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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re SPENCER M.,

a Person Coming Under the Juvenile  
Court Law.

B237966

(Los Angeles County  
Super. Ct. No. CK80245)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KATHRYN M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stanley Genser, Juvenile Court Referee. Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Kathryn M. (Mother) appeals from an order terminating her parental rights (Welf. & Inst. Code, § 366.26<sup>1</sup>) over her son, Spencer M. She claims the juvenile court abused its discretion in refusing to continue the hearing or to allow her to offer evidence that one of the exceptions to termination applied. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 2009, the Department of Children and Family Services (DCFS) filed a petition under subdivisions (a) and (g) of section 300, alleging Mother was unable to care for six-year-old Spencer due to mental and emotional problems, and Father had failed to provide him with the necessities of life.<sup>2</sup> It was alleged that Mother had mental and emotional problems, including a diagnosis of depression and suicidal ideation. Mother had been hospitalized on November 9 for evaluation and treatment of her psychiatric condition and on prior occasions had failed to take her psychotropic medication. Her mental health problems placed Spencer at risk of physical and emotional harm.

According to the detention report, Spencer was detained in the home of his maternal grandfather, Steven M., following a referral alleging general neglect. It was alleged that Mother had been diagnosed with borderline personality disorder and bipolar disorder and was not taking her medication. She spent money irresponsibly and then claimed to have no money for food. Her behavior was erratic. She was on probation for

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<sup>1</sup> All further section references are to the Welfare and Institutions Code.

<sup>2</sup> Father, Jeffrey W., whose whereabouts were unknown at the time the petition was filed, is not a party to this appeal.

a “financial crime” and was in violation of her probation. She had two older children who lived with their father, and she had a history of DCFS referrals for all three children.

It also was reported that Spencer had problems with chronic constipation and as a result had problems with leakage and had to wear diapers. He had poor hygiene, was always dirty, and often his clothes were dirty. He was having trouble in school and was immature.

In a September 2009 interview, Mother had denied any mental health problems other than depression. She denied being on probation or not having enough money for food. However, when she came to the DCFS office on December 1, she was arrested for driving with a suspended license and grand theft. She posted bail with a credit card and was arrested the following day for using a fraudulent credit card. At that time, she attempted to harm herself with a pair of scissors and was hospitalized. She was in jail at the time the detention report was prepared.

The court found a prima facie case for detention. It ordered Spencer detained with Steven M.

In its jurisdiction/disposition report, DCFS stated that Mother denied any mental health problems other than generalized anxiety and depression, for which she was taking medication. She did not believe her mental problems were detrimental to Spencer and believed she was meeting all of his needs. She admitted having a “significant spending addiction” and having stolen credit cards from her parents and stated that she was ready to receive help for this problem.

DCFS had been able to contact Father, who stated that Mother was severely mentally and emotionally ill. Mother “duped” him into impregnating her, and he did not find out that he was Spencer’s father until Spencer was a year old. He had tried to visit with Spencer, but Mother threatened a court battle if he tried to set up a visitation schedule. Father had made two referrals to DCFS due to the filthy condition of Mother’s home. Father was unable to deal with Mother, although he had recently given her money for child support. He wanted Spencer to live with the maternal aunt and grandfather,

although he would consider taking custody of Spencer rather than see Spencer placed in foster care.<sup>3</sup>

Both the maternal grandfather and the maternal aunt, Christin M., were concerned that Mother's mental and emotional problems, and her poor housekeeping and parenting skills, were having a negative impact on Spencer's physical and mental health. Spencer was undisciplined, not potty trained, and lagging educationally.

Additionally, Steven M. and Christin M. reported that Mother spent thousands of dollars on beauty products and treatments for herself then called Steven M. to ask for money to buy food for Spencer. Steven M. had been supporting Mother financially but cut her off when she used his credit card without his permission to make purchases on the internet. The financial pressure had caused Mother's mental health to deteriorate, and he had called 911 when she called him threatening to kill herself.

Neither Steven M. nor Christin M. wanted to serve as monitor for visitation between Spencer and Mother, so a professional monitor was approved. When she arrived to take Spencer to visit Mother, he refused to go with her. On the second attempt at visitation, his godmother accompanied him, but he fought with her and refused the visit. On the third attempt at visitation, Steven M. accompanied Spencer. When they arrived at the DCFS office, Spencer did not want his grandfather to leave him. When he saw Mother, he stated emphatically that he did not want to visit with her.

Spencer stated that he did not want to live with Mother because she lived in "a mansion and it does not have anything in it and it is weird." He wanted to live with Christin M.

Following the unsuccessful visitation attempts, the juvenile court ordered that Spencer receive therapy, and that the therapist be consulted regarding visitation. Due to tension between Mother and Christin M., the court ordered that Christin M. not transport Spencer to, or be present during, visitation with Mother.

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<sup>3</sup> While Father later had visitation with Spencer, he was unwilling to participate in reunification because of the potential for contact with Mother.

Thereafter, Spencer had several visits with Mother. Although at times he seemed comfortable with Mother during the visits, he generally did not want to visit with her. By February 2010, it was “apparent that the idea of visits with his mother [is] causing Spencer a great deal of distress and trauma and as of the last two or three attempts to have a visit, Spencer has refused and it was apparent to DCFS it was not in his best interests to force him to have these visits.”

On February 10, 2010, the court ordered that visitation be in a therapeutic setting pending receipt of the results of a Multidisciplinary Assessment Team (MAT) assessment. On March 1, DCFS reported that the MAT assessment was incomplete. Dr. Susan Parks, the HUB assessor,<sup>4</sup> had diagnosed Spencer with post-traumatic stress disorder and reactive attachment disorder. She made a recommendation “for hopefully visitation with Spencer and his mom to be suspended and for him to get the necessary treatment that he needs as well as for her.” Spencer was adamant that he did not want to visit with Mother, although the exact reason for this was unclear.

DCFS also noted that Mother had been in an addiction program in Utah. She had returned to California and was currently homeless. DCFS was trying to help her find transitional housing.

The MAT assessment was conducted on March 3. It was reported that Spencer was refusing to visit with Mother and would throw tantrums to avoid visitation. Dr. Parks opined that Spencer’s “reactions to the presence to and thoughts of his mother appear to be therapeutically counterintuitive and likely to have the effect of traumatizing Spencer at this time.” She also believed that in order for therapy to be effective, Mother would “need to be psychologically and emotionally stable.” On March 5, the juvenile court discontinued visitation, finding it would be detrimental to Spencer.

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<sup>4</sup> “The term ‘Hub’ is conceptualized as the connecting anchoring piece in the delivery of services to children and their families.” (<http://www.lacdcfs.org/Policy/Hndbook%20CWS/1300/Glossaryv0109.doc> [as of June 8, 2012].)

Mother submitted a report by her psychiatrist recommending that visitation take place. He acknowledged, however, that he had not met with Spencer.

On March 10, the juvenile court sustained the petition under subdivisions (b) and (g) of section 300. It ordered DCFS to provide reunification services. It also ordered DCFS to hold a team decision making meeting (TDM) to create a visitation plan. DCFS was to consult with Spencer's therapist in doing so. Steven M. was to monitor Mother's visits. Additionally, both Spencer and Mother were to attend counseling, and they were to participate in joint counseling when recommended by Spencer's therapist.

Following a TDM, a visit took place at a park on March 25. DCFS reported that "[d]espite some initial reluctance, Spencer eventually warmed up to his mother, and the visit went unexpectedly well. Spencer appeared to be eager for another visit sometime soon."

For the six-month review hearing, DCFS reported that Mother was arrested on April 9 and remained incarcerated pending sentencing on numerous felony charges. It was expected that she would be incarcerated for at least eight months. Mother stated that she was participating in the programs available to her, she was on medication for mild bipolar disorder and borderline traits, and she wanted to reunify with Spencer. DCFS later verified Mother's participation in programs while incarcerated.

Spencer was doing well in Steven M.'s custody. His health was good, he had no significant behavioral problems, and he was progressing in school. Steven M. and Spencer were living with Christen M., to whom Spencer was deeply attached. Steven M. was interested in adopting Spencer.

At the hearing on August 20, the juvenile court ordered that DCFS continue to provide reunification services. It approved visitation after Mother was released from custody, with DCFS discretion to allow the visits to take place in Steven M.'s home.

For the 12-month review hearing, DCFS reported that Mother received a five-year suspended sentence and was on parole. On October 20, Mother entered Pacifica House, a substance abuse facility.

Efforts were being made to arrange visitation, but Spencer became agitated and anxious when the subject of visitation was raised. He “adamantly insists that he does not want to see his mother.” He spoke with Mother on the telephone but seemed “stressed” when she mentioned visitation. His therapist was working with him and with Mother to enable visitation to begin.

Spencer received an unauthorized visit at school by one of Mother’s friends. Afterwards, he “became extremely anxious and upset, and his encopresis worsened.” He asked Christen M., “Do I really have to go live with my mom again? What mental home is my mother in?”

On January 12, 2011, Spencer’s attorney filed a JV-180 request to change court order. (§ 388.) She requested that visitation be discontinued until Spencer was able to deal therapeutically with the anxiety caused by the possibility of visitation.

The juvenile court ordered a hearing on the request and ordered DCFS to prepare a report. DCFS reported that Steven M. said that Spencer had been more anxious and encopretic since he began talking to Mother by telephone, and he refused to speak to her on January 24. Spencer’s therapist “believe[d] the emotional preparation required for Spencer to see his mother in person will be ‘a process.’” Additionally, the district attorney’s office stated that Mother was required to remain in her program for a full year, and her assertion that she would be released soon was “delusional.”

On March 16, the juvenile court granted the section 388 request. It ordered monitored visitation only when recommended by Spencer’s therapist, and in a setting recommended by the therapist.

At the 12-month review hearing on March 23, the court found that Mother was not in compliance with her case plan and there was no substantial probability Spencer could be returned to her custody within six months. It ordered termination of reunification services. It further ordered a permanent plan report (§ 366.26) and adoptive home study.

On July 20, DCFS reported that it was likely that Steven M. would adopt Spencer. Spencer was continuing to do well and was happy, although he may have suppressed the trauma he went through with Mother, still wanted nothing to do with her, and would

benefit from continued therapy. According to Spencer's therapist, who had also been treating Mother, Mother was "still blaming everybody" and "not taking responsibility" for her actions. She was "not really in touch with reality" and still needed a lot of help. DCFS noted that Mother was at that time incarcerated. DCFS recommended termination of parental rights and adoption.

The case was set for a contested hearing, which was continued to November 2. On November 2, Mother filed a JV-180 request, seeking reinstatement of reunification services. As changed circumstances, she stated: "I am currently in a program (in prison) and will be released, where I will enroll in a residential program. . . . Instead of serving my sentence, I will be wearing an ankle bracelet." She believed the requested change would benefit Spencer because: "My son has lived with me for 7 years prior to my incarceration. I write letters and have a relationship with my son."

At the November 2 hearing, the court denied Mother's request. Mother's counsel then requested a continuance so that Spencer could be present. The court denied the request, stating that Spencer had already been through enough trauma, and his presence was not necessary or "helpful in assisting the court to make a proper ruling in this case."

Mother's counsel then requested a continuance to allow Steven M. to be brought to court. Mother told her counsel that Steven M. might be interested in legal guardianship rather than adoption. According to DCFS counsel, however, Steven M. was still interested in adoption. The court denied the request for a continuance as untimely, adding that Steven M.'s testimony was not relevant to the issues before the court and if Mother's counsel wanted him to testify, counsel should have made him available.

Mother then testified about her visitation with Spencer, and the letters she sent and phone calls she made when she was unable to visit. She also testified about her upcoming release from prison. The court allowed Mother to address it. She stated that she believed the court had only received negative information about her. She explained that about two years earlier, "a huge family rift" had developed between her and Steven M. They separated, "[a]nd in the process Spencer, I believe—and a lot of people close to me believe—got caught in the middle of what was a family feud. And my son and I have

made mistakes. And I have to pay for those every day of my life.” She added that she loved her son and wished she could go back and undo her mistakes.

The court responded that Mother needed to take responsibility for her actions and deal appropriately with her problems. She needed to repair her relationship with her family. The court had no legal basis to change its prior orders or to stop the termination of parental rights and adoption. However, if she dealt with her “issues and how they impact with the relationships that you have with your family and why that has put a wall between you and your family,” she would be able to reenter Spencer’s life.

Mother asked the court, “Is there a reason why can’t we do a legal guardianship until I have got everything together so I don’t— . . . I am willing to have my rights terminated; I am willing to give my dad guardianship. I am willing to let Spencer do what is best for Spencer.” The court gave her “the simple answer. That is not the law. The law is, we go to the most permanent plan that we can do at this time, if it is appropriate. And in this case it’s appropriate in light of all the facts.”

Mother’s counsel then argued that the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) applied. He reviewed the steps Mother had taken to remain in Spencer’s life and her concern that due to her father’s age, it was not in Spencer’s best interests to be adopted. In addition, “[s]he also testified that she would be released soon. And because of that . . . she would have the opportunity to mend the relationship she has with not only her son, but with her family.”

The court reiterated that there was “no legal or factual basis to not terminate parental rights when we took jurisdiction based upon your client’s parenting style of the child who is fearful of the mother. He was neglected and she has not had a relationship that would rise to affirmative defenses . . . .” It therefore terminated Mother’s parental rights.

## DISCUSSION

Mother contends the juvenile court abused its discretion when it denied her a continuance in order to call Spencer and Steven M. as witnesses. She claims that by doing so, it precluded her from offering any evidence that the beneficial parent-child relationship exception to termination of parental rights applied.

Section 352, subdivision (a), permits the trial court to continue a hearing upon a showing of good cause and for the amount of time necessary, provided a continuance is not contrary to the interests of the child. In ruling on a request for a continuance under this section, the trial court should consider whether the minor's need for prompt resolution of his dependency status outweighs any benefit to be derived from the continuance and any other relevant factors brought to the court's attention. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1017.) A trial court's decision on a request for continuance under this section will be reversed only upon a showing of abuse of discretion. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811; *In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) An abuse of discretion may be found where a different result may have occurred had the continuance been granted. (See *In re Julian L.* (1998) 67 Cal.App.4th 204, 208; *Gerald J., supra*, at p. 1187.)

The beneficial parent-child relationship exception applies when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The parent seeking to avoid adoption bears the burden of demonstrating “that there exists ‘a significant, positive, emotional attachment from child to parent.’” (*In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548.)

Mother complains that her family prevented her from visiting with Spencer, this was corroborated by a professional monitor, and the only way she could have proven this was through Spencer's testimony. Mother misstates the record. The record shows that

her family did not want to serve as monitors for visitation, which is why a professional monitor was called. The professional monitor was unable to facilitate visitation because Spencer did not want to visit with Mother. The record shows that despite a few successful visits between Spencer and Mother, for the most part Spencer became agitated and anxious when the subject of visitation was raised and “adamantly insists that he does not want to see his mother.”

Mother also asserts that the juvenile court’s “outright denial” of her request to call Spencer as a witness was error, in that there are ways of protecting child witnesses who testify in dependency proceedings, and his testimony was important in making a determination as to what was in his best interests. The question before us, however, is not whether the court erred in denying Mother’s request to call Spencer as a witness. The question before us is whether the court abused its discretion in denying a continuance.

Mother’s counsel made no showing as to why he had not taken steps previously to have Spencer testify at the hearing, i.e., why there was good cause for a continuance. Neither did he make an offer of proof showing that Spencer’s testimony would have led to a different result, that it would have supported a finding of the existence of a beneficial parent-child relationship exception to termination of parental rights. Spencer’s counsel, however, said she could make an offer of proof as to what type of relationship Spencer wanted with Mother. Mother’s counsel objected to hearing the offer of proof, and it was never made. In sum, Mother’s counsel failed to show good cause for a continuance to allow Spencer to testify, and the juvenile court did not abuse its discretion in denying the continuance on this basis. (*In re Gerald J.*, *supra*, 1 Cal.App.4th at p. 1187.)

Mother’s counsel also made no showing as to why he had not taken steps previously to have Steven M. testify at the hearing. Mother asserts, however, that a continuance should have been granted, in that, in order to prove an exception to termination of parental rights applied, she was required to prove that Steven M. was unable or unwilling to adopt Spencer for reasons other than financial inability. Under subdivision (c)(1)(A) of section 366.26, an exception to termination of parental rights applies when “[t]he child is 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, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child.” (See, e.g., *In re Xavier G.* (2007) 157 Cal.App.4th 208.)

Mother’s counsel’s offer of proof was that Mother “indicated that maternal grandfather might be interested in a legal guardianship as opposed to adoption.” This falls far short of an offer of proof that Steven M. was unwilling or unable to adopt Spencer. To the contrary, the record shows that Steven M. was willing and able to adopt Spencer, and counsel for DCFS confirmed that Steven M. was still interested in adoption, and the children’s social worker could testify to that fact.

Again, Mother’s counsel failed to show good cause for a continuance to allow Steven M. to testify, and the juvenile court did not abuse its discretion in denying the continuance on this basis. (*In re Gerald J.*, *supra*, 1 Cal.App.4th at p. 1187.)

## **DISPOSITION**

The order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.