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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.A. et al.,

Persons Coming Under the Juvenile Court Law.

B262346

(Los Angeles County
Super. Ct. No. DK08494)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANTOINETTE A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Veronica McBeth, Judge. Affirmed.

Jennifer L. King, under appointment by the Court of Appeal, for Defendant
and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant
County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff
and Respondent.

Mother Antoinette A. is the adoptive mother of sons M.A. (born Aug. 2005), R.A. (born Jan. 2007), and C.A. (born Feb. 2008).¹ She appeals from the juvenile court's order declaring the children to be dependents under Welfare and Institutions Code section 300,² and removing them from her custody. Her sole contention is that the court's order of visitation, entered at the disposition hearing, must be reversed because it improperly delegates the issue of visitation to the Los Angeles County Department of Children and Family Services (DCFS). We disagree. Based on the visitation order previously in effect, supplemented by the disposition order, mother is entitled to visitation with the children two-to-three times a week for two-to-three hours at a time, to be monitored by a DCFS approved monitor in a neutral setting, and DCFS has discretion to liberalize.

BACKGROUND

The petition, as sustained by the court at the jurisdiction hearing on February 4, 2015, alleged under section 300, subdivisions (a) and (b), that Mother physically abused the children by striking them with belts, and under subdivision (b), that mother kept marijuana in the home within the children's access and that the home was in a filthy and unsanitary condition. The underlying circumstances of dependency jurisdiction are not material to the issue on appeal.

Mother was not present at the jurisdiction hearing, having told her attorney that she was going to the hospital because she had an anxiety attack. Based on the history of the case (including mother's failure to stay in touch with DCFS) and the

¹ Mother is the biological maternal aunt of the children. She adopted them in 2012 as a result of a dependency proceeding involving the biological parents.

² All undesignated section references are to the Welfare and Institutions Code.

timing of her contact with her lawyer to request a continuance (1:07 p.m. when she had been ordered to appear at 8:30 a.m.), the court found that mother was simply trying to delay the hearing without good cause. Therefore, the court adjudicated the case, but agreed to continue the disposition hearing.

At the time of the disposition hearing on February 23, 2015, the children were residing with their maternal uncle), subject to a visitation order that directed monitored visits for mother two-to-three times a week for two-to-three hours at a time, to be monitored by a DCFS approved monitor in a neutral setting. According to DCFS, the uncle allowed mother to visit as frequently as she could because the distance between their homes made visitation difficult for mother.

Mother failed to appear at the disposition hearing, despite proper notice. The court delayed hearing the case from 8:30 a.m. to just before noon, based on the representation by mother's attorney that mother was on her way to court using public transportation. Thereafter, the court declined to wait further, and held the hearing. The court removed the children from mother's custody, ordered them suitably placed, and ordered reunification services for mother. With respect to visitation, the court stated, "She'll [mother] have monitored visits. The Department has discretion to liberalize."

Later, a discussion of visitation occurred in the context of the maternal uncle's request for financial assistance in caring for the children. To secure federal financial assistance, DCFS needed to interview mother to obtain her financial information, but she failed to respond to DCFS's requests to meet and DCFS did not know where she lived. In an attempt to arrange an opportunity for DCFS to interview mother, counsel for DCFS suggested that as soon as the maternal uncle notified DCFS that mother was planning a visit, DCFS could try to have an eligibility worker attend the visit and interview mother. However, counsel for the

children requested that the burden not be on the maternal uncle, who had “done everything he [could] possibly do” to have mother contact DCFS. The court asked, “[D]o we have a written visitation schedule?” Minor’s counsel replied “[n]ot that I know of He tries to make the kids available but he works full time.” The court determined, “Well, then the uncle is going to have to contact the Department and let them know when there is a visit taking place . . . so the Department can come and interview mother.”

The court set the case for a six-month review hearing. The minute order from the hearing stated that “[a]ll prior orders not in conflict shall remain in full force and effect.”

DISCUSSION

Mother contends that the juvenile court’s visitation order at the disposition hearing improperly delegated to DCFS the authority to determine the frequency and duration of visits, and whether visits will occur on a reasonable or regular basis. We disagree.³

“The court has the sole power to determine whether visitation will occur. [Citations.] Once visitation is ordered, the court may delegate responsibility for managing details such as the time, place and manner of visits, none of which affect a parent’s defined right to see his or her child. [Citations.] However, the visitation order must give some indication of how often visitation should occur. [Citations.] A court may not abdicate its discretion to determine whether visitation will occur

³ DCFS contends that by failing to object to the visitation order at the disposition hearing, mother forfeited any challenge to the order on appeal. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) We nonetheless exercise our discretion to consider the issue on the merits because the facts are undisputed and we can determine the issue as a matter of law. (*Id.* at pp. 1293-1294.)

to a third party.” (*In re E.T.* (2013) 217 Cal.App.4th 426, 439; see *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314 [“The time, place, and manner of visitation may be left to the legal guardian, but leaving the frequency and duration of visits within the legal guardian’s discretion allows the guardian to decide whether visitation actually will occur.”].)

Here, at the time of the disposition hearing, a visitation order already was in effect. It directed monitored visits for mother two-to-three times a week for two-to-three hours at a time, to be monitored by a DCFS approved monitor in a neutral setting. Moreover, the minute order from the disposition hearing states that “[a]ll prior orders not in conflict shall remain in full force and effect.” Such an order means what it says: prior orders continue in effect, unless they are inconsistent with the current order. (See *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1141 [holding, as here relevant, that such an order does not re-impose prior orders, but merely continues them in effect]; *Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1380 [order at disposition hearing that “[a]ll prior orders to remain in full force and effect” continued prior order from detention hearing permitting social services agency to modify child’s placement and determine whether visitation required a monitor].)

The preexisting visitation order is not inconsistent with the visitation order entered at the disposition hearing. The disposition order did not change the frequency or duration of monitored visitation, but simply added a term – favorable to mother – which permitted DCFS to liberalize visitation. Indeed, from the comments at the disposition hearing, attempting to arrange an interview with mother on the occasion of a visit, it is apparent that the court and parties understood that visitation would be continuing on the same basis as before the disposition hearing.

In short, status of visitation after the disposition hearing is as follows: mother is entitled to visitation with the children two-to-three times a week for two-to-three hours at a time, to be monitored by a DCFS approved monitor in a neutral setting, and DCFS has discretion to liberalize.

DISPOSITION

The order is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.