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

In re D.J., a Person Coming Under the
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

DARIUS J.,

Defendant and Appellant.

C069556

(Super. Ct. No.
JD231494)

Darius J., father of the minor, appeals from the juvenile court's judgment of disposition which denies him visitation with the minor. (Welf. & Inst. Code, § 395, subd. (a)(1).)¹ He complains that the juvenile court restricted his contact with the minor to supervised letters. We affirm.

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

Because the issue in this case is limited to father's visitation with the minor, we recite only those facts which are relevant to that issue.

The minor was born in August 2007. On May 5, 2008, father assaulted mother in the presence of the minor and her older sibling. He was arrested shortly thereafter and convicted of forcible sodomy, domestic violence and making criminal threats. The trial court found he had a prior serious felony conviction and sentenced him to 14 years four months in state prison.

In October of 2010, the minor began showing signs of illness resulting in several trips to the emergency room. On December 23, 2010, she was diagnosed with a brain tumor and underwent immediate brain surgery. It was discovered she had a high-grade anaplastic ependymoma, which has a high risk of recurrence. After her surgery, the minor received radiation treatment from February 2011 through the end of March 2011. She also required hospitalization from March 14 to March 31, 2011, for treatment for two infections.

Upon her release from the hospital, the minor continued on numerous medications (some several times a day), required a broviac catheter and a gastrostomy tube, had a restricted diet which included the use of a gastrostomy tube, and was seeing numerous doctors. From January 14, 2011, to March 31, 2011, the minor had 59 medical appointments scheduled.

On April 13, 2011, the Sacramento County Department of Health and Human Services (DHHS) filed a section 300 petition,

alleging that the minor was at substantial risk of suffering serious harm or illness based on mother's failure to provide adequate medical care.² Upon DHHS recommendation, the juvenile court ordered no visitation for father, who had not seen the minor for approximately one year. Father was housed in High Desert State Prison, in Susanville.

The juvenile court assumed jurisdiction after a contested hearing and the matter was set for disposition. By the time of the October 2011 disposition hearing, the minor's medical condition had significantly improved. Unfortunately, she remains at high risk for recurrence, either locally or in another area of her central nervous system. The minor also still required feeding through a gastronomy tube. In addition to speech therapy appointments every week, the minor also had regular appointments with three different doctors, and periodic follow-up appointments with a radiation oncologist, including MRI's.

The juvenile court placed the minor with mother under supervision and with services. The juvenile court denied services for father pursuant to section 361.5, subdivision (b)(12) (violent felony conviction) and subdivision (e)(1) (incarcerated parent). Over father's objection, the juvenile court also limited father's contact to supervised letters.

² Mother is not a party to this appeal.

DISCUSSION

Father contends the juvenile court erred in denying him visitation with minor, absent a showing and finding that visitation would be detrimental to the minor. We find no error.

The juvenile court denied reunification services to father pursuant to both subdivision (b)(12) (violent felony conviction) and subdivision (e)(1) (incarcerated parent) of section 361.5. In denying services, the juvenile court found that services would be detrimental to the minor based on her age, the lack of relationship she had with father, the length of father's incarceration, and the nature of father's crime. Those findings are not contested.

Once the juvenile court has denied reunification services under section 361.5, subdivisions (b)(12) and/or (e)(1), section 361.5, subdivision (f), gives the juvenile court discretion to allow the parent to continue visitation with his or her child, unless it finds that visitation would be detrimental to the child, in which case visitation is prohibited. (§ 361.5, subd. (f);³ *In re J.N.* (2006) 138 Cal.App.4th 450, 458.) "The best interests of the child is certainly a factor the court can look

³ Section 361.5, subdivision (f), provides, in relevant part: "If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child."

to in exercising its discretion to permit or deny visitation. (See *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 569 [the standard which governs all determinations in dependency proceedings is protection of the child's welfare and best interests].)" (*In re J.N., supra*, 138 Cal.App.4th at p. 459.) A finding of detriment to the minor is not necessary in order to deny visitation. (*Id.* at pp. 458-459.)

Here, the juvenile court permitted only supervised letter contact between father and the minor, and denied him in person visitation. Father contends this was an abuse of discretion because the court did not find visitation detrimental to the minor. As we have set forth, "the court may deny visitation to an incarcerated parent who has been denied reunification services, even in the absence of any showing that continued visitation would be detrimental to the child." (*In re J.N., supra*, 138 Cal.App.4th at p. 460.) Thus, we review the denial of visitation under the abuse of discretion standard. (*Id.* at pp. 458-459.) "The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court. [Citation.]" (*Id.* at p. 459.)

The record reflects that father has been in custody for the violent crimes he committed against mother, and in the minor's presence, since the minor was approximately nine months old. He had last seen the minor around May 2010, when the minor was less than three years old. It was approximately five months later that the minor began showing signs of illness. By the time of

the disposition hearing, the minor was four years old and had not seen father for almost a year and a half.

Moreover, throughout these proceedings, father has been incarcerated in High Desert State Prison, in Susanville -- approximately 200 miles from minor's home in Sacramento -- and will remain incarcerated for the next eight years. The minor, although significantly improved from a medical standpoint, is still medically fragile and at high risk of developing cancer again. She still requires a gastrostomy tube, has numerous medical appointments, and was placed with mother with significant supervision and support.

Considering the minor's tender age and the fact that she has not seen father since she was less than three years old, the juvenile court could quite reasonably determine that transporting this medically fragile child approximately 200 miles to Susanville to visit her imprisoned father, with whom she has been unable to develop any substantive parental bond due to father's own criminal behavior, would not be in the minor's best interests. We find no abuse of discretion.

DISPOSITION

The order of the juvenile court is affirmed.

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

BUTZ, J.