

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S. F. et al., Persons Coming Under the
Juvenile Court Law.

B237323
(Los Angeles County
Super. Ct. No. CK77032)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M. F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Donna R. Levin, Juvenile Court Referee. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

M. F. (mother) challenges a juvenile court order establishing a permanent plan of legal guardianship for her two children, S. F. (S., born Nov. 2003) and Ruby F. (Ruby, born Dec. 2005) with maternal relatives and dismissing juvenile court jurisdiction.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Welfare and Institutions Code Section 300¹ Petition; Detention Report and Hearing

On May 4, 2009, the Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of S. and Ruby. The petition alleged that mother had physically abused their older sister, Maxine F. (Maxine),² that mother's home was filthy, that mother had mental and emotional problems, and that the conflict between mother and Maxine created a detrimental home environment.

According to the detention report, the family had a history with DCFS. Mother's older son, Alfred F. (Alfred),³ was removed from her custody and a family reunification plan was opened between May 1994 through September 1996. Another court-involved family reunification plan existed between January 1997 through January 1998 for Alfred. In July 2005, a voluntary maintenance plan was opened for Maxine and S. for general neglect because mother removed S. from the hospital for dehydration against medical advice and left Maxine home alone. And, Maxine, S., and Ruby were removed from mother's care when Ruby was born because mother had been placed on a section 5150 hold for paranoid delusions. A voluntary family maintenance agreement was opened December 2005 through February 2007.

Most recently, the family failed a family maintenance agreement, which began in August 2008 for general neglect and emotional abuse as a result of mother's shoplifting

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² This child prefers to be called by her middle name. She is not a party to the instant appeal.

³ Alfred is not a party to the instant appeal.

and paranoia. The family had discontinued therapy because of arguing between mother and Maxine, and mother was not attending individual therapy as dictated by the case plan.

The detention report outlined what led to the filing of the instant section 300 petition. Following a referral to DCFS, the social worker went to Maxine's school to speak with Maxine. Maxine told the social worker about an argument between mother and Maxine. She also told the social worker that mother had mental health issues, including schizophrenia and paranoia, and that mother had been nicer when she was taking medication.

When the social worker went to the family home to investigate, she noticed a very foul odor, cockroaches, clutter everywhere, three cats, five kittens, two birds in a bird cage, and a fish tank.⁴

Mother denied any mental health history or ever being prescribed medication. She indicated that she favored counseling.

On April 23, 2009, a team decisionmaking (TDM) meeting was held. During the meeting, mother was unable to see the connection between her paranoid statements, such as telling Maxine that she is poisoning S., and her mental health. Mother blamed Maxine for everything and did not take responsibility for her behavior in not parenting Maxine; for example, she did not see anything wrong with Maxine being out all night. Mother also did not think she put Ruby at risk by hitchhiking with her. Ultimately, Maxine was detained from mother during the TDM meeting. S. and Ruby remained with mother.

At the hearing on May 4, 2009, the juvenile court ordered family preservation services. The matter was continued for a pretrial resolution conference.

Jurisdiction/Disposition Report and Hearing

For the May 28, 2009, report, DCFS interviewed mother. She stated that S. and Ruby's father was an "enemy," was connected to the mafia, and had told mother that he

⁴ Later, a therapist informed the DCFS social worker that mother indicated that she was trying to clean up; mother was speaking with the landlord regarding the cockroaches.

and his friends were setting her up to lose custody of her children. Mother also suggested that Alfred's girlfriend was conspiring with DCFS to get the children removed from her. Regarding mental health issues, mother reminded the social worker that she never lost control. She denied suffering from severe mental illness.

Mother's medical records revealed a different story. She was diagnosed with a psychotic disorder after she locked Alfred, who was 11 years old at the time, in the bathroom and claimed that her ex-boyfriend had friends in the mafia who were trying to poison her. In 2006, she was diagnosed with delusional disorder with paranoid and depressive features and was prescribed medication.

Now, mother stated that DCFS was the enemy and trying to take her children away from her. DCFS recommended that mother be evaluated for mental illness and participate in treatment.

At the contested hearing on June 12, 2009, the juvenile court struck the allegation of physical abuse and sustained the allegations that (1) the parent-child conflict between mother and Maxine created a detrimental home environment for S. and Ruby, (2) the home was filthy and unsanitary, and (3) mother's mental and emotional problems rendered her unable to provide regular care of the children. The juvenile court ordered that S. and Ruby remain in mother's custody and that Maxine be removed from mother's custody.

Section 342 Petition and Detention

On August 7, 2009, DCFS received a referral from Children's Hospital of Los Angeles. According to the referral, mother brought S. to the hospital with an infected wound on her stomach. Mother had treated the wound with duct tape and had failed to administer prescribed medication. As a result, S. developed a severe infection and required surgical intervention. The referral also alleged that mother was psychotic.

Hospital staff had to give both S. and Ruby baths because they smelled like "urine."

That same day, the DCFS social worker conducted a home assessment. In the home, the social worker saw cats without eyeballs. When the social worker asked mother

about the cats' missing eyeballs, mother stated that they did not need their eyeballs because they can sniff their food to eat it. The children were drinking a red liquid out of ketchup bottles, although mother claimed that they were drinking lemonade. The home was dirty and had a foul smell. Mother threatened to kill herself and the children if the children were removed from her care.

Based on the foregoing, on August 12, 2009, DCFS filed a section 342 petition on behalf of S. and Ruby. S. was still in the hospital when the section 342 petition was filed; Ruby was placed in the foster home of Diane S. (Diane). According to the attached detention report, S. would be placed with Diane after she was discharged from the hospital.

At the hearing, the juvenile court ordered that S. and Ruby be detained from mother's custody and that the matter be set for adjudication.

First Amended Section 342 Petition

On August 28, 2009, DCFS filed a first amended section 342 petition, adding allegations that mother had mental and emotional problems, which caused her to be limited in her ability to provide care and supervision for her children. DCFS further alleged that mother had made numerous suicidal and homicidal ideation statements. Mother's emotional and mental condition placed the children at risk of harm.

Jurisdiction/Disposition Report

On August 31, 2009, DCFS reported that there were serious safety concerns regarding mother's ability to provide a safe and healthy environment for S. and Ruby. According to a letter from Children's Institute, Inc., mother had an "ongoing pattern of emotional instability, unpredictable behavior, poor judgment, paranoid thinking, and lack of insight regarding her own mental health needs."

DCFS also reported that since the children's removal, mother called the social worker's voicemail and repeatedly threatened to kill her. Mother accused the social worker of paying the hospital to make allegations against her. She also stated that her attorney was black and was in favor of the children being placed in a black family. At a later date, she told the social worker that her attorney did not read the allegations and had

forged them for political purposes to get more money. She believed that Alfred's girlfriend was working with her attorney and other social workers. She also stated that if she did not get her children back, she could not promise what she would or could do.

When interviewed, Maxine stated that she saw S.'s infected wound and told mother that she was worried about her sister's welfare. She stated that mother got angry and started choking her in front of S. and Ruby.

Dr. Thomas A. Klotz, with Downtown Mental Health Clinic, had been treating mother and indicated that she might benefit from medication.

DCFS then described a monitored visit on August 26, 2009. The children were misbehaving, fighting with each other, and throwing things, all while mother continued to speak about the case with the children. The children cried at the end of the visit, stating that they wanted to go with mother.

DCFS recommended family reunification services for mother with S. and Ruby.

Manuel and Elizabeth O. (the aunt and uncle), S. and Ruby's maternal aunt and uncle, were present at the August 31, 2009, hearing. The juvenile court ordered DCFS to assess their home for placement. The juvenile court also ordered an Evidence Code section 730 evaluation of mother to address her mental status.

Information for the Court

On October 13, 2009, DCFS reported that mother was participating in her case plan, but the visits remained problematic. She had been consistently late or did not arrive for visits on the correct dates. During one monitored visit, mother had a "mental health breakdown," making everyone in the office uncomfortable and alert. The foster family agency that had monitored the visits was no longer willing to do so.⁵

S. and Ruby had had an overnight visit with their aunt and uncle. During that visit, mother called every 15 minutes from six in the morning until six at night. Also, the aunt and uncle had taken the children to the county fair. When they returned home,

⁵ On November 16, 2009, the juvenile court ordered that mother's visits occur at the DCFS office.

mother was sitting outside their home waiting for them. She jumped out of her car and began yelling at the children that this was a conspiracy by the social workers to take them away for political purposes. She threatened that they had “better return her phone calls or watch and see what [would] happen to them.” When the aunt and uncle returned the children to the foster home, mother followed them; the uncle reported that they had to take several different highways in order to lose her.

The aunt and uncle’s home was approved for placement, but they were not interested in monitoring mother’s visits as a result of her behavior and out of fear for their safety. They even were considering obtaining a restraining order.

Last Minute Information for the Court

On November 19, 2009, the DCFS social worker provided information regarding her visit with the children at their placement with their aunt and uncle.

The social worker interviewed S. Although she was initially shy, S. warmed up and was friendly throughout the interview. She disclosed that mother’s boyfriend, Victor, had physically abused both her and Ruby. She also stated that he had sexually abused her and that mother was aware of the abuse, but let him back into the house. She further reported that she had seen mother and Victor engage in sexual activity many times; she had also seen Victor choke and hit mother.

The aunt stated that when she gave Ruby a bath, Ruby demonstrated how Victor told her to undress and do a “sexy dance.” Ruby told her aunt that that was how ““girls needed to undress for a man.””

Adjudication of the First Amended Section 342 Petition

On November 19, 2009, the juvenile court sustained the first amended section 342 petition, as further amended. Specifically, the juvenile court found that mother had mental and emotional problems that limited her ability to care for S. and Ruby; mother had expressed suicidal and homicidal ideation; mother had placed duct tape on S.’s wound, which led to an infection and multiple abscesses; and mother’s home was filthy and unsanitary.

Status Review Report

On December 11, 2009, DCFS reported that S. and Ruby were happy living with their aunt and uncle. S. attended kindergarten, and the aunt and uncle were in the process of enrolling Ruby in preschool. Both girls continued to receive counseling.

Meanwhile, mother was constantly calling the DCFS social worker and leaving messages regarding visitation. She also went to the office at least three times a week, demanding to speak to someone regarding her visits. On one occasion, mother was escorted out of the building by DCFS security guards. Mother was not participating in any services.

DCFS reported that mother had undergone an Evidence Code section 730 evaluation with Dr. Suzanne Dupee. Dr. Dupee diagnosed mother with schizophrenia, paranoid type, and felt that she was in need of medication. She advised that mother's threats of harm should be taken seriously because of her unpredictable behavior; she recommended injectable anti-psychotic medication to ensure that mother received the medication. In spite of Dr. Dupee's suggestion, mother refused to take medication and had stopped all treatment.

Mother's visits and behavior continued to be problematic. In August 2009, at the DCFS office, mother referred to the social worker as a "dirty politician who want[ed] to corrupt the world with poisons." She then broke furniture in the bathroom in front of the children, who were upset and crying and had to be escorted from the office. She continued to bring liquids in ketchup bottles for the children even though she had been advised against doing so.

On September 14, 2009, in addition to calling them every 15 minutes, mother arrived at the aunt and uncle's home unannounced and yelled at them in front of the children. She warned them to return her calls "or else."

Finally, in addition to threatening telephone calls to the social worker, on October 19, 2009, mother went to the DCFS office without an appointment and threatened the social worker that she would pour oil on her and light her on fire.

Last Minute Information for the Court

On December 30, 2009, DCFS advised the juvenile court that mother had provided DCFS with a letter confirming that she was participating in therapy with Dr. Dirk R. Kuiken. She also submitted a certification of completion of 10 sessions of a parent support group.

Last Minute Information for the Court

On January 22, 2010, DCFS informed the juvenile court that it had received a telephone call from Dr. Roach, mother's former psychiatrist. He stated that mother had not been compliant with her medication. She disagreed with Dr. Roach's diagnosis and had requested a new psychiatrist.

Second Section 342 Petition; Detention Report and Last Minute Information for the Court; Disposition Hearing

On March 15, 2010, DCFS filed a second section 342 petition on behalf of S. and Ruby, alleging that Victor had physically and sexually abused the girls and that mother failed to protect them. DCFS also alleged that mother and Victor had sex in the children's presence.

Mother was interviewed about the new allegations; she denied them and said that she had enemies. She said that Alfred's girlfriend had connections to DCFS and her ex-boyfriend, who was connected to the mafia, was also making false accusations against her.

Mother continued to call excessively and leave profanity-laced messages. On March 3, 2010, mother called the supervising social worker six times beginning at 4:12 a.m.

DCFS received a report from Dr. Klotz. He advised that mother was not taking her anti-psychotic medication as recommended, but she was taking a mood stabilizer.

Mother continued to have inappropriate visits. On March 6, 2010, she advised DCFS that if "she did not get her children back at the next court hearing, something 'tragic' was going to happen." Mother also continued to be fixated on the idea that she and the children were being poisoned.

On March 10, 2010, the aunt advised the social worker that mother had come to their home demanding to see the children. She did not allow the visit because it was not mother's scheduled time. The aunt stated that later that day, mother talked to her neighbors and told them that the girls' father was trying to kidnap S. and Ruby and that she was not allowed to see her children. DCFS requested an order prohibiting mother from going to the aunt and uncle's home and for an order not to call them outside her scheduled monitored contacts.

At the disposition hearing on March 15, 2010, the juvenile court declared the children dependents of the court pursuant to sections 300, subdivisions (b) and (j), and 342. The juvenile court ordered that mother be provided with reunification services, that she remain under the care of a psychiatrist, and that she take all prescribed psychotropic medication. She was afforded monitored visitation.

A hearing was set on the second section 342 petition.

Last Minute Information for the Court

Regarding visitation, although there were some issues, DCFS reported that the visits were otherwise appropriate. Mother had called the uncle in violation of the juvenile court's orders. And, on April 14, 2010, Dr. Klotz informed DCFS that mother had discharged him as her psychiatrist and she had been assigned to a new psychiatrist.

Status Review Report and Hearing

On May 27, 2010, DCFS informed the juvenile court that S. and Ruby were receiving individual counseling. They also had begun conjoint counseling with mother on April 21, 2010.

Although mother's behavior during the visits had improved, she still had to be constantly redirected when she would start making inappropriate comments. DCFS noted that her monitors put a lot of effort into creating a structure for mother's visits. DCFS recommended termination of mother's reunification services.

At the May 27, 2010, hearing, the juvenile court commenced adjudication of the second section 342 petition. It sustained the petition as amended, noting that mother's

failure to protect her daughters from physical and sexual abuse was the result of her mental health issues.

Mother was in custody for the hearing as she had been arrested on May 13, 2010, and charged with petty theft with a prior. She was ordered to receive services for incarcerated parents and her current individual counseling was to address sex abuse awareness. Because of mother's incarceration, the orders regarding calling the social worker and the children were modified to accommodate mother's schedule in jail.

Status Review Report and Hearing

On September 13, 2010, DCFS reported that mother had been released from jail on June 2, 2010. She met with the social worker and informed her that she had been diagnosed with a mood disorder and prescribed medication. Her psychologist, Dr. Kuiken, reported that mother was being cooperative and seemed a lot calmer. Dr. Kuiken reminded the social worker that he was limited in what he could discuss.

The social worker advised the aunt and uncle that they needed to cooperate with mother's visits. They did not want to come inside the office to pick up the children for the visit because of mother. DCFS reported that during a visit on July 14, 2010, S. stated that the aunt told her that mother was "crazy and sick."

The children's therapist reported that S. stated that she wanted to be with mother. Dr. Kuiken advised that mother was educated about abusers, and mother indicated that she would exercise better judgment in her choice of companions. The children and mother engaged in family therapy. The therapist reported that they had made progress in communicating with one another. She also reported that mother continued to require guidance. Finally, DCFS reported that mother's home appeared to be in fair condition.

Mother's visits seemed appropriate. However, on August 4, 2010, Ruby told mother that she hated her. Mother asked her if she was mad because she wanted to come home. The minor reminded mother not to discuss such matters with the children, to which mother replied, "You know I have rights and I have the right to tell my daughter if she is having problems with her uncle and if they are doing things to her."

On September 4, 2010, mother had a scheduled visit with the girls. The aunt and uncle were still not comfortable with coming inside the office with the children because it usually resulted in a hostile exchange with mother. However, they did bring the children inside. Mother began asking the aunt about the children's school. Mother was concerned because she did not want Ruby in class with a particular boy. The aunt informed mother that Ruby was attending a different school; mother then became very loud and started accusing the aunt and uncle of not protecting the children. The aunt responded loudly and angrily. The aunt and uncle were signaled to leave the building, which they did. Afterwards, mother told S. to remember to tell the judge that she wanted to go home. Finally, mother instructed the children to ask for more food at the aunt and uncle's home and to ask to be taken to McDonald's. When the aunt and uncle returned to pick up the children, mother brought up food with them and another argument ensued.

At the hearing, the matter was set for contest.

Supplemental Progress Report and Hearing

On October 6, 2010, DCFS reported that mother continued to make inappropriate comments in front of the children during the visits. She claimed that the aunt told them not to play with mother. Otherwise, however, mother was generally appropriate, playing with the girls and disciplining them as necessary. There continued to be no interaction between the aunt and uncle, on the one hand, and mother, on the other hand; in fact, the uncle preferred it that way because they did not get along.

DCFS also reported regarding a TDM meeting that occurred on September 29, 2010. Mother and the aunt and uncle were present. A plan was set for mother and the aunt and uncle to be respectful and civil in front of the children and not discuss the case with the children or interrogate them.

Because mother was in compliance with her case plan, DCFS recommended unmonitored visits for her. At the hearing, the juvenile court continued reunification and mother was authorized to have unmonitored visits.

Supplemental Progress Report and Hearing

On December 2, 2010, DCFS reported that mother was bringing food and drinks to her unmonitored visits with the children. The children reported to their therapist that mother was bringing lemonade with salt in it and putting aspirin in the drink. She would then make the children drink it. During another visit, mother took an iPod and sweater. She admitted that she took them, but stated that she had returned them. The juvenile court ordered that mother not bring food to the visits.

DCFS reported that mother and the aunt and uncle did not comply with the agreement not to speak negatively about each other. The aunt and uncle wanted to adopt the children and called the social worker, sometimes three times a day, to complain and make accusations about mother.

Section 388 Petition

On December 30, 2010, DCFS filed a section 388 petition for a change of order. It alleged that mother continued to bring food to the visits despite the juvenile court's orders. She had also given the children aspirin. In addition, mother made threatening statements to DCFS staff. During one visit, mother yelled at S., asking if the aunt had told her to say that mother had given them aspirin. Mother continued to rage at the children, and the visit had to be cancelled. DCFS asked that mother's visits return to monitored.

The petition was set for hearing.

Supplemental Progress Report and Hearing

On January 3, 2011, DCFS stated that since the last progress hearing, the children's symptoms had increased. Mother was reported to be receptive to the therapist's suggestions, but continued to require guidance throughout the sessions. Both children reported to their therapist that they had seen and been affected by the animosity between mother and the aunt and uncle. S. disclosed that mother told her to be bad, and Ruby stated that she ate some chicken at a visit and one piece tasted "bad." She stated that mother had told her that a little boy put poison on it.

The aunt and uncle informed DCFS that it was difficult to work with mother because of the lack of a meaningful relationship with her and her negative perception of them.

At the hearing, the juvenile court ordered monitored visits for mother with S. and Ruby, pending the next hearing. The juvenile court directed DCFS to make it clear to the aunt and uncle that they were not to discuss the case with the children and that if they continued to do so, the juvenile court would consider removing them as caregivers.

Status Review Report

On February 4, 2011, DCFS reported that the social worker met with the aunt and uncle on January 11, 2011, to discuss the placement of the children with them. DCFS indicated that the children were doing better since the meeting and did not report any negative comments about mother from the aunt and uncle. The aunt and uncle were referred to the National Alliance on Mental Illness so that they could be educated on mother's mental illness.

DCFS also reported that since the last hearing, mother continued to be unstable. She told Maxine that she was going to hurt herself and the neighbors. She continued to bring aspirin and other medications to the DCFS office for visits. Mother told the social worker that she would do something desperate if she lost her children.

DCFS recommended that the juvenile court terminate mother's reunification services.

Last Minute Information for the Court

DCFS reported that mother was consistent with all of her visits; however, during one visit, mother had an onion taped to her leg. She explained that it was there because she could not bend her leg and that it was like "[l]aser surgery." Mother later requested to go to the restroom to wash her leg because she could smell the onion and she had a bad smell.

DCFS then provided the juvenile court with a record of what had occurred during specific visits. On February 1, 2011, mother stated that S. had a bad ankle and that Ruby had a fever. She also continued to bring up the case in front of the children during the

visit. On February 2, 2011, mother's visit was with S. only because Ruby had a doctor's appointment. Mother could not understand why Ruby had to go to the doctor instead of visiting her. The aunt and uncle ended up bringing Ruby to visit mother after the doctor's visit concluded.

During the February 9, 2011, visit, mother asked S. if she was sick. S. said that her throat hurt. Mother insisted that S. was not sick until after she ate and asked her if the aunt had given her lemon with salt in it. She suggested that there was hair in S.'s food.

On February 15, 2011, mother appeared at the DCFS with a threatening and angry demeanor. She declared that "the Chinese set her up." She also stated that when she was crossing the street, two Chinese people accelerated their vehicle and tried to run her over.

On February 22, 2011, mother arrived at a visit with a lot of medication in her purse. She told the monitor that she had broken her arm; she wrapped her arm in a bandage with a warm onion, which mother claimed helped reduce the swelling. Maxine was present at the visit, and mother gave Maxine a note with what she wanted Maxine to say in her statement to the juvenile court. In particular, mother wanted Maxine to say that S. and Ruby stated that their aunt made them lie about mother.

On February 28, 2011, the aunt and uncle reported that mother continued to call them and threatened to go to her attorney if they did not answer the telephone.

Mother continued to be concerned that the aunt and uncle were not giving the children lemon with salt, and she told the children to tell the judge that they wanted to go home so that she could take them to Chuck E. Cheese and Disneyland.

Attached to the document was a letter from S. and Ruby's therapist, reporting that family sessions had been temporarily suspended by the therapist because S. and Ruby did not appear to be benefitting from family therapy. Mother had demonstrated "heightened anxiety" and interactions between mother and the therapist were impacting the girls' ability to self-regulate.

Contested Hearing on DCFS's Section 388 Petition

At the hearing on March 25, 2011, on DCFS's section 388 petition, the juvenile court received various reports into evidence. Then, the conjoint therapist testified. She stated that after unmonitored visits were ordered for mother, S. became more defiant and Ruby cried more. She did state that mother had done well with positive verbal and nonverbal communications with the children. She also noted that mother was good with her attendance. Finally, she testified that the children's behavior depended upon mother's mood; when mother was having a good day, the children behaved.

The children's individual therapist's testimony followed. She stated that she noticed a dramatic change in the children's behavior in February. She recommended that the children's visits with mother remain monitored. After all, S. and Ruby had reported to her that mother continued to bring food to the visits when she was not supposed to do so, and S. disclosed that mother had told her to run into the street or jump off of a high place. The therapist did not believe that the aunt and uncle were directly trying to influence the children, although they have had some indirect influence.

S. and Ruby told the therapist that they loved mother. Ruby had informed the therapist that she knew about the hearing date, that she was going home to mother, and that she was happy about it.

S. testified next. She denied that the aunt told her to lie about mother. She also denied that mother gave her and Ruby aspirin during the visits. She wanted to continue visiting with mother. Finally, she denied that mother brought her food.

After entertaining oral argument, the juvenile court granted DCFS's section 388 petition, ordering that mother's visits remain monitored. The aunt and uncle were admonished not to discuss mother or mother's visits with S. and Ruby.

Last Minute Information for the Court

For the April 13, 2011, section 366.21, subdivision (f), hearing, DCFS reported that mother had left a telephone message for the social worker, threatening to kill herself. Despite instructions from the social worker, mother talked about the case with the children prior to a visit. Afterwards, mother played with the children and interacted appropriately with them.

According to DCFS, the aunt and uncle had been obeying the juvenile court's order not to discuss mother or the case.

Finally, DCFS reported that mother left a message on the social worker's voicemail, indicating that Alfred had told her that his girlfriend was a Jewish Russian with connections to the social workers. Mother indicated that she would let everyone know that she had lost her children because of racism.

Contested Section 366.22 Hearing

At the April 13, 2011, hearing, the social worker testified first. She stated that mother was participating in her treatment plan; mother interacted with the children on the visits; mother praised the children and disciplined them by telling them to take time outs when they were misbehaving.⁶ She averred that the girls wanted to live with mother, and that mother and the girls had a positive bond.

She further testified that the aunt and uncle had not cancelled any visits for mother.

Following the social worker's testimony, at mother's request, two letters were accepted into evidence: (1) A letter from mother's therapist recommending continued reunification services; and (2) a progress letter from mother's therapist indicating that mother had complied with her therapy and requesting that reunification efforts continue.

S.'s attorney asked that S. remain suitably placed, noting that at an 18-month review hearing, the issue was return, not further reunification services. Ruby's attorney agreed, also asking for the termination of reunification services and the setting of a section 366.26 hearing.

The juvenile court noted that mother had complied with her treatment plan. But, the juvenile court found that mother needed to demonstrate that she was able to complete the objectives of the plan and provide for S. and Ruby's safety, protection, and physical and emotional health and special needs, which she could not do. Thus, it concluded that

⁶ She later clarified that mother told the girls that she was going to give them time outs, but she did not follow through.

it had no choice but to terminate mother's reunification services. The matter was set for a section 366.26 hearing to determine a permanent plan for the girls. Mother's visits were to occur at least twice a week for two hours a visit.

Mother's Section 388 Petition

On July 20, 2011, mother filed a section 388 petition, requesting family maintenance services or, in the alternative, family reunification services with monitored visits with discretion to liberalize. On August 5, 2011, the juvenile court summarily denied mother's request.

Section 366.26 Report

According to DCFS's August 5, 2011, report, the aunt and uncle would consider adoption if it meant no further contact with mother; however, they were comfortable with whatever plan was best for S. and Ruby. Legal guardianship was identified as the appropriate permanent plan because S. and Ruby were attached to mother, and termination of parental rights would be detrimental to them.

The aunt and uncle were ready and able to assume legal guardianship over the children. During his interview, the uncle stated that S. and Ruby had weekly mental health counseling, and he and the aunt were in couples counseling to help them communicate with the girls. The children were observed to snuggle and be very comfortable with the aunt and uncle; their interaction was characterized as appropriate.

The aunt and uncle recognized that S. and Ruby were attached to mother, but asked that future visits be limited to once a month. They reported that the children did not listen and were difficult to handle for days after contact with mother.

Based on the foregoing, DCFS recommended that the aunt and uncle be appointed legal guardians of S. and Ruby and that mother be allowed monthly visits. DCFS also recommended that jurisdiction over the children continue.

Status Review Report

DCFS reported that the children's behavior remained a challenge, but the aunt and uncle were willing to accept any services that would help them care for the children. The girls were enrolled in Therapeutic Behavior Services. The social worker noticed a

significant decrease in telephone calls from the aunt and uncle, and the children appeared to be following directions better. Mother visited the children regularly, although she continued to be inappropriate. Her visits were now every other week. Finally, the children's individual therapist suggested that the aunt participate in individual therapy to address her conflicts with mother.

Section 366.26 Hearing

At the October 12, 2011, hearing, mother advised the juvenile court that she was not opposed to legal guardianship; she did, however, want to be heard regarding visitation. She requested increased and unmonitored visitation. Eventually, her request of three hours visitation every other week was granted.

Mother further requested holiday visits. The juvenile court stated that so long as she has an appropriate monitor, she could have "holiday visits absolutely."⁷

The matter was continued.

Updated Section 366.26 Interim Review Report

DCFS now recommended a permanent planned living arrangement for the children. It believed that that was the best way to ensure the children's needs were being met. At the October 28, 2011, hearing, the juvenile court noted that if the aunt and uncle were not comfortable with closing the case, then it could not order a legal guardianship; if they wanted to keep the case open, then a different permanent plan was required. The uncle then advised the juvenile court that he was comfortable with a legal guardianship and with the case being closed.

The matter was continued.

Last Minute Information for the Court

On November 3, 2011, DCFS informed the juvenile court that the aunt and uncle wanted to be appointed legal guardians. They understood that jurisdiction would be

⁷ The juvenile court's minute order provides: "Mother may have holiday visits with the children, if she has a DCFS approved monitor."

terminated. Finally, they reported that they were willing to monitor the children's future visitation with mother.

Thus, DCFS recommended that the aunt and uncle be appointed legal guardians and that jurisdiction be terminated.

Hearing

At the November 4, 2011, hearing, over mother's objection, the juvenile court ordered legal guardianship for the aunt and uncle over S. and Ruby. In so ruling, the juvenile court "checked the box" that the children were "living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship." Mother was awarded monitored visitation on Saturdays, two times a month for three hours in a neutral setting. Letters of guardianship were issued and juvenile court jurisdiction was terminated.

Appeal

Mother's timely appeal ensued.

DISCUSSION

I. Dismissing Jurisdiction

Mother contends that the juvenile court erred in dismissing jurisdiction.

A. Applicable Law and Standard of Review

The juvenile court may order a permanent plan of legal guardianship or planned permanent living arrangement, instead of adoption, if one of the exceptions to adoption exists. (§ 366.26, subd. (c)(1).) Section 366.3, subdivision (a), provides that if a relative has been appointed legal guardian of the child and that child has been placed with the relative for at least six months, the juvenile court shall terminate jurisdiction, unless the relative objects or exceptional circumstances exist. The juvenile court's order establishing a legal guardianship and terminating jurisdiction is reviewed for abuse of discretion. (*In re K.D.* (2004) 124 Cal.App.4th 1013, 1019.)

B. Jurisdiction was Properly Terminated

The juvenile court properly terminated jurisdiction. Tracking the language of section 366.3, subdivision (a), relatives of S. and Ruby were appointed legal guardians and the children had been placed with those relatives for more than six months; under those circumstances, the juvenile court was required to terminate jurisdiction.

Mother claims that because the aunt and uncle objected to the termination of jurisdiction, the juvenile court erred. But in making this argument, mother ignores the fact that on October 28, 2011, the uncle advised the juvenile court that he understood that jurisdiction would be terminated and that he was comfortable with that. Moreover, on November 4, 2011, DCFS advised the juvenile court that the aunt and uncle indicated that they wanted to be appointed legal guardians and that they understood that jurisdiction would be terminated. Thus, while the aunt and uncle previously may have wanted the case to remain open, they later agreed to the termination of jurisdiction. It follows that they did not object to the termination of dependency jurisdiction.

Mother further argues that dismissal of jurisdiction was inappropriate because “exceptional circumstances” existed. Specifically, she points to the hostility between herself and the aunt and uncle and the lack of a specific visitation order; according to mother, absent dependency court jurisdiction, visitation will not occur. We cannot agree.

The aunt and uncle consistently demonstrated that they were willing to engage in counseling, take direction from the social worker, and do what was needed to ensure that the children’s welfare was protected. They had been given referrals to resources to help them deal with mother’s mental health issues, and not only were the children engaged in weekly mental health counseling, the aunt and uncle were in counseling themselves. In other words, there is substantial evidence that they could meet the children’s needs.

Moreover, the aunt and uncle indicated that they were committed to ensuring ongoing contact between mother and the girls. It is undisputed that mother had regular visits with the children and the aunt and uncle did not interfere with those visits. And, at the final hearing, the aunt and uncle stated that they agreed with the juvenile court’s order for twice-monthly visits. It follows that dependency jurisdiction was not required to

ensure visitation. (*In re Twighla T.* (1992) 4 Cal.App.4th 799, 806; *In re Grace C.* (2010) 190 Cal.App.4th 1470, 1476.)

II. *Visitation*

Mother contends that the juvenile court erred in impermissibly delegating discretion over visitation to the guardians. The juvenile court's order indicates otherwise. The juvenile court ordered how often the visits would occur (twice a month), when (Saturdays from 9:00 a.m. to 12:00 p.m.), for how long (3 hours), and where the visits would occur (neutral setting). Nothing else was required. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314.)

In re M.R. (2005) 132 Cal.App.4th 269 is distinguishable. The visitation order in that case provided that “[v]isitation between the child and parents shall be supervised and arranged by the legal guardians at their discretion.” (*Id.* at p. 272.) The appellate court held that the visitation order improperly delegated the judicial function to the legal guardian. (*Id.* at p. 274.) In contrast, as set forth above, the terms of mother's monitored visits were not left to the aunt and uncle's discretion. Thus, there is no reversible error.

Mother also urges us to reverse on the grounds that, in response to mother's request to have the children on holidays, the juvenile court stated “absolutely,” so long as there was an appropriate monitor. Mother made that request on October 12, 2011. She did not object to the visitation order discussed and issued on November 4, 2011, limiting her visitation as outlined above. It follows that the issue has been forfeited on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962.)

III. *Factual Finding*

Mother argues that the juvenile court erred in “checking the box” on the legal guardianship form that the aunt and uncle were unwilling to adopt, when the real reason the permanent plan was legal guardianship and not adoption was because the children were attached to mother.

Mother is correct that the appellate record reflects that legal guardianship was the appropriate permanent plan because the children were attached to mother; termination of

parental rights would have been detrimental to S. and Ruby. But, the juvenile court’s alleged error in checking the box was harmless. (*In re James F.* (2008) 42 Cal.4th 901, 915.) Mother failed to reunify with her daughters despite months of reunification services. The aunt and uncle were ready, willing, and able to become their legal guardians. Thus, the order for legal guardianship was appropriate.

DISPOSITION

The juvenile court’s order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD