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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MARIAH G., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARMEN G.,

Defendant and Appellant.

D061511, D061578

(Super. Ct. No. EJ3479A-B)

APPEAL from order of the Superior Court of San Diego County, Ronald F.  
Frazier and Gary M. Bubis, Judges. Affirmed.

At the dispositional hearing on a supplemental petition (Welf. & Inst. Code,<sup>1</sup>  
§ 387), the juvenile dependency court limited Carmen G.'s right to make educational

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

decisions for her daughter, Mariah G. (§ 361, subd. (a)). Carmen appeals, contending the court erred by limiting her right to make educational decisions.<sup>2</sup> We affirm.

## BACKGROUND

In November 2011, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for 14-year-old Mariah. The petition alleged that beginning in November 2010, her older half-brother, Billy, had inappropriately touched her and her younger sister, L.G. Carmen was informed of Mariah's allegations, but did not believe her. Carmen told Mariah to "shut her mouth." Billy remained in the home.

Mariah and L.G. were detained with a relative. Mariah reported that a year earlier, L.G. had told Carmen that Billy had touched L.G. Carmen did not believe L.G.

Mariah also said Billy first molested her when she was 10 or 11 years old and the most recent incident occurred in the summer of 2011, when she was 13 years old. Mariah was afraid to tell the social worker and a forensic interviewer exactly what Billy had done. Carmen had told Mariah that if she said anything, Child Protective Services would take her away, L.G. would be placed in foster care, Billy would go to jail and Mariah would be responsible for ruining his future. Carmen insisted Mariah was lying and had told Mariah to "get out of her house." Mariah did not want to go home to Carmen.

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<sup>2</sup> Carmen also filed a notice of appeal from the findings and orders made at two earlier hearings, the original jurisdictional and dispositional hearing and the detention hearing on the section 387 petition. That notice of appeal referred to Mariah and her younger sister, L.G. The two appeals were consolidated. Carmen makes no contentions regarding the earlier hearings or L.G.

Mariah overcame her reluctance and disclosed the details of the molestations. In December 2011, the Agency filed an amended petition adding those details. The amended petition alleged that between 2007 and July 2011, Billy sexually abused Mariah on multiple occasions. He entered her bedroom and removed her clothing. He touched her genitals with his hand and penis. He penetrated her vagina with his hand and penis. He ejaculated in her bed.

In a forensic interview, Billy acknowledged he had touched Mariah inappropriately. Carmen nevertheless insisted Billy had not molested Mariah. Carmen said she would like to attend family counseling with Mariah and wanted Mariah to undergo substance abuse treatment. When she lived with Carmen, Mariah used marijuana and alcohol "to erase" what was happening to her.

In January 2012, the court made true findings on the amended petition, and ordered Mariah removed from Carmen's custody and placed with a relative. The court limited Carmen's right to make educational decisions for Mariah and appointed Mariah's caregiver to make those decisions (§ 361, subd. (a)).

Mariah had been having problems in school and was failing three classes. By the end of December 2011, her grades had improved, but she was upset because Billy attended the same school and took the same school bus, and he had approached her on several occasions. In January 2012 Mariah's relative caregiver suggested that Mariah be transferred to a different school. Mariah wanted to be placed at San Pasqual Academy. The Agency, the caregiver and Carmen agreed with this plan.

In February 2012, the Agency filed a supplemental petition (§ 387) requesting a change of placement. The Agency recommended that Carmen's right to make educational decisions be limited, and the rights be assigned to Mariah's Indian Child Welfare Act (ICWA) representative. (25 U.S.C. § 1901 et seq.)

In February 2012, the court sustained the supplemental petition and gave the Agency discretion to detain Mariah at San Pasqual Academy. By March 1, Mariah had entered San Pasqual Academy and was doing well in school. She steadfastly refused contact with Carmen.

Soon after Mariah moved to San Pasqual Academy, Carmen telephoned and left a message for her. Mariah returned the call and told Carmen she hated her, did not want any contact with her and did not want Carmen "to have any rights over her." Mariah told the social worker she did "not want to have anything to do with [Carmen] and [did] not want [Carmen] making any decisions about her future."

On March 5, 2012, the Agency filed a modification petition (§ 388) requesting suspension of Carmen's educational rights. That day, at the dispositional hearing on the supplemental petition, the court ordered Mariah placed at San Pasqual Academy. The court limited Carmen's right to make educational decisions for Mariah and appointed Mariah's ICWA representative as her educational representative.

## DISCUSSION

Carmen contends the juvenile court erred by limiting her right to make educational decisions because she was willing and able to make those decisions.<sup>3</sup> We apply the abuse of discretion standard of review, "bearing in mind '[t]he focus of dependency proceedings is on the child, not the parent' [citation]."<sup>4</sup> (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1277.) Carmen also contends the limiting order violated her constitutionally protected liberty interest in controlling Mariah's education, a contention requiring de novo review (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112). We conclude the juvenile court did not abuse its discretion by limiting Carmen's right to make educational decisions for Mariah and there was no constitutional violation.

"The law recognizes the vital role that education plays in today's society." (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 509.) " '[E]ducation is a major determinant of an individual's chances for economic and social success in our competitive society; . . . education is a unique influence on a child's development as a citizen and his participation in political and community life.' " (*Ibid.*, quoting *Serrano v. Priest* (1971) 5 Cal.3d 584, 605.) " '[T]he distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a "fundamental interest." ' " (*In re Samuel G.*, *supra*, at p. 509, quoting *Serrano v. Priest*, *supra*, at pp. 608-609.)

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<sup>3</sup> Carmen repeatedly refers to the court's order as a "termination" of her right to make educational decisions. It was not.

<sup>4</sup> Carmen incorrectly suggests the substantial evidence test is the standard of review.

"Parents have a constitutionally protected liberty interest in directing their children's education." (*In re R.W.*, *supra*, 172 Cal.App.4th at p. 1276.) This interest "is subject to limitation only "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." [Citation.]' [Citation.]" (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1103.)

The state's responsibility "for educating all children within its borders" extends to each child who is the subject of a dependency proceeding "at every stage of the child's case." (*In re Samuel G.*, *supra*, 174 Cal.App.4th at p. 509.) When the child "is adjudged a dependent child of the court [under section 300], the court may limit the control to be exercised over the dependent child by any parent . . . . The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent . . . to make educational . . . decisions for the child, the court shall at the same time appoint a responsible adult to make educational . . . decisions . . . ." (§ 361, subd. (a).) At the review hearings held every six months, "[i]f the parent . . . 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 . . . to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent . . . to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361." (§ 366.1, subd. (e).) At each review hearing, "[t]he court must consider the child's education, including whether it is necessary to limit the right of the

parent . . . to make educational decisions for the child . . . ." (Cal. Rules of Court, rule 5.708(f).)

In the instant case, the limiting order at issue was made at the dispositional hearing on the supplemental petition. That hearing occurred after the original dispositional hearing, at which section 361, subdivision (a) applied, and before the six-month review hearing, at which section 366.1, subdivision (e) would apply. The challenged order was proper under either section.

Unlike section 366.1, subdivision (e), section 361, subdivision (a) does not expressly condition limitation of a parent's educational rights on an inability or unwillingness to make educational decisions. Nevertheless, inability and unwillingness are factors for the court to consider when limiting educational rights at the original dispositional hearing. This is so because a parent's inability and unwillingness to make educational decisions are relevant to a determination whether a limitation is "necessary to protect the child." (§ 361, subd. (a).) Moreover, "[a]ll educational decisions must be based on the best interests of the child." (*In re Samuel G.*, *supra*, 174 Cal.App.4th at p. 510.) A determination of the child's best interests necessarily includes a consideration of the parent's inability and unwillingness to make educational decisions.

The juvenile court found Carmen was "unable to essentially effectively make educational decisions at this point in time" and "[t]he breakdown in communication between Mariah and [Carmen] could affect the way [Carmen] makes decisions in this matter." The record amply supports these findings. Although Carmen may have been willing to make educational decisions, as a practical matter she was unable to do so. The

limitation of Carmen's right to make educational decisions was in Mariah's best interests, and the court did not go beyond what was necessary to protect Mariah.

Carmen made an offer of proof she would testify that Mariah called her on February 22, February 29 and March 3, 2012. The record does not disclose whether they spoke to each other on those dates, and if so, what was said. Since the beginning of the case, Mariah had refused contact with Carmen. On March 1, Mariah said she had returned a call from Carmen and told Carmen she hated her, did not want any contact and did not want Carmen "to have any rights over her." Mariah's understandable antipathy toward Carmen and refusal of contact made it impossible for Carmen to determine Mariah's best interests and make effective educational decisions. Carmen's denial of the molestation and cruel reaction to Mariah's disclosure demonstrate that Carmen did not have Mariah's best interests at heart.

Carmen asserts she "had historically been concerned for Mariah's welfare and had brought her to psychotherapy to address her depression." This is apparently a reference to a March 2011 report to Child Protective Service after Mariah made suicidal statements. At that time, Carmen arranged for counseling for Mariah. This is the only evidence Carmen had any concern for Mariah, and pales in comparison to Carmen's subsequent callousness and longstanding pattern of denying her daughters had been sexually abused. In December 2011, Mariah's presumed father reported that about five years previously, Mariah said someone had touched her at night, but Carmen convinced Mariah it was a ghost. Mariah's older sister reported she had been raped by Carmen's boyfriend, and when she told Carmen, Carmen called her a liar. Carmen never took responsibility for

failing to protect Mariah and causing her emotional distress, and made no effort to understand her feelings and needs. The court did not abuse its discretion by limiting Carmen's right to make educational decisions for Mariah.

For the reasons set forth above, the court's restriction of Carmen's right to make educational decisions was necessary to protect Mariah's welfare. The order was narrowly tailored to satisfy the compelling governmental interest in ensuring that protection. (*Jonathan L. v. Superior Court, supra*, 165 Cal.App.4th at pp. 1101-1103.) There was no violation of Carmen's constitutional rights.

#### DISPOSITION

The order is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.