

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re I.L., a Person Coming Under the Juvenile Court Law.	
JOHN P. et al.,	D070008
Plaintiffs and Respondents,	(Super. Ct. No. A60708)
v.	
CHRISTINE T. et al.,	
Defendants and Appellants.	

APPEALS from a judgment of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal for Defendant and Appellant, Christine T.

Amy Z. Tobin, under appointment by the Court of Appeal for Defendant and Appellant, Justine L.

John Phillips and Robyn Phillips, Plaintiffs and Respondents In Propria Persona.

Peter Thompson, under appointment by the Court of Appeal for Minor.

Christine T. (mother) and Justin L. (father) appeal an order terminating parental rights to their daughter, I.L., under Probate Code¹ section 1516.5.² Mother contends that the probate court erred in giving sole discretion for visitation to I.L.'s guardians, John P. and Robyn P. (together, respondents). Father asserts that, in the event we reverse the order terminating mother's parental rights, we should also reverse the order terminating his parental rights. We find no error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parents have a history of substance abuse and domestic violence, leading to multiple arrests. In 2012, when I.L. was approximately two years old, the parents left her with respondents. Respondents are I.L.'s maternal aunt and uncle. In August 2012, respondents filed a petition for legal guardianship to provide I.L. with, among other things, safety and stability. The parents agreed with the guardianship, and signed a consent and waiver of notice form. The probate court issued letters of temporary guardianship and later extended the temporary letters. In January 2013, the probate court issued letters of guardianship and an order appointing respondents I.L.'s guardians. The court also ordered that contact between I.L. and her parents would be at respondents' discretion.

¹ Undesignated statutory references are to the Probate Code.

In March 2013, mother sought to terminate the guardianship and change the visitation terms of the guardianship. The probate court took mother's petitions off calendar as no one appeared at the hearing. In November 2013, respondents exercised their discretion and ceased contact and visitation between I.L. and her parents because they believed visitation damaged I.L. and was not in her best interests.

In December 2013, mother renewed her petition for visitation. In February 2014, the probate court referred the matter to Family Court Services for a recommendation on mother's petition. Family Court Services recommended that the parents have no court ordered visitation with I.L. In June 2014, the probate court denied mother's petition for visitation, adopted the Family Court Services recommendation, and ordered no contact between mother and I.L.

In September 2015, respondents filed a petition in juvenile court seeking a judgment declaring I.L.'s freedom from parental custody and control. (§ 1516.5.) A probation officer prepared a report recommending that the court grant the petition. In February 2016, trial on the contested petition commenced. Respondents and father appeared, but mother was not present and her attorney indicated that she did not wish to participate and took no position in the matter. The court terminated parental rights, finding clear and convincing evidence that I.L.'s best interests would be served if she was

² The notice of appeal is taken from the court's February 18, 2016, minute order terminating parental rights. In the interests of justice and to avoid delay, we exercise our discretion to deem that minute order an appealable final judgment. (*In re Clarissa H.* (2003) 105 Cal.App.4th 120, 122, fn. 2.)

deemed free from her parents' custody and control. The parents timely appealed from the order terminating their parental rights.

DISCUSSION

I. *General Legal Principles*

Under the Probate Code, a relative or other person may petition to appoint a guardian for a minor. (§ 1510, subd. (a).) After a hearing, the probate court may appoint a guardian "if it appears necessary or convenient." (§ 1514, subd. (a).) A probate guardianship is approved but not supervised by the court; it is distinct from a guardianship ordered as a result of juvenile dependency proceedings. (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1133 (*Ann S.*)) "It is the family members and the guardians who determine, with court approval, whether a guardianship is established, and thereafter whether parent and child will be reunited, or the guardianship continued, or an adoption sought under section 1516.5." (*Id.* at p. 1122.)

When the court appoints a guardian, the parent's authority ceases. (*Ann S., supra*, 45 Cal.4th at p. 1123.) While the court has discretion to grant visitation, parental rights otherwise are completely suspended for the duration of the probate guardianship and the guardian assumes the care, custody and control of the child. (*Id.* at pp. 1123-1124.) Unlike dependency proceedings, there is no periodic court review of the placement and the parent is not provided reunification services. (*Id.* at p. 1124.) Unless ended by court order, the guardianship continues until the child either "attains majority or dies." (*Id.* at p. 1124.) The court may terminate the guardianship on a petition by the guardian, parent, or child, based on the child's best interest. (*Ibid.*) Parental rights may be terminated after

two years of probate guardianship if the child would benefit from being adopted by the guardian. (§ 1516.5, subd. (a).) " 'Benefit' in this context means that adoption would be the best alternative for the child ... [,]" and requires a determination of the child's best interest. (*Ann S.*, *supra.*, at p. 1128, fn. 10.)

II. *Analysis*

Mother does not argue that the probate court abused its discretion when it terminated her parental rights. Rather, she claims that the probate court violated her right to due process by giving respondents complete discretion over whether she would be allowed any contact with I.L. She asserts that allowing respondents to control visitation essentially gave them control over whether she would ever be able to mount a successful defense to the effort to terminate her parental rights, thus ensured she would never be able to gather evidence to defeat the petition to terminate her parental rights. There are a number of problems with mother's argument.

Generally, the failure to raise an issue below forfeits a parent's right to pursue it in the appellate courts. (*United States v. Olano* (1993) 507 U.S. 725, 731 [constitutional rights in civil and criminal cases may be forfeited by failure to object or assert rights in the trial court]; *In re Levi U.* (2000) 78 Cal.App.4th 191, 201 [mother waived due process claim by failure to object].) The rationale behind the forfeiture rule is that it would be unfair to the trial court and the adverse party to take advantage of an error on appeal when it could have been corrected at trial. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501.) Here, mother did not appear at the hearing and took no position on the petition. While counsel appeared at the hearing on mother's behalf and participated in the

proceeding, counsel never claimed a due process violation prevented the court from terminating mother's parental rights. While the forfeiture rule is not automatically applied, our discretion to excuse forfeiture should be exercised rarely in cases presenting an important legal issue. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7.) This is not such a case.

Additionally, mother's arguments are doubly forfeited as she neglected to seek timely appellate review of the probate court's order giving respondents discretion over visitation. In January 2013, the probate court issued letters of guardianship, appointed respondents as guardians and ordered that contact between I.L. and her parents would be at respondents' discretion. An order granting letters of guardianship is appealable. (Code Civ. Proc., § 904.1, subd. (a)(10); § 1301, subd. (a).) Because mother did not timely appeal from this order, she is precluded from attacking it. (*Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864 [failure to file timely notice of appeal deprives appellate court of jurisdiction to consider an issue on appeal].) Moreover, in June 2014, the probate court denied mother's petition for visitation and ordered no contact between mother and I.L. This order stripped respondents of their discretion over mother's visitation.³

In any event, mother's contention fails on its merits. Respondents had discretion over mother's visitation from January 2013 to June 2014. Review of the record shows

³ Mother also failed to appeal from the order denying her petition for visitation and terminating her visitation. The order terminating mother's visitation was also an appealable order. (§ 1514, subd. (b) [appointment of guardian is governed by Family Code chapters beginning with sections 3020 and 3040]; *Chalmers v. Hirschkop* (2013)

mother had visitation with I.L. from December 2012 to approximately November 2013. Specifically, from December 2012 to April 2013, mother had weekly supervised visitation with I.L. at a residential drug treatment program where mother resided. After mother was kicked out of the program in April 2013, mother had supervised visitation at least every other week despite her return to drug use. In June 2013, mother began to decline visits with I.L. In August 2013, mother was placed on a psychiatric hospital hold after threatening to kill herself. The following month, mother went on a drug binge and later moved into a program that did not allow any contact outside the program for 30 days. In November 2013, after consulting with a child psychologist, respondents exercised their discretion to end I.L.'s visitation with her parents.

Thus, mother's due process complaint is directed to an eight-month time period from November 2013 (when respondents exercised their discretion to end visit) to June 2014 (when the probate court ordered no visitation). Sometime during this time period mother moved to Oregon and made only occasional contact with respondents. In February 2014, in response to mother's petition to modify visitation, the probate court referred the matter to Family Court Services. Family Court Services ultimately recommended no visitation. This recommendation strongly suggests that I.L.'s continued contact with mother during this eight-month time period would have been detrimental to I.L.'s best interests. Notably, during the time period when visits were still occurring, respondents reported that I.L. had nightmares, wet her pants and exhibited aggressive

213 Cal.App.4th 289, 304 [in context of Family Code, "[v]isitation orders are appealable

behavior following visits with her parents. Once visits ceased, these problems stopped. Moreover, as of December 2015, mother remained in Oregon. This suggests mother was not available for supervised visitation during some, if not all, of the eight-month time period.

Accordingly, even assuming mother had preserved her claim of error, the record does not support her contention that the probate court's order giving respondents discretion over her visitation amounted to a denial of due process.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

IRION, J.

PRAGER, J.*

orders under Code of Civil Procedure section 904.1, subdivision (a)(10)].)

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.