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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

C068694

(Super. Ct. Nos.
JD231464, JD231465 &
JD231466)

M.S., mother of B.M. (born July 1994), K.M. (born September 1996), and J.M. (born January 2004), appeals from the juvenile court's dispositional orders. On appeal, mother contends the juvenile court erred in imposing conditions on her right to control her children's education. Mother also contends the juvenile court failed to give proper notice under the Indian Children Welfare Act (ICWA). We are not persuaded by either claim; accordingly, we shall affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND¹

Removal and Detention

Mother's three children (minors) have varying degrees of special needs and mental health issues, ranging from autism to oppositional behavior and suicidal ideation. Minors were previously assessed and qualified for ALTA Regional Center services.

Prior to removing minors from mother's custody, El Dorado Department of Health Services (EDDHS) received 12 child welfare referrals regarding the family. Seven referrals required Child Protective Services (CPS) investigation, two were deemed unfounded, four were deemed inconclusive, and one (for "general neglect") appears to have been substantiated.²

In December 2010, EDDHS removed minors from mother's care and took them into protective custody. EDDHS also filed a petition pursuant to Welfare and Institutions Code³ section 300, alleging minors suffered abuse and neglect at the hands of mother and their stepfather.

¹ We limit our discussion of the background facts to those facts that are relevant to the issues raised on appeal.

² The jurisdiction report indicated that a claim of sexual abuse was deemed "substantiated." The disposition report, however, indicated the allegation was deemed "unfounded."

³ Further undesignated statutory references are to the Welfare and Institutions Code.

Educational Issues

When B.M. was two years old, he was diagnosed with pervasive developmental disorder and high functioning autism. K.M. was diagnosed as "compulsive" when she was seven years old, and at 18 months old, J.M. was diagnosed with autism. B.M. began receiving services through the San Andreas Regional Center in 1998. In 2005, all three children began receiving services through the local ALTA Regional Center (ALTA).

From 2005 to 2007, mother received a multitude of in-home services for minors through ALTA. Services included the in-home support of tutors who set goals and objectives for minors and worked with them on behavior management. Mother also had in-home respite and daycare. In 2007, mother fired the vendor who provided the tutoring but continued to utilize the in-home respite and daycare.

After she fired the in-home support vendor, mother refused to give ALTA access to minors. Without access to minors, ALTA was precluded from preparing Individual Program Plans (IPP) for minors, plans which "drive[] [ALTA's] ability to provide services to the children." Specifically, mother failed to follow through with her promises to provide ALTA with assessments for minors and refused to sign the paperwork necessary to allow ALTA to assess minors' needs.

ALTA provides support services for minors and works from a "collaborative model," which requires it be involved with minors' schools and be made aware of any mental health issues. Mother, however, refused to allow ALTA to participate in minors'

Individual Education Plan (IEP) meetings at school. Moreover, mother repeatedly refused to "sign-off" on minors' IEPs or assessments. As a result of mother's conduct, the services being provided to minors were based on assessments that were "old and outdated."⁴

B.M.'s Services and IEP

In December 2010, B.M. was in the tenth grade and was struggling in school. The school psychologist, Jennifer Glaspell, was concerned about B.M.'s attendance; he was missing an average of 60 days each school year. Glaspell also reported that in October 2010, B.M. threatened to kill himself while he was at school. The school could not locate mother, so B.M. was taken to a local psychiatric hospital by a family friend.

When B.M. was discharged from the psychiatric hospital, the school asked mother to give them a copy of his discharge plan or, alternatively, to sign a release so the school could obtain a copy directly from the hospital. Mother failed to do either. Glaspell was concerned that mother was withholding important psychiatric information that could be used to keep B.M. "safer at school" because not only had he threatened to kill himself while at school, he was "at times delusional and exhibit[ed] psychotic behavior." Glaspell also was concerned that an

⁴ Minors' services at ALTA were canceled in March 2010--in part due to billing issues, but also due to mother's repeated failures to provide ALTA with minors' assessment information.

assessment of B.M. had not been completed since he was in fifth grade.

As of January 2011, despite twice being hospitalized for suicidal ideations, B.M. was not yet receiving mental health services from a licensed therapist. The high school had made repeated efforts to obtain a mental health services referral on B.M.'s behalf, but mother refused to cooperate.

B.M. was enrolled in a new school in February 2011, but the last IEP signed by mother was dated 2008. Accordingly, an IEP meeting was held to address B.M.'s "behaviors and academic needs." The IEP team discussed phasing out B.M.'s one-on-one instructional aide in order to help him become a more independent learner. Mother disagreed with this assessment and refused to sign the IEP. The IEP meeting was continued to March 2011.

Because she disagreed with the proposed IEP, mother wanted B.M. to be assessed by an independent assessor. The school district sent mother a letter identifying approved independent assessors; however, as of May 2011, mother still had not selected one. Mother also disagreed with the school district's assessment that B.M. did not require the use of an iPad as an "Augmentative Communicating Device" in the classroom. Mother wanted B.M. assessed by her own independent assessor from Stanford.

In the meantime, and with permission from EDDHS, ALTA was able to complete its own assessment of B.M. and was "pleasantly surprised" with the results. According to its assessment, B.M.

"is at a much higher functioning level than his mother makes him out to be," but still required socialization skills.

J.M.'s IEP

Seven-year-old J.M. was also enrolled in a new school in January 2011. As his last IEP was dated in 2007, an interim plan was implemented, placing him in a general education kindergarten class with resources services for math and occupational services to assist him with his fine motor skills. Mother signed off on the interim plan.

J.M.'s triennial IEP assessment was held on March 2, 2011.⁵ Mother, however, failed to return the documents provided to her requesting her input on how J.M. behaved emotionally and behaviorally until a month after the triennial IEP meeting.

K.M.'s IEP

On March 8, 2011, K.M.'s IEP meeting was held. The team determined that K.M. no longer needed to be in a special day class accompanied by a full time one-on-one aide. K.M.'s IEP was changed to put her in a less restrictive environment where she would be mainstreamed and given "resource help" for English and math. Mother was present for that meeting and signed the IEP.

K.M.'s triennial evaluation was scheduled in late March 2011. Five minutes before the meeting was to start, mother emailed one of the members on K.M.'s IEP team and said she would

⁵ A triennial IEP is an evaluation held every three years "for all special education students to determine if they qualify for special needs services." It consists of a full academic, cognitive, social, and emotional assessment of the child.

not be present; she added the meeting could not go forward. The meeting went forward but, because mother was not there, "no signature was obtained" and the meeting was rescheduled for May 2011.

Additional Delays

In its March 2011 Disposition Report, EDDHS requested "the Court relieve the mother of the children's educational rights." In support of its request, EDDHS reported that, "At the time of this report, [mother] has once again delayed progress and services for one of her children by rescheduling an important school meeting. . . . The other two minor's [sic] school education plans are also on hold due to [mother]'s delays."⁶ In April 2011, mother had made repeated promises to ALTA that she would sign information releases to enable ALTA to obtain minors' IEPs and mental health records. Mother finally provided those releases on May 9, 2011.

In May 2011, J.M. was assessed for an updated IEP, wherein the school concluded his needs were being met by the current support services provided. Mother disagreed and requested an independent assessment, refusing to sign the new IEP, which meant that the school could not move forward with the new IEP goals. Mother told Sacramento Department of Health and Human Services (DHHS) she would review the new goals "this weekend" and sign the IEP "on Monday."

⁶ The case was then transferred to Sacramento County.

Mother also disagreed with the psycho educational evaluation included in K.M.'s triennial IEP. She indicated to DHHS that she would not be signing that IEP and would be asking for K.M. to be re-assessed by independent assessors.

In an addendum report filed with the court on May 18, 2011, DHHS concluded that: "What is clear is that the mother continues to challenge the children's Triennial IEP's, which are critical for determining whether the children qualify for special needs services. Thus, the process gets delayed for months and no changes are made or implemented. The children continue to receive services based on old assessments. According to information provided in prior reports this is a consistent pattern for the mother."

Disposition Hearing

At the contested disposition hearing held in July 2011, the juvenile court stated "there is sufficient evidence to suspend educational rights but . . . the court . . . would like to give particularly [mother] a chance to exercise those [rights] in an appropriate way and also for [father] to exercise his rights. These children need active parental involvement in their education, but it needs to be positive. It needs to be educational support that gives them the belief that they can succeed, that they can fulfill their potential, that they are not going to be held back."

Accordingly, the court ruled as follows: ". . . so I think we need to stop for a while and let the children experience school, relax a little bit and see what they can do

before we continue more assessments. They have been assessed lots. Okay? And you're even agreeing. So part of my condition of granting educational rights is that the request for independent assessments be withdrawn right now. We let them go to school. We let them see how they do. And then we take a very careful look with both parents actively involved but that we stop all the assessments. We stop the holding up of certain plans.

"[¶] . . . [¶]

"So in order not to suspend ed. rights, here's the condition: That the triennial plan will be signed, the request for any independent assessments will be withdrawn and that the I.E.P.'s [sic] be attended and signed off on when they start the school year. And that if there is any feeling by mother or father that an independent assessment -- or that there is something wrong with the I.E.P., we come back to court, and we take a look at it before we order an assessment."

The court then ordered everyone back to court in 60 days to re-evaluate the children's educational needs.

ICWA

During an interview in December 2010, B.M. told EDDHS that he had Cherokee heritage on mother's side, but did not know if he had a tribal enrollment number. Mother and father were both given a JV-130 form at the detention hearing on January 4, 2011, and ordered to "submit it to the court before leaving the courthouse today."

Father filed his JV-130 form that same day, indicating he did not have Indian heritage but that minors may have Cherokee heritage. Mother never filed her form with the court. On January 7, 2011, however, mother told EDDHS that she did *not* have any Indian heritage.

Prior to the jurisdictional hearing in March 2011, notice of the proceedings was apparently provided to the Bureau of Indian Affairs (BIA) and the record indicates that "proof of such notice was filed with [the] court." Shortly thereafter, the matter was transferred to Sacramento County. The minute order from the transfer-in hearing found minors had no Indian heritage.

DISCUSSION

I

Education Rights

Mother first contends the juvenile court violated her statutory and constitutional due process rights to make educational decisions for her children by "conditioning her maintenance of her right to make [such] decisions . . . on dropping her request for an IEE and signing the IEPs and triennial plan." In support of her contention, mother relies on the federal Constitution and the Individual with Disabilities Education Act (20 U.S.C. § 1400, et seq.)⁷

⁷ DHHS contends mother has forfeited her right to raise this claim on appeal by failing to raise it first in the juvenile court. Mother disagrees. We need not address and resolve this

Mother's argument ignores the critical fact that minors were and remain adjudicated dependents of the juvenile court. Accordingly, mother's right to control their education is not without restriction. "Parents have a constitutionally protected liberty interest in directing their children's education. [Citations.] However, when a child is a dependent child, a court may limit a parent's ability to make educational decisions on the child's behalf by appointing a responsible adult to make educational decisions. (Welf. & Inst. Code, § 361, subd. (a); Cal. Rules of Court, rule 5.650(a).)

"If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited." (Welf. & Inst. Code, § 366.1, subd. (e).) A court-imposed limitation on a parent's educational rights 'may not exceed those necessary to protect the child.' (*Id.*, § 361, subd. (a).)

"In addition, 'the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the [dependent] child, including medical treatment, subject to further order of the court.' (Welf. &

dispute, because it is clear that mother's claim fails on the merits.

Inst. Code, § 362, subd. (a).)" (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1276-1277.)

Here, the juvenile court did *not* suspend mother's educational rights. Instead, the court conditioned mother's maintenance of those rights on her ceasing obstructionist behavior, which had the effect of denying to minors the benefit of special services to which they were entitled due to their respective disabilities. This directive was well within the court's discretion; as it correctly pointed out, the other option available to it was far more restrictive of mother's educational rights; that is, to *suspend* those rights and prohibit mother from exercising them at all.

The record is replete with evidence of mother's failure to cooperate with minors' schools and counselors--her obstructionist behaviors ran the gamut, from stalling to outright refusal to provide relevant information. As noted by DHHS, this conduct resulted in provision of services to minors based on perceptions of their needs formed from outdated assessments. This meant the services being provided were not based on minors' current age or advancement; this result was not in minors' best interests. In challenging every decision and assessment made, mother was neither furthering minors' education nor acting in their best interests. Accordingly, we find no error in the juvenile court's attempt to compromise with mother and extract a modicum of cooperation from her, without having to completely divest her of her rights to control her children's education.

II

ICWA

Mother contends "the dispositional orders must be conditionally reversed because there is insufficient evidence that the juvenile court ensured compliance with the requirements of the [ICWA]." She claims the notice requirements of the ICWA were triggered when father expressed that minors *may* have Cherokee heritage (although not from him), and B.M. told DHHS he had Cherokee heritage on mother's side. She omits any meaningful discussion of the fact that mere days after she *failed to file* her own ICWA disclosure form, she *disclaimed* any Indian heritage to DHHS.

Father indicated on his JV-130 form that he did *not* have Indian heritage, but minors *may* have Cherokee heritage. B.M. said he was Cherokee on his mother's side, but did not know if he had an enrollment number. Mother, who never filed a JV-130 form with the court despite being ordered to do so, told DHHS that she did *not* have Indian heritage.

Thus, the only potential claim of Indian heritage was on mother's side, and *mother denied having such heritage*. EDDHS included mother's denial in its jurisdiction report, as well as its conclusion that the ICWA did not apply. That conclusion was reiterated in the subsequently filed transfer-in report. Mother appeared before the juvenile court on numerous occasions after these reports were filed and at no time did she indicate this conclusion was incorrect. On this record, mother cannot now

credibly complain that further ICWA notice was warranted. There was no error.

DISPOSITION

The orders of the juvenile court are affirmed.

DUARTE, J.

We concur:

RAYE, P. J.

MURRAY, J.