On November 5, 2014, the court held three detention hearings, one for each father. The Honorable Lois Haight presided over all three hearings. The Bureau recommended that the children be detained from mother. All three fathers insisted they were unaware of any abuse in mother's home, but the Bureau recommended that the children not be placed with their fathers until a further assessment was completed.

The first detention hearing was held for N.J. and A.J., who share a father. Through counsel, mother submitted the matter for purposes of detention only. Counsel explained that mother was still in custody, but expected to be released later that day, and she requested that the children be returned to her by the following Monday. Father objected to the detention recommendation and requested that the girls be released to him. The court denied father's request and then asked mother if there were relatives she wanted considered for placement. Mother responded "Um—um—I'm having a hard time following along—why her father is not able to take her." The court stated that the girls would not be released at that time and mother then provided contact information for some of her relatives. At the conclusion of the hearing, the court adopted the Bureau's recommendation, detained the girls, and denied mother visitation pending a jurisdiction hearing.

The second hearing was for T.C. T.C.'s father has three children with mother. Their two older children live with father in Sacramento. Father produced a joint custody order for T.C. and requested that she be released to his care. Mother objected to detention, submitted the matter on the Bureau's report, and supported placement with father if T.C. were detained from mother. As county counsel attempted to set forth the Bureau's recommendations to detain T.C. from both parents, mother began making her own direct objections, but was admonished by the court to communicate through counsel.

After the parties stated their positions, the court ruled that T.C. would be detained from both parents. As the court began to explain its ruling, mother's counsel apologized

for interrupting and then stated that mother wanted to make it clear to the court that her children were in childcare and that she did not leave them alone. ~RT 35)~ Mother then interrupted her counsel, stating that she needed to object. Again, the court admonished her not to speak and then conducted an off-the-record discussion. When the hearing resumed, mother continued to speak out of turn, repeating that her children were in childcare on the day in question, and stating that the detention report was false and “No children stay home alone.”

Mother’s counsel then made a record of mother’s objection to the allegation that mother left the children alone. The court stated that the children had provided a different story, that the court would adopt the Bureau’s recommendations, and that T.C. would not be released to either parent. Mother interrupted again, questioning whether the judge was an “Article Three” judge, and demanding to see an oath of office. Mother repeatedly objected that she would not acknowledge the court’s ruling until she was provided with proof that Judge Haight was an Article Three judge and that she had an oath of office.

The final hearing was for Z.J., who had been released to his father on the night of the November 1 incident. The Bureau requested that the boy be taken into custody that evening because a preliminary investigation revealed that his father may have engaged in domestic violence with mother in front of the children, and one of the children had also reported that father also hit Z.J. Mother interrupted once to deny that she and father engaged in domestic violence. Subsequently, mother’s counsel objected to the detention recommendation, made a record that mother denied allegations of domestic violence, and stated that mother supported placement of Z.J. with father. After the matter was submitted, the court followed the recommendation of the Bureau to detain Z.J. Again mother interrupted, stating “Get me out of here. Get me out—the fuck out of here.”

C. Mother’s Request to Represent Herself and the Appointment of a Guardian Ad Litem

On November 13, 2014, mother filed a document which she titled “(e.g., Affidavit of Facts Writ of Discovery).” Although she was represented by counsel, mother’s document stated that she was “in propria persona,” and that she was making a “special

appearance” for the sole purpose of objecting that the court lacked jurisdiction over her. Mother cited provisions of the federal Constitution, and other statutes and cases, sometimes including quotations from them. She also made incomprehensible arguments that were peppered with legal sounding jargon. However, mother did communicate a demand that her children be returned to her care.

On November 20, 2014, a hearing was held before the Honorable Rebecca Hardie for the purpose of deciding the juvenile court’s jurisdiction over the children. At the beginning of the hearing, mother’s counsel presented a request from mother that she be permitted to represent herself. The court stated it was inclined to deny the request for three reasons. First, mother engaged in disruptive conduct during the detention hearings before Judge Haight; second, mother’s “e.g., Affidavit of Facts Writ of Discovery” raised questions about whether she was competent to represent herself; and third, given mother’s behavior and evidence of incompetence, it was not in the best interest of these young children to prolong these proceedings by allowing mother to attempt to represent herself.

Mother’s counsel asked that the record reflect that mother objected to the denial of her request. Counsel then made her own request that the court appoint a guardian ad litem for mother. When mother objected, the court cleared the courtroom and conducted an in-camera hearing. During that closed proceeding, the court explained the role of the guardian ad litem to mother, and then the following exchange occurred:

“THE COURT: . . . So do you understand all of those things that I have explained to you right now?

“THE MOTHER: I do not stand under.

“THE COURT: I’m sorry? What does ‘I do not stand under’ mean?

“THE MOTHER: It means that I do not stand under. I am under no agreement to make any oral, written or implied jurisdiction at this time.”

At that point, mother’s counsel interjected that mother objected to being represented by counsel, and therefore also objected to the guardian ad litem. Counsel began to express a concern that mother was very focused on “one area,” when mother

interrupted. The court asked mother to be quiet for a moment and then she would have an opportunity to talk. Counsel then continued to share concerns that mother was focused on the idea of jurisdiction, and when counsel tried to explain dependency jurisdiction mother did not appear to understand. Counsel also stated that mother only believed in the Constitution, that she did not believe in codes and statutes and claimed she was not bound by them. Mother interrupted again, telling her attorney that she was owed a fiduciary duty and that counsel could not “share with the judge.”

The court attempted to explain that counsel was free to share this information because the courtroom had been cleared, but repeatedly had to tell mother to stop interrupting. After mother said “She’s not my attorney. She’s your attorney,” the court stated it was inclined to appoint a guardian ad litem. Mother objected, stating she was not incompetent. The court started to explain its ruling, stating “I do believe that you are in need of—” Mother interrupted again, stating “A belief is not a fact. It’s how you feel. I object.” The court responded by giving mother one last warning that if she did not “comport” herself she would be excused from the courtroom. At that point, the in-camera proceeding was concluded.

As people returned to the courtroom for the jurisdiction hearing, mother continuously stated objections, refusing to give the court subject matter jurisdiction, demanding that the court produce an oath of office, and insisting she had the right to represent herself. Once everyone was present, the court stated that the matter would have to be put over for “acceptance” of a guardian ad litem, but mother repeatedly objected to the court’s lack of jurisdiction until the court ordered that she be removed, advising her that she could return when she was willing to be quiet and comport herself.

After mother left the courtroom, the court stated that it wanted to make a record of an incident that had previously been revealed to the court in the presence of all counsel. But first the court addressed N.J., who had attended the hearing that day. The court apologized that N.J. had to witness mother’s removal from the hearing. The judge also told N.J. that the actions she took were “extraordinary,” that she was very courageous, and that if any adult tried to tell her that she did something wrong, then they were wrong.

Then the court asked N.J.'s counsel to recount the incident that occurred earlier that day, as N.J. was entering the courthouse. Counsel stated that N.J. and the social worker were outside when they ran into mother, who had a hood over her head because it was raining. Mother "got very close" to N.J., hugged her, and then "said very slowly, 'Don't say anything else to those people. See what you caused.'" After the court made a record of this incident, it warned adult family members in the courtroom that there would be consequences if anyone tried to dissuade the children from telling the truth. The court then addressed visitation issues raised by the children's fathers, denied a request that mother be afforded visitation, and continued the matter for appointment of a guardian ad litem.

On November 25, 2014, mother filed an "In Propria Persona" document with the title "Affidavit of Fact." That document consisted of mother's summary of the November 20, 2014 hearing, some parts of which are difficult to follow and other parts appear to be quoted verbatim from the discussion that occurred during the in-camera hearing. In her affidavit, mother also declared that she was competent and renewed her objection to the court's jurisdiction over her.

On December 1, 2014, the court held a hearing for acceptance of a guardian ad litem for mother and to set a contested hearing date. Mother's counsel made a record of mother's continuing objection to the appointment of a guardian ad litem and to having appointed counsel continue to represent her. The contested hearing was set for January 8, 2015, so the parties would have sufficient time to review video recorded statements that the girls' were going to provide. During the remainder of the hearing, the court addressed visitation issues, of which there were many. The older girls' father, who lived in Sacramento, needed transportation assistance for visits; T.C.'s father wanted unsupervised visits for himself and T.C.'s two older siblings; Z.C.'s father also wanted unsupervised visits with his son, who was particularly traumatized because of his separation from his family at such a young age. Because there was a strong concern that a relative might influence the girls' testimony, their fathers were denied unsupervised visits. But because Z.C. was too young to give a statement, his father was granted

unsupervised visits. The court denied mother's request to visit with the children prior to the jurisdiction hearing because of a concern that mother might try to influence their statements.

On December 2, 2014, mother filed an "In Propria Persona" document with the title "Peremptory Challenge" and a reference to Code of Civil Procedure section 170.6. The document consisted of a declaration in which mother stated that Judge Hardie was prejudiced against her, and a memorandum of law which did not advance a coherent argument.

On December 12, 2014, the court issued an order which stated that mother's peremptory challenge was not accepted because it was untimely, that mother had now filed three separate pleadings that were not signed by her attorney and that were filed without the knowledge of her counsel, and that the court would not accept any further filings from mother that were not signed by her attorney of record absent further court order.

D. The Jurisdiction Orders

The contested jurisdiction hearing began on January 8, 2015. Mother was not present when the hearing began, although her attorney and guardian ad litem were. Fathers were all present. The Bureau requested that its November 2014 detention/jurisdiction report be admitted into evidence. Mother's counsel made numerous objections which were discussed and overruled. The report was admitted into evidence, although county counsel was directed to produce the social worker at the afternoon session of the hearing so that she could be cross-examined. The Bureau then requested that N.J.'s cell phone videotape of the November 1 incident be admitted into evidence. Mother's counsel objected on foundation and other grounds. The court reserved ruling on the foundation issue and stated that it would view the video with all the parties present. While the videotape was playing, mother arrived at the hearing and after the tape ended, the court allowed mother time to consult with her attorney and guardian ad litem. Mother's guardian ad litem then conveyed mother's objections to being represented by an attorney and a guardian ad litem.

As the court attempted to continue with the hearing, mother repeatedly disrupted the proceedings with her objections. The court stated that it “would like to allow” mother to stay, but she needed to stop being disruptive. Mother responded, “I’d like to make your oath of office to uphold the constitution—” County counsel then advised the court that it would elicit testimony from fathers in order to address mother’s foundational objection to the cell phone video. Mother’s counsel made additional objections to the recording, which the court overruled. Then mother herself objected to the court’s ruling.

While Z.J.’s father was preparing to testify about the content of the cell phone video, mother left the courtroom “on her own volition.” Later, mother sent a message through the bailiff that she wanted to talk to her attorney. The court stated that the delay and interruption would not continue, but it authorized the guardian ad litem to leave the proceedings to consult with mother. The parties then discussed the Bureau’s intention to introduce evidence of interviews of the girls that had been recorded by the district attorney’s office. Again, mother’s counsel raised objections to that evidence. Before the court began viewing the interviews with the parties, mother’s counsel left the courtroom and returned with mother and the guardian ad litem. After one of the interviews was played, the court advised the parties there would be a recess for lunch and that everyone was to return at 1:30 p.m.

Mother returned to court at 2:30 p.m., and was admonished that if she continued to be late she would not be allowed to enter the courtroom. Then the Bureau’s social worker was called to the witness stand. Before her testimony began, however, the bailiff informed the court that mother was recording the proceedings on her cell phone. The court told mother it was illegal to record in a courtroom and instructed her to give the phone to the bailiff. The court asked twice whether mother had recorded the morning session of the hearing. Instead of answering, mother asked to have her cell phone returned. The court responded that the phone would not be returned until it was determined whether confidential proceedings had been recorded. Mother was asked to leave the courtroom.

A few minutes after the social worker began her testimony, the court interrupted to let the parties know that mother's phone contained recordings of the morning session and that she had also begun recording the afternoon session. The court stated that mother would not be allowed back into the courtroom given her disruptive behavior. Mother's attorney objected on her behalf. The proceedings were further delayed while mother's attorney and guardian ad litem left the courtroom to talk with mother.

Eventually, the social worker continued her testimony, during which she was subjected to extensive cross-examination by mother's counsel. Mother's counsel also elicited further testimony from Z.J's father who had lived in mother's home with the four children on and off prior to the November 1 incident. Mother's counsel also cross-examined witnesses called by others. Furthermore, after the close of evidence, mother's counsel objected to the Bureau's recommendations and argued there was insufficient evidence to support the jurisdictional allegations pertaining to mother.

At the conclusion of hearing, the court exercised jurisdiction over the children, finding that all of the petition allegations were true. Mother's counsel requested visitation for mother, arguing that there was no longer a risk of "tainting" because the girls' interviews had already been recorded. Counsel also suggested that the order could be fashioned so the girls would not be forced to visit if they did not want to, in accordance with *In re Chantal S.* (1996) 13 Cal.4th 196; *In re Julie M.* (1999) 69 Cal.App.4th 41, 50-51; and *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237. The court granted this request, and ordered that mother be provided supervised visits a minimum of one hour twice a month, under the condition that the girls would not be forced to visit and that a visit was to be terminated if mother engaged in inappropriate behavior.

E. Disposition

1. The February 2015 Memorandum and Hearing

The disposition hearing was set for February 9, 2015. The Bureau submitted a memorandum report in which it requested a continuance in order to complete its disposition report. The social worker who had been assigned to mother's cases after the

jurisdiction hearing had experienced difficulties making contact with mother. After learning that mother was blocking calls from the Bureau, the social worker sent mother a letter of introduction. Thereafter, mother called, but refused to discuss the cases.

Because mother refused to provide information about the children's medical insurance, the Bureau had been unable to arrange doctor visits for the girls. The girls' foster mother reported they were behind in school and had behavioral issues. N.J. took things that did not belong to her, made up stories, and was hostile when she felt she was being wronged. She said things like she "knows how to put a baby in the microwave," and she stayed up at night pacing instead of sleeping. A.J. appeared emotionally overtaxed and depressed. On one occasion, T.C. defecated at the table without saying that she needed to use the bathroom. Her sisters appeared unfazed and said she had done that before. The girls also exhibited sexualized behavior. N.J. had used the foster mother's computer to look at child pornography, which she then discussed with her sisters. The girls inappropriately touched each other and openly masturbated. Their little brother Z.J., who had struggled in his first foster care placement, was doing much better after he was placed with a paternal relative.

At the February 9 hearing, mother's attorney and guardian ad litem appeared without mother. Mother's counsel notified the court that mother's doctor had put her on bed rest and she would not be available until March 20 at the earliest. The court expressed concern about the depth of the children's issues and granted the Bureau's request for a continuance. It denied mother's request that the court provide her with hearing transcripts at the court's expense.

2. The March 2015 Disposition Report

In its March 12, 2015 disposition report, the Bureau recommended that the children be placed with their fathers with family maintenance services. Since the jurisdiction hearing, all fathers had consistently positive visits with their children, had prepared rooms for their children in their homes, and were cooperative with the Bureau. Fathers wanted their children to live with them, believed they could provide for their needs, and felt that they were being unfairly punished because of mother's actions.

Since her last report, the social worker had a few conversations with mother about visitation, but mother was unwilling to share information about herself or family. Mother had participated in two supervised visits with the children, although she refused to sign the Bureau's visitation agreement. The older girls were resistant and nervous prior to the visits, but seemed to enjoy their time with mother. They maintained that they did not want to return to her care. In early March, mother called the social worker and said that she loved her children and that she did not abuse them. She accused the police and the Bureau of coaxing a story out of N.J. by offering her candy and asking leading questions.

The disposition report contained the following assessment of mother: "During this reporting period, [mother] has begun to make contact with the Bureau regarding visitation with her children, but has been resistant to seeking or completing any services to reunify with her children. [Mother] has been adamant and clear to this worker that she will not be working on any reunification plan at this time. Despite wanting to get her children back in her care, except [N.J.] who she feels is best served by being placed with her father, she has stated that the Court has no real jurisdiction over her children and that this case is clearly an abuse of power and the law. This worker believes that [mother] is in total denial of her role/actions which led to this dependency case. She refused to acknowledge any admissions made by her children. She believes her children were coerced to make up stories and that [N.J.] constantly fabricates stories to benefit her own agenda. [Mother]'s communication during this reporting period has been driven by anger and resentment, which this social worker believes impedes her ability to learn from this dependency and her ability to safely parent her children. Due to lack of cooperation, denial of events which led to our intervention and difficulty with communicating the Child Welfare process to this mother, this social worker feels that it would be in the best interest of the children to be placed in the care of their nonoffending/noncustodial fathers."

3. The March 23, 2015 Hearing

When the disposition hearing commenced on the afternoon of March 23, mother was not present in the courtroom because she had refused to allow security to search her

purse for contraband or a recording device. Mother's counsel advised the court that mother had gone to put her purse in her car with the intent to return, but after waiting 10 or 15 minutes the court decided to commence proceedings over the objection of mother's counsel.

Mother's counsel then began her cross-examination of the Bureau social worker and mother entered the court room shortly after that examination began. The social worker testified that mother declined referrals for anger management, parenting class, and general counseling on numerous occasions by telephone, in person and by mail. Mother was not interested in any activity other than visitation. Under examination by county counsel, the social worker testified that mother never expressed any difficulty about accessing the services that were offered to her but instead made it clear that she did not want to participate in services. She continued to maintain that the court should not have exercised jurisdiction over the children and she did not believe that they had been abused. When mother's counsel conducted a recross-examination of the social worker, the court permitted her to raise new issues that mother had brought to her counsel's attention while the social worker was being questioned by the other parties.

During the social worker's testimony, the court inquired about a section in the report pertaining to the family's prior social welfare history, which stated that between 2000 and 2014, there had been 29 referrals to social welfare agencies, and that mother had received reunification services from Sacramento County in 2003 and 2007 and had successfully reunified with her children. The social worker testified that the Bureau had not obtained the mother's case files from Sacramento. Thus, after the parties completed the presentation of their evidence, the court continued the hearing so the Bureau could provide additional information about previous dependency cases in Sacramento County. The court denied mother's request for unsupervised visits and overnight visits, and advised mother that unsupervised contact was not an option until she engaged in services to address the issues that led to the children's removal from her care.

4. April 20, 2015 Hearing

Mother did not appear at the continued hearing. Her counsel requested a continuance, explaining that mother had started a new job. The court denied that request. The Bureau submitted a memorandum summarizing the dependency cases in Sacramento County, which pertained to mother's now teenaged children who she had with the father of T.C. Those cases involved allegations of an unsuitable caretaker, domestic violence and substance abuse by father. Mother's counsel made an objection to the admission of the Bureau's memorandum, which the court overruled. The court also rejected an argument that the Bureau failed to comply with the Indian Child Welfare Act (ICWA), finding that the Bureau had exercised due diligence notwithstanding mother's refusal to cooperate or provide pertinent information about her claim of Native American heritage. When examined about the Bureau's supplemental memorandum, the social worker testified that the Sacramento cases did not change the Bureau's dispositional recommendations in these cases.

At the conclusion of the hearing, the court made disposition orders for N.J., A.J., and Z.J. The three children were removed from mother and placed in the care of their respective fathers. The court continued disposition for T.C. until May 28, expressing some reluctance to place her with her father at that time.

5. May 13, 2015 Hearing and the Amended Disposition Order

On May 13, the court conducted an interim hearing at the request of mother's counsel in order to clarify its disposition order for N.J., A.J., and Z.J. The court stated that it had intended to order services for mother in each of those cases and to keep the cases "open" with family maintenance services for six months. The court directed that the Bureau prepare a case plan for mother and that her services include anger management, an intensive parenting class, individual counseling and a mental health assessment, including a psychological evaluation if recommended by the assessment. Mother was also granted supervised visitation and allowed to have monitored phone contact with her children.

On May 28, the court signed “Amended Disposition Findings and Orders” for N.J., A.J., and Z.J. that had been drafted by mother’s counsel. The court adjudged the children dependents of the juvenile court and ordered, inter alia, that the children were to be removed from the physical custody of mother; that fathers were to assume physical custody of their respective children; and that the Bureau was to provide services to mother and fathers. The court also ordered that the Bureau was to “arrange visitation” for mother, which “will be for a minimum of one hour one time per week and must be supervised.” The court ordered the Bureau to “consider the child’s wishes and input from the child’s counsel and child’s treating therapist in establishing the frequency, time, place, and length of visits, pursuant to the holdings of *In re Danielle W.*, *In re Chantal S.*, and *In re Julie M.*”

6. May 28, 2015 Hearing

Mother did not appear at the continued disposition hearing for T.C. The Bureau submitted a memorandum which summarized a recent contact between the social worker and mother on May 15, 2015. The Bureau reported that when the social worker attempted to provide mother with referrals to services, mother interrupted and said: “I am not willing to participate in any Court ordered services and how can the Court even order me to participate in these services that are not proven to work.” Mother said she was only interested in visitation.

In its memorandum report, the Bureau continued to recommend that T.C. be placed with her father in Sacramento. It also requested that her case be transferred to Sacramento County to facilitate the provision of services to the family. Additionally, the Bureau requested that N.J.’s case and A.J.’s case be transferred to Sacramento, where they were now living with their father.

During the continued hearing, mother’s counsel reiterated mother’s objection to the removal of T.C. from her care, but clarified mother’s position that if the court was going to remove T.C., mother supported the placement with father. Furthermore, after an

extensive discussion, the court found that the Bureau had complied with the ICWA.² Ultimately, the court ordered that T.C. be placed with her father and ordered reunification services to both parents. The court also granted the Bureau's requests to transfer N.J.'s, A.J.'s, and T.C.'s cases to Sacramento County.

On June 4, 2015, the court signed a disposition order for T.C. T.C. was adjudged a dependent of the juvenile court and was removed from the physical custody of mother. Father was ordered to assume physical custody of the child subject to the court's supervision, and the Bureau was ordered to provide services to mother and father. The Bureau was ordered to arrange visitation for mother for a minimum of one hour one time per week and to consider the child's wishes and input from others when establishing the frequency, time, place, and length of visits, pursuant to the holdings of *In re Danielle W.*, *In re Chantal S.*, and *In re Julie M.* In contrast to the disposition orders for the other children, the court ordered that mother's visits with T.C. could be unsupervised, but only if mother was "actively engaged in services in her case plan."

III.

DISCUSSION

A. Mother's Request to Represent Herself

Mother contends that the jurisdiction findings and disposition orders must all be reversed because the juvenile court erroneously denied her request to represent herself.

1. Legal Principles

Section 317, subdivision (b) states that the court shall appoint counsel for an indigent parent in a case where the children have or might be removed from the home "unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel" This statutory right to appointed counsel "has been interpreted

² After the issue of ICWA compliance was raised at the May 13 hearing, mother provided the Bureau with documentation of her claim. Mother's evidence was unusual and of questionable reliability, and included, for example, a document titled "Kinship of Princess Pocahontas." The court viewed these documents as further evidence of mother's questionable mental stability.

to give a parent in a juvenile dependency case a statutory right to self-representation. [Citation.]” (*In re A.M.* (2008) 164 Cal.App.4th 914, 923 (*A.M.*); see also *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1083 (*Angel W.*.) However, because this right is statutory, not constitutional, it must be balanced against the rights of other parties, most especially the rights of the children. (*A.M.*, *supra*, 164 Cal.App.4th at pp. 924-925.)

The juvenile court has discretion to deny a request for self-representation if it determines that granting the request would cause substantial disruption or delay in the proceedings. In exercising its discretion, the court must weigh the parent’s right to self-representation against the child’s right to a prompt and fair disposition of the case. (*In re A.M.*, *supra*, 164 Cal.App.4th at pp. 924-926.) “A parent’s disruptive behavior may be sufficient to deny a request for self-representation, but it is not necessary. If it is reasonably probable that granting a parent’s request for self-representation will lead to undue delay in the proceedings that would impair the child’s right to a prompt resolution of custody, the juvenile court has discretion to deny the request regardless whether the parent has ever behaved disruptively.” (*Id.* at p. 926.)

Any error in denying a parent her right to self-representation “should be analyzed under ordinary principles of harmless error as set forth in *People v. Watson* (1956) 46 Cal.2d 818, 837.” (*Angel W.*, *supra*, 93 Cal.App.4th at p. 1082.)

2. The Juvenile Court Did Not Abuse Its Discretion

In the present case, the denial of mother’s request to represent herself was a proper exercise of the juvenile court’s discretion. When the order was made, mother had already substantially disrupted the proceedings and had also raised real concerns about her mental competency. These concerns could not be resolved or addressed because of her steadfast refusal to cooperate with the Bureau or to participate in the judicial process.

Furthermore, the lower court was rightly concerned about the adverse consequences of delay on these very young children, who had not only been removed from mother’s home, but who had been separated from their fathers and their extended families.

In challenging the denial of her request for self-representation, mother parses the court’s ruling into multiple “findings,” and then purports to undermine some of those

findings. But it was a combination of mother's disruptive behavior, her struggles with mental stability, *and* her children's need for a prompt resolution of the dependency petitions which led the court to deny mother's request for self-representation. In her disjointed analysis, mother overlooks and completely fails to account for the children's interests. Furthermore, mother's selective challenge does not alter our conclusion.

3. Disruptive Behavior

Mother argues that the juvenile court committed reversible error by basing its finding that mother was disruptive solely on a matter that had not been presented as "evidence" at the November 20 hearing. According to mother, "[n]o evidence whatsoever had been presented to Judge Hardie as to [mother's] behavior during the detention proceedings before Judge Haight." Thus, mother concludes, Judge Hardie's "adjudication" that mother was disruptive is not supported by substantial evidence and cannot be used to justify the denial of mother's right to represent herself. Indeed, in mother's view, Judge Hardie's alleged reliance on evidence outside the record constituted a violation of due process.

This claim of error rests on at least two crucial assumptions that mother fails to substantiate: first, that she was entitled to a formal evidentiary hearing on this matter; and second, that taking account of mother's behavior in open court during a prior hearing in this same case constituted judicial misconduct. Furthermore, mother completely ignores the fact that Judge Hardie's courtroom was full of people who had also been present at the detention hearings, and no one disputed that mother had been disruptive during those hearings. Finally, mother relies on cases that do not support any prong of her argument.

Mother relies primarily on *Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100 (*Guadalupe A.*).³ That case involved a special needs child who was detained shortly

³ Mother also cites *People v. Weaver* (2004) 118 Cal.App.4th 131, 148 (*Weaver*), as support for her contention that Judge Hardie's "exposure" to information about the detention hearing was somehow improper. *Weaver* addressed potential problems that arise when a trial court judge also participates in the negotiation of a plea agreement to a criminal charge. It does not support mother's argument here.

after her birth because both of her parents were incarcerated on drug charges. (*Id.* at pp. 103-104.) At the 12-month review hearing, the referee made a sua sponte ruling to return the child to mother, refusing a request from the child’s counsel to present evidence on the matter. After finding that this ruling was error, the *Guadalupe A.* court also concluded that the referee had committed misconduct by initiating contact with the child during a social event that occurred while the review hearing was in progress. The evidence showed that, after conducting three days of the trial, the referee attended a holiday party hosted by the social services agency for foster families, and during the party the referee initiated contact with the minor and her foster mother three separate times, the third time picking up the child and carrying her away for five minutes. (*Id.* at pp. 107-108.)

Because the *Guadalupe A.* referee was sitting as a trier of fact, her conduct was evaluated under the rules applicable to a sitting juror. (*Guadalupe A.*, *supra*, 234 Cal.App.3d at p. 108.) Thus, it was misconduct for her to receive information from sources outside of the evidence, to conduct any type of out-of-court experiment, and to engage in a substantive conversation with a party or witness outside of court. (*Id.* at p. 109.) Here, by contrast, the ruling that mother challenges was not the subject of a contested hearing, and was not made by a trier of fact. Rather, the juvenile court was called upon to make a discretionary determination as to whether mother’s statutory interest in self-representation was outweighed by the minors’ interest in a prompt resolution of the dependency petitions. Mother’s recent conduct during the detention hearings was not only uncontroverted, it was probative of the issue before the court. Nothing in *Guadalupe A.* suggests otherwise.

Furthermore, mother mistakenly assumes that her behavior at the detention hearings was the only evidence of her “disruption.” Eight days after those hearings were held, mother filed her “Affidavit of Facts.” In filing that document, mother purported to be an in pro. per. litigant notwithstanding that she was represented by appointed counsel. Furthermore, this document was prepared without the assistance of mother’s attorney and

filed without her attorney's knowledge. Finally, although the content of that document was not comprehensible, its purpose was clear—to forestall the dependency process.

In addition to mother's "Affidavit of Facts," the detention/jurisdiction report was also before the court when it denied mother's motion to represent herself. That report, which described the social worker's interview with mother and the police report of the November 1 incident, was additional evidence that mother not only refused to discuss matters that potentially placed her in an unfavorable light but went so far as to deny reality, as when she arrived home with a pizza but insisted that she had just been upstairs taking a nap. Thus, the Bureau's report was additional support for the court's finding that allowing mother to represent herself would substantially delay these proceedings.

Finally on this point, mother fails to account for the disruption that she caused during the November 20 hearing itself. Although the request for self-representation was made at the beginning of that hearing, mother's reaction to the court's ruling and her behavior for the remainder of that hearing was the very definition of disruption, and it clearly supported Judge Hardie's formal order denying mother's request to represent herself which was made at the conclusion of the hearing.

4. Mother's Mental Instability

Mother separately argues that information the court used to explain its concern about mother's instability was not properly considered. But her contention that the "Affidavit of Facts" was not properly before the court fails for reasons we have outlined above. Mother also erroneously contends that her trial counsel objected to the court's consideration of this document. Mother's counsel made a record of mother's objection to the denial of her request for self-representation. But there was no objection to the court's consideration of the "Affidavit of Facts" that mother had filed a week before the November 20 hearing. Indeed, that hearing was the court's first opportunity to discuss mother's filing with the parties.

5. Weight of the Evidence

Taking a different tack, mother argues that even if the juvenile court properly considered matters that were not formally admitted into evidence, this record does not

support the court's finding that mother's issues justified denying her request to represent herself. As support for this argument, mother quotes the following passage from *Angel W., supra*, 93 Cal.App.4th at page 1085: "The possibility of disruption or delay, however, exists to some degree with virtually all pro se litigants and the mere possibility alone is not a sufficient ground to deny self-representation. Only when the pro se litigant 'is and will remain' so disruptive as to significantly delay the proceedings or render them meaningless and negatively impact the rights of the minor in a prompt and fair hearing may the court exercise its discretion to deny self-representation. [Citation.]"

This case is not analogous to *Angel W., supra*, 93 Cal.App.4th at page 1085, which involved a mother who participated in dependency proceedings for two years without ever being disruptive, but then had one difficult interaction with the court at the section 366.26 hearing. Here, from the outset of these cases, mother was disrespectful of the court and the judicial process and she made it abundantly clear that she did not intend to cooperate. Furthermore, mother also demonstrated that she would not or could not understand the function or purpose of the dependency law. This was not a lack of legal training, but a pervasive obstructive attitude toward dependency law. Thus, the circumstances presented to Judge Hardie substantially established that mother not only was, but would remain so disruptive that she would significantly delay the dependency process and adversely impact the rights of her children to a prompt and fair disposition of the petitions.⁴

B. The Appointment of a Guardian Ad Litem

Mother contends the jurisdiction and disposition findings must be reversed because they were all made after the improper appointment of a guardian ad litem.

⁴ In light of our conclusions, we need not address mother's extensive arguments that (1) she is not required to prove prejudice and (2) she did suffer prejudice. Nevertheless, after reviewing this record, we find that any claim of prejudice resulting from the denial or mother's request to represent herself would be unfounded. Mother was well represented by able counsel who was very attentive to mother and her concerns.

1. Legal Principles

“In a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the court. [Citations.]” (*In re James F.* (2008) 42 Cal.4th 901, 910 (*James F.*)) “ [T]he primary concern in section 300 cases is whether the parent understands the proceedings and can assist the attorney in protecting the parent’s interests in the companionship, custody, control and maintenance of the child.’ [Citation.] ‘In a dependency proceeding, a juvenile court should appoint a guardian ad litem for a parent if the requirements of either Probate Code section 1801 or Penal Code section 1367 are satisfied. [Citation.]’ [Citation.] ‘[T]he trial court must find by a preponderance of the evidence that the parent comes within the requirements of either section.’ [Citation.]” (*In re M.P.* (2013) 217 Cal.App.4th 441, 453, fn. omitted; see also *In re Sara D.* (2001) 87 Cal.App.4th 661 (*Sara D.*))

“Before appointing a guardian ad litem for a parent in a dependency proceeding, the juvenile court must hold an informal hearing at which the parent has an opportunity to be heard. [Citation.] The court or counsel should explain to the parent the purpose of the guardian ad litem and the grounds for believing that the parent is mentally incompetent. [Citation.] If the parent consents to the appointment, the parent’s due process rights are satisfied. [Citation.] A parent who does not consent must be given an opportunity to persuade the court that appointment of a guardian ad litem is not required, and the juvenile court should make an inquiry sufficient to satisfy itself that the parent is, or is not, competent. [Citation.] If the court appoints a guardian ad litem without the parent’s consent, the record must contain substantial evidence of the parent’s incompetence. [Citation.]” (*James F.*, *supra*, 42 Cal.4th at pp. 910-911.)

2. Substantial Evidence Supports the Order

In the present case, mother did not consent to the appointment of a guardian ad litem. Thus, the court conducted an in-camera hearing where mother was afforded the opportunity to persuade the court that a guardian ad litem was not required. During that hearing, mother was not only disruptive, she engaged in a form of word play which substantially demonstrated that she lacked the capacity to comprehend what the court was

telling her, and that her obsession with an erroneous conception of jurisdiction rendered her unable to assist her counsel in the preparation of her case or to truly understand the consequences of the proceeding in which she found herself. Indeed, as the People contend on appeal, “[w]ithout any rational basis, Mother simply did not recognize the authority [of] the juvenile court to make orders regarding the care and custody of her children” and thus “was unable to assist her counsel in the conduct of a defense in a rational manner.”

Therefore, we conclude that the record contains substantial evidence that mother met the definition of mental incompetency set forth in Penal Code section 1367, subdivision (a), which describes a mentally incompetent defendant as one who “as a result of mental disorder or developmental disability . . . is unable to understand the nature of the . . . proceedings or to assist counsel . . . in a rational manner.”

Mother contends that the juvenile court erred by failing to make an express finding by a preponderance of the evidence that mother was mentally incompetent. However, she also implicitly concedes that an implied finding is sufficient, provided it is supported by substantial evidence. (See *In re Andrea G.* (1990) 221 Cal.App.3d 547, 554.) Mother then purports to articulate 11 separate reasons why the evidence in this case was insufficient to establish that she was unable to understand the proceedings or to assist her counsel. We have already rejected several of these arguments, which simply repackage mother’s objections to the denial of her request to represent herself. The juvenile court did not err by considering mother’s disruptive conduct during hearings in this case or by considering the documentary evidence that mother herself filed in her children’s dependency matters.

Mother contends that even if the juvenile court could properly have concluded that mother suffered from a mental disorder, that evidence did not support a finding that mother was unable to assist her counsel because our Supreme Court has recognized that even a disabling mental disorder “may be intermittent or short-lived and/or may well have involved a limited area of functioning” As support this argument, mother cites *People v. Blackburn* (2015) 61 Cal.4th 1113 (*Blackburn*).

Blackburn, supra, 61 Cal.4th 1113 addresses the procedures governing an involuntary commitment of an alleged Mentally Disordered Offender (MDO) defendant. The *Blackburn* court held that a trial court must obtain a personal waiver of the statutory right to a jury trial before conducting a bench trial in a MDO commitment proceeding. In reaching that conclusion, the court observed that “[t]he potentially transitory and treatable nature of mental illness and the potentially limited areas of functioning impaired by such illness preclude any categorical inference that an MDO defendant facing a commitment extension proceeding cannot competently decide whether to waive a jury trial.” (*Id.* at p. 1129.) The present case does not involve an alleged MDO defendant, an involuntary commitment, or a waiver of the right to a jury trial. This is a juvenile dependency proceeding in which the rights of the dependent children must be protected. (*A.M., supra*, 164 Cal.App.4th at p. 925 [“ ‘The overarching goal of the juvenile dependency system is to promote the best interests of children within the system. (§ 202.)’ ”].) Furthermore, and in any event, the evidence in this record substantially establishes that mother was so entrenched in her irrational positions that she was incapable of assisting her counsel.

Mother also relies on *In re Joanne E.* (2002) 104 Cal.App.4th 347 (*Joanne E.*), a useful tool for analyzing this issue, although not ultimately useful to mother. In *Joanne E.*, the social services agency alleged jurisdiction over the minor on the ground that her grandmother (and guardian since birth) was exhibiting symptoms of mental instability, and that grandmother’s recent rapid decline compromised her ability to care for the child. (*Id.* at p. 350.) A commissioner who presided over an early jurisdiction hearing continued the matter for appointment of a guardian ad litem for grandmother, without providing any explanation for doing so. Grandmother was not present at that hearing, and the court’s minute order reflected only a single appearance by an attorney from the county counsel’s office. At the next hearing in the case, grandmother was represented by a guardian ad litem, again without any explanation as to how that happened. During subsequent hearings, grandmother indicated dissatisfaction with both her attorney and her guardian ad litem and, at one point, the court appointed substitute

counsel for her. At disposition, the court removed the minor from grandmother, an order which grandmother appealed. (*Id.* at pp. 351-353.)

The *Joanne E.* court found that the appointment of a guardian ad litem under the circumstances established by the record violated grandmother's right to due process. (104 Cal.App.4th at p. 353.) Grandmother did not receive notice of the intention to appoint a guardian or an opportunity to be heard on the issue. Indeed, there was no evidence a hearing was ever held. (*Id.* at pp. 357-358.) Furthermore, the *Joanne E.* court found, there was no evidence in the record that the juvenile court had made an "assessment" of grandmother's competency to participate in the proceedings and assist her attorney. (*Ibid.*)

In *Joanne E.*, *supra*, 104 Cal.App.4th at page 358, there was evidence that grandmother had been upset by the proceedings and that "at times was difficult for the court to handle as a witness and a participant in the litigation." However, the appellate court found that those recorded interactions between the court and grandmother did not validate the appointment of a guardian for three independent reasons: (1) the incidents all occurred after the guardian was appointed; (2) the pertinent question was whether grandmother's due process rights were violated, not whether there was substantial evidence of incompetency; and (3) the incidents would not, in any event, have satisfied the standards for appointment of a guardian because the pertinent test is whether the parent understands the proceedings and can assist the attorney, "not whether the individual is difficult to handle as a participant in the process." (*Id.* at p. 359.)

In contrast to *Joanne E.*, in the present case mother was afforded notice of the intent to appoint a guardian, and an in camera hearing so that she could express her views on the subject. Instead of doing so, mother engaged in behavior which indicated that she did not understand the dependency law and was not capable of assisting her attorney in protecting her rights. Furthermore, by the time the hearing was held mother had already demonstrated that she was uncooperative, disruptive and obsessed with an erroneous conception of jurisdiction which prevented her from meaningfully participating in the dependency proceedings.

Mother contends this case is factually analogous to *Joanne E.* because in both cases the court appointed guardians for a person who was “difficult to handle,” but who “understood the process and had wanted to participate.” Unquestionably, the record establishes that mother was difficult to handle, but that undisputed fact is not the focus of this inquiry. Furthermore, although there is overwhelming evidence that mother *did not want* to participate, that is not the issue either. In this case, in which procedural due process was provided, the issue is whether substantial evidence supports the juvenile court’s finding that mother did not sufficiently understand the dependency process, and could not assist her attorney in a rational manner. As discussed, that finding is supported by substantial evidence.⁵

3. Mother’s Due Process Arguments Are Unsound

Mother contends that she was not afforded procedural due process because she only received a few seconds notice followed by a very short in-camera hearing. However, as mother concedes, due process does not require a formal noticed hearing, but rather an informal hearing which affords the parent an opportunity to be heard. (*Sara D.*, *supra*, 87 Cal.App.4th at p. 671.) That happened here, notwithstanding the fact that mother was unable to avail herself of the opportunity to share her views cogently on the matter.

Mother also contends she was denied due process because the court’s rulings were supported by improper considerations rather than substantial evidence. Again though, this contention rests on the erroneous assumption that the court was precluded from considering mother’s conduct during the prior hearings and mother’s in pro. per. filings.

⁵ Mother argues that the juvenile court violated *Joanne E.* by attempting to justify its ruling with a retrospective determination of incompetency. According to mother, Judge Hardie was “predisposed” against mother because of the information that she heard about the detention hearing conducted by Judge Haight, and so she appointed a guardian to avoid having to deal with a difficult parent and then used subsequent events to justify her decision. This argument is unfounded. We mention it only because it is a theme that runs throughout mother’s more than 140 pages of appellate briefing.

Finally, mother argues that she was denied due process during the in camera hearing because Judge Hardie advised her that a guardian ad litem would not be able to waive mother's trial rights or to relieve county counsel of its burden of proof. Mother contends this advisement deprived her of due process because it was legally erroneous in that a guardian ad litem does have the power to waive a contested hearing in a dependency case. (Citing *James F.*, *supra*, 42 Cal.4th at p. 910.) This argument by mother is factually unsupported and legally unsound.

Mother unfairly parses the juvenile court's remarks. When read as whole, the court's explanation advised mother that the purpose of the guardian ad litem was to assist the parent; that the guardian ad litem's power was not unqualified, and that his or her decisions would be subject to the court's approval. Furthermore, it also appears that the court made assurances about what it would or would not allow a guardian ad litem to do in this particular case. Indeed, mother's guardian ad litem did not waive a contested hearing or any of mother's rights in these proceedings.

Furthermore, mother's perfunctory legal critique of the probate court's advisement consists of an unexamined reference to dicta in *James F.*, *supra*, which states that a guardian ad litem "may" waive the right to a contested hearing. (42 Cal.4th at p. 910.) Although a guardian may have that power in the general sense, he or she "may not compromise fundamental rights, including the right to trial, without some countervailing and significant benefit." (*In re Christina B.* (1993) 19 Cal.App.4th 1441, 1454.) Beyond that, a guardian ad litem's power to make stipulations or concessions is also subject to the "approval of the court." (*De Los Santos v. Superior Court* (1980) 27 Cal.3d 677, 684.) Furthermore, the guardian ad litem must also consult with the parent and parent's counsel before waiving a material right, like the right to file an extraordinary writ. (*In re Albert A.* (2016) 243 Cal.App.4th 1220, 1244.) In light of these relevant principles, Judge Hardie's advisement to mother was not erroneous; the court correctly assured mother that the function of the guardian ad litem was to assist mother, and that checks were in place to ensure that mother was not deprived of any of her rights.

4. Prejudice

Finally, even if the appointment of a guardian ad litem for mother was error, we would not reverse the disposition orders because mother has failed to demonstrate prejudice.

“[E]rror in the procedure used to appoint a guardian ad litem for a parent in a dependency proceeding is trial error that is amenable to harmless error analysis rather than a structural defect requiring reversal of the juvenile court’s orders without regard to prejudice.” (*James F.*, 42 Cal.4th at p. 915.)⁶ On appeal, the erroneous appointment of a guardian ad litem is reviewed to determine whether the error was harmless beyond a reasonable doubt. (*In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 96; *In re Enrique G.* (2006) 140 Cal.App.4th 676, 687; *Sara D.*, *supra*, 87 Cal.App.4th at p. 673.)

In the present case, mother fails to articulate any prejudice resulting from the appointment of a guardian ad litem. The guardian did not waive any of her rights and there is no evidence that he took any action that either contravened mother’s interests or was contrary to her wishes. While the participation of the guardian ad litem may well have facilitated the adjudicative process, there is nothing in the record which suggests that the outcome of these proceedings would have been more favorable to mother if a guardian had not been appointed for her. Thus, any error in the appointment of mother’s guardian ad litem was harmless beyond a reasonable doubt.

Mother argues that if she had not been represented by a guardian ad litem, she would have personally requested that she be provided with services that she did not have to pay for herself. Mother fails to explain how having a guardian ad litem prevented her from making that request; the hearing transcripts show that when mother was present she was never prevented from personally raising an issue. In any event, the record does not support mother’s premise that she was required to finance her own services.

⁶ In light of our Supreme Court’s holding in *James F.*, *supra*, 42 Cal.4th at pages 914-917, we reject mother’s lengthy claim that the allegedly erroneous appointment of a guardian ad litem was structural error.

During the disposition hearing, the social worker testified under cross examination by mother's counsel that when the Bureau makes a referral to a parent, it is "with the understanding that the parent is responsible for financing the services." However, the social worker also testified that mother declined all referrals in this case without any discussion about financing. Furthermore, under subsequent questioning by county counsel, the social worker testified that if mother was unable to pay for a service, the Bureau would provide that service at no cost. In this case, however, mother never expressed any difficulty in accessing a service, but instead made it clear that she did not want to participate in services at all.

The social worker's testimony on this subject shows that financial considerations did not impede mother from participating in this case. It also confirms that the appointment of a guardian ad litem had no bearing on the fact that mother consistently and steadfastly refused to participate in services. Notwithstanding this fact, mother's appointed counsel (with support from the guardian ad litem) was able to secure a disposition ruling from the juvenile court which required the Bureau to afford mother with services.

Mother also appears to blame her guardian ad litem for the fact that her service plan contains a mental health component, and that she does not have a more liberal right to visitation. These consequences are directly attributable to mother's own conduct, and thus provide no basis for claiming that the appointment of a guardian ad litem resulted in prejudice.

C. Visitation

Mother contends that the part of the May 28, 2015 disposition order which grants mother visitation with N.J., A.J., and Z.J. is internally inconsistent and "illusory" because it fails to adequately protect mother's right to visit the children.⁷

⁷ Mother's appellate counsel mistakenly characterizes this visitation order as applying to the three older girls. The first disposition order covered the two older girls N.J. and A.J., as well as three-year-old Z.J., who was the youngest boy. The disposition order for T.C., mother's six-year-old girl, was issued later.

“A visitation order may delegate to a third party the responsibility for managing the details of visits, including their time, place and manner. [Citation.] That said, ‘the ultimate supervision and control over this discretion must remain with the court’ [Citation.] Several appellate courts have overturned visitation orders that delegate discretion to determine whether visitation will occur, as opposed to simply the management of the details. [Citations.]” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123 (*T.H.*.)

For example, in *T.H.*, the court reversed a visitation order for a noncustodial father which provided that “visitation would occur, but only upon the ‘agreement of the [custodial] parents.’ ” (*T.H.*, *supra*, 190 Cal.App.4th at p. 1123.) Particularly in light of record evidence that mother opposed father’s right to visit, the order “effectively delegate[d] to mother the power to determine whether visitation [would] occur at all. [Citation.]” (*Ibid.*) Thus, while the juvenile court order in that case recognized the father’s rights to supervised visitation, the appellate court concluded that the right was “illusory when left solely to the ‘agreement’ of a parent who was unlikely to agree.” (*Id.* at p. 1124.)

For similar reasons, an order which allowed the children to decide whether visits would occur was reversed in *In re S.H.* (2003) 111 Cal.App.4th 310, 317-320 (*S.H.*). In that case, mother’s case plan included supervised visits at the social worker’s office, but did not specify the duration or frequency of the visits. Furthermore, because the children were afraid of mother, the court included a provision that they would not be forced to visit if they refused. In reversing the visitation order, the *S.H.* court stated: “[B]y failing to mandate any minimum number of monitored visits per month or even to order that some visitation must occur each month, the court’s abstract recognition of [mother’s] right to visitation is illusory, transforming the children’s ability to refuse ‘a visit’ into the practical ability to forestall any visits at all.” (*Id.* at p. 319.)

In the present case, the May 28, 2015 disposition order contains an order requiring the Bureau to “arrange visitation” for mother in accordance with the following directives: (1) visitation with mother “will be for a minimum of one hour one time per week and

must be supervised”; (2) the Bureau will “consider the child’s wishes and input from the child’s counsel and child’s treating therapist in establishing the frequency, time, place, and length of visits, pursuant to the holdings of *In re Danielle W.*, *In re Chantal S.*, and *In re Julie M.*”; and (3) mother may also have supervised telephone contact with the children.

Mother isolates the court’s second directive and contends that it invalidates the entire visitation order because it delegates authority to the Bureau to veto all visitation. (Citing *T.H.*, *supra*, 190 Cal.App.4th at p. 1124.) We disagree. When construed as a whole and in accordance with its straightforward language, the visitation order is neither ambiguous nor internally inconsistent. It establishes a minimum amount of visitation to which mother is entitled. It also contains a proper delegation of responsibility to the Bureau to manage the details of the visits. Finally, it gives the Bureau limited discretion to take into account whether the girls want to visit mother, but only to the extent permissible by the controlling case law. (*In re Chantal S.*, *supra*, 13 Cal.4th at pp. 203-204 [juvenile court may require counseling as a condition of visitation]; *In re Danielle W.*, *supra*, 207 Cal.App.3d at p. 1237 [agency may take into account child’s desire to visit when exercising limited discretion to determine whether a specific proposed visit will occur]; and *In re Julie M.*, *supra*, 69 Cal.App.4th at pp. 48-50 [juvenile court may not give children absolute discretion to decide whether parent can visit with them].)

In a separate argument, mother contends that her right to visitation is illusory because the girls’ cases were transferred to Sacramento County. Although mother’s reasoning is unclear, it appears that she is arguing that the juvenile court violated a duty to ensure that at least some visitation would occur because once the cases were transferred to Sacramento, the court would not have authority to control the actions of the social services agency in Sacramento County.

Mother did not object to the transfer orders in the lower court, nor does she assert any ground for overturning those orders on appeal. The prospect that the Sacramento court may adopt a new or different visitation order has no bearing on whether the

visitation order under review here was illusory when it was made. For the reasons discussed above, we conclude that mother's right to visitation with the girls was not illusory.

IV.

DISPOSITION

The appealed orders are all affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.

A145404, *In re N.J.*