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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re N.B., a Person Coming Under the Juvenile Court Law.

C080657

SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY,

(Super. Ct. No. J07081)

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

Kenyatta C., mother of the minor, appeals from the judgment of the juvenile court. (Welf. & Inst. Code, § 395.)¹ Mother argues the juvenile court’s order appointing a guardian ad litem for her was not supported by substantial evidence. We affirm.

I. BACKGROUND

In January 2015, the San Joaquin County Human Services Agency (Agency) filed a petition to detain three-year-old N.B. from mother’s custody due to an episode of

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

mother's excessive use of alcohol and Ecstasy which resulted in mother's hospitalization. The detention report stated that mother had a prior dependency with minor's sibling, which was dismissed with custody of that child given to the father. Mother was given notice of the detention hearing in person and given a pamphlet explaining her rights. The minor was placed at the children's shelter. The detention hearing was held January 14, 2015. Mother was hospitalized and was not present. The juvenile court ordered the minor detained and set a jurisdiction hearing.

Mother appeared at the January 28, 2015, jurisdiction hearing, and began to explain she was in the hospital during the detention hearing, the attorney sent her nothing in writing and asked for a new attorney. The court continued the case to the next day for a *Marsden* motion.² After making inquiry and hearing from both mother and her counsel, the court denied the motion. During the hearing mother stated she recorded all conversations to protect herself and she was clearly confused about what had occurred when she spoke to counsel and met with a social worker. Mother's counsel said that the social worker suggested that a guardian ad litem might be appropriate. The court agreed. Mother said she had never had a guardian ad litem and was competent. Mother complained that counsel had not acted according to "the code." When the parties convened in open court, the court ordered supervised visitation for mother and a guardian ad litem assessment.

At the next hearing in February 2015, Mother's counsel declared a conflict and new counsel was appointed. Counsel for the Agency noted that a guardian ad litem assessment had been scheduled and mother refused to go but the doctor indicated that, with the information he had, he could complete the assessment. Mother again stated she

² See *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

did not need a guardian ad litem, she was not mentally incompetent and was “very sane.” Mother’s new counsel withdrew the guardian ad litem request.

At the jurisdiction hearing on March 11, 2015, mother’s counsel asked for a guardian ad litem assessment because he could not communicate with her. The court granted the request. Mother insisted that she be informed of the date, time and location of the assessment by mail and reminded the court that she did not get a 24 hour notice of the detention hearing by mail. Mother also requested a slip with the date of the next court hearing because she needed the information in writing. At a hearing five days later, counsel, after characterizing mother as “impossible,” declared a conflict. The court attempted to find out if mother objected to his withdrawal but she persisted in responding that counsel was not doing his job. Unable to get a clear response from mother, the court relieved counsel. The court asked mother if she could afford counsel but got a meaningless response and told mother she was creating a doubt as to whether she understood the proceedings and could participate. Mother insisted she understood and could represent herself. The court disagreed and appointed new counsel. Mother complained that it was not her fault and that no attorney had sat down and talked with her. The court told mother to contact her new counsel within 24 hours. Mother told the court she wanted all correspondence by mail, she was afraid of people lying.

At a status hearing a few days later, mother’s new counsel appeared and asked for clarification of the guardian ad litem issues. Mother was not present. Counsel for the Agency reviewed the chronology of the case and the two requests for guardian ad litem. Based on that information, the court found good cause for the prior continuances of the jurisdiction hearing. The court expressed concerns about mother’s conduct and behavior in court, describing it as very animated and emotional. The court said it was unclear if she understood the nature of the proceedings or not. Mother’s counsel noted that mother refused any type of notice of a hearing, as her mind set was that the only noticed date is one she receives in court. Prior to the last date set in court, a hearing was set for April 2,

2015, to decide whether visitation should be suspended in light of mother's "out of control" behavior during visits. Mother's counsel was concerned that mother would not attend. The court directed notice to mother by mail and asked her counsel to inform her client of the date as well.

Mother did not appear at the April 2, 2015, hearing. The Agency's counsel explained that notice by certified mail was sent to her and she called the Agency and talked for over an hour, ultimately saying she would not attend and would not accept verbal or mailed notices. Mother also did not appear for the guardian ad litem assessment, although she came to the Agency offices and limited her discussions to visitation. In support of the Agency's request to suspend visits, Agency's counsel represented that mother was unable to follow directions at visits and was angry and unable to focus, making visits detrimental to the minor. Mother's counsel told the court mother believed she had not received correct service of notice and would not attend the hearing because she did not get proper notice. The court found mother had notice and suspended visits as detrimental to the minor.

Mother was present at the April 8, 2015, jurisdiction hearing. Mother's counsel informed the court that, while she had several conversations with her client, they did not actually get to the jurisdiction issues and she believed that mother wanted to represent herself. The court noted that the guardian ad litem issue had to be addressed before self-representation could be considered. Counsel for the Agency stated that mother was at the Agency but refused to see the doctor. Counsel also said Dr. Palomares was present in court to see if he could get an opportunity to interact with mother. The court asked if mother had met with the doctor. Mother responded that she needed proper counsel and continued to discuss issues of counsel, notice of the detention hearing and the time limits for the jurisdiction hearing when the minor was detained. She refused to go to any appointment relating to a guardian ad litem until she was appointed proper counsel and complained she lacked transportation. The court tried to redirect her to the guardian ad

litem issues but mother returned to issues of notice and proper counsel and asserted she did not need a guardian ad litem. The court expressed serious questions about her competence and stated that based on what had been said, believed mother lacked the competence to proceed. Mother responded with her version of the initial facts of the case and continued to ramble about counsel, again refusing to meet with the doctor until she had counsel who could properly defend her. The court tried to get mother to focus on making an appointment to see the doctor. Mother became argumentative and required redirection from the bailiff and the court but continued to resist making an appointment. Mother also attempted to condition the appointment on making recordings to “protect” herself. Ultimately, mother agreed to a date and time but injected comments about the initial facts of the case and suspension of visitation. The Agency wanted to continue to suspend visits because her conduct in visits was the same as it had been in court. Both the bailiff and the court had to admonish mother not to interrupt while counsel was speaking. The court had to repeatedly admonish mother not to interrupt and not to video or audio tape the proceedings when the court was trying to rule on whether visits were detrimental to the minor. Ultimately, the court was unable to get information from mother about the minor and said: “I don’t see how I can go forward. I am not making head way. You are not willing to cooperate or participate. When we come back, this kind of conduct persists, I will not allow you to represent yourself. I will be forced to consider having a guardian to assist you.” Mother was provided the address for the doctor and given a slip for the next court date.

On May 13, 2015, mother was present but, according to the Agency’s counsel, there was no assessment by the doctor because mother failed to attend her appointment. Counsel further represented that the doctor did give an oral assessment to the social worker, recommending a guardian ad litem for mother, but did not yet have a written report because the doctor found mother had a prior psychological evaluation from 2007, which contained a diagnosis of schizophrenia. The Agency asked that a guardian ad

litem be appointed. Mother's counsel objected. The court appointed a guardian ad litem to assist mother. Mother interjected that she had "paperwork that refute, at least two evaluations. Dr. Abraham's evaluation. That I was schizophrenia. I filed federal. I was never prescribed or supposed to take medication. I think they need to do further research into their department of investigation is not true. Somebody who has had two evaluations. I was never diagnosed schizophrenic. Never supposed to take medication." Mother continued: "She has not talked to me, speak to me. I don't know if you appoint GAL. Nobody speaks to me. Before that I leave. I don't know what that means." Mother further stated: "I am not stressing today. Got a plan. I got a federal pro se. Nothing going to stop me." The guardian ad litem requested a contested jurisdiction hearing and a new date was set.

The Agency filed a jurisdiction report which had mother's 2007 psychological evaluation attached. The evaluation contained the diagnosis of schizophrenia, paranoid type. At the contested jurisdiction hearing in June 2015, the Agency relied on both the 2007 psychological evaluation and a June 7, 2015, report by Dr. Palomares in addition to evidence in the earlier reports.³ Mother's counsel stated mother did not want to testify. The court sustained the petition and set a disposition hearing. Mother was not present at the disposition hearing. The court adopted the recommended findings and orders for removal of the minor and services to mother.

³ On our own motion, we augmented the record to include Dr. Palomares's report. In his report, Dr. Palomares said he explained to mother why a guardian ad litem might be beneficial to her and detailed his observations of her conduct. He described mother's conduct that he observed in court stating: She "exhibited irrational aggressive and irate behavior toward all those around her including the judge She seemed to have very little understanding of what [the judge] was trying to say. . . . She was obsessed that her story be dealt [with] at the moment. . . . [¶] She was argumentative with the bailiff, the judge, and anyone else who would try to guide the conversation in a direction other than the way she wanted to take it. She would interrupt anyone in the court or talk over whatever they were saying."

II. DISCUSSION

“In a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the court. [Citations.] The test is whether the parent has the capacity to understand the nature or consequences of the proceeding and to assist counsel in preparing the case. [Citations.] The effect of the guardian ad litem’s appointment is to transfer direction and control of the litigation from the parent to the guardian ad litem who may waive the parent’s right to a contested hearing. [Citations.]

“Before appointing a guardian ad litem for a parent in a dependency proceeding, the juvenile court must hold an informal hearing at which the parent has an opportunity to be heard. [Citation.] The court or counsel should explain to the parent the purpose of the guardian ad litem and the grounds for believing that the parent is mentally incompetent. [Citation.] If the parent consents to the appointment, the parent’s due process rights are satisfied. [Citation.] A parent who does not consent must be given an opportunity to persuade the court that appointment of a guardian ad litem is not required, and the juvenile court should make an inquiry sufficient to satisfy itself that the parent is, or is not, competent. [Citation.] If the court appoints a guardian ad litem without the parent’s consent the record must contain substantial evidence of the parent’s incompetence. [Citation.]” (*In re James F.* (2008) 42 Cal.4th 901, 910-911 (*In re James F.*.)

The conditions giving rise to the need for appointment of a guardian ad litem can be met either by the requirements of Code of Civil Procedure section 372, subdivision (a)(1), i.e., “a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed” pursuant to Probate Code section 1801, or of Penal Code section 1367, subdivision (a), i.e., “if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (See *In re Sara D.* (2001) 87 Cal.App.4th 661, 667.)

Although the record is clear that the procedure required by *James F.* was not followed, mother does not raise any procedural errors, arguing only that the record does not contain substantial evidence to support the juvenile court's finding of her incompetence.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence—that is, evidence which is reasonable, credible and of solid value—to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*Ibid.*; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Prior to this dependency, mother was diagnosed with schizophrenia. The existence of a mental disorder, in itself, is not enough to satisfy the requirements for appointment of a guardian ad litem. The mental disorder must result in an inability either to understand the nature of the proceedings or to assist counsel. At each of the hearings prior to May 13, 2015, mother displayed perseverance of ideas and tangential speech. She was unable to interact appropriately with counsel or the court, interjecting her own concerns into the proceedings whether her concerns were relevant or not. She demanded specific behavior from counsel and, when she did not get it, rejected counsel's representation. She demanded that she receive notice in a particular fashion and when that did not occur, insisted that notice had not been given and her rights were violated although the legal requirements for notice had been met. The court, after a particularly trying hearing on April 8, 2015, when counsel and the court tried to accommodate the shifting conditions mother placed on her agreement to meet with Dr. Palomares,

cautioned her about her conduct in court as well as her unwillingness to cooperate and the likelihood of appointment of a guardian ad litem.

At the May 13, 2015 hearing, the court found mother had again failed to go to the assessment with Dr. Palomares, who nonetheless was able to tell the social worker that he recommended that a guardian ad litem be appointed for mother, based on her prior psychological evaluation and his observations of her in court. After the court appointed a guardian ad litem to assist mother, she again displayed the behavior that had made the last hearing so difficult, interjecting rambling and disjointed comments and complaints. The court's own observations; mother's mental health diagnosis; and mother's inability to interact with the court, counsel and service providers, except in a narrow and rigidly self-defined manner, provided ample evidence to support the juvenile court's finding that mother was unable to understand the nature of the proceedings or to assist counsel as a result of a mental disorder. Substantial evidence supported the appointment of a guardian ad litem for mother.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

BUTZ, Acting P. J.

/S/

HOCH, J.