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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant.

E053914

(Super.Ct.Nos. J-238686, J-238687)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.
Schneider, Jr., Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel,
for Plaintiff and Respondent.

M.H. (mother) is the mother of M.P. and S.T. (children), who were ages six and seven at the time of the challenged order. Mother argues the juvenile court both abused its discretion and deprived her of due process when it denied requests by her newly appointed counsel to continue the June 24, 2011 appearance review hearing, at which the court reduced her visitation and changed the requirements of her case plan. As discussed *post*, we conclude that the court did not abuse its discretion and that any violation of her due process rights was harmless beyond a reasonable doubt.

FACTS AND PROCEDURE

Voluntary Family Reunification (VFR) Plan in Los Angeles County

In February 2010, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging that mother continuously punched and slapped the children, hit them with a belt, did not feed or bathe them because she slept all the time, had not enrolled them in school, and left them with various family members for weeks at a time. Mother entered into a VFR plan in May 2010, in which she agreed that the children would be placed with non-relative extended family members who were licensed foster caregivers and that she would participate in parenting and anger management classes, drug testing and visits with the children. Mother was prescribed medical marijuana for back pain and loss of appetite and was not required to participate in drug treatment unless she tested positive for other drugs or the marijuana use interfered with her daily functioning.

Detention in Los Angeles County

The VFR plan was set to expire on November 27, 2010, but mother had not made sufficient progress. Mother completed the parenting and anger management class and was enrolled in counseling, but had missed six sessions. Mother was authorized to visit with the children twice a week, but had only visited them six times. Mother failed to drug test on May 25, September 30, October 12 and October 22, 2010. Mother failed to maintain telephone contact with the children, although the social worker urged her to do so because of her lack of in-person visits. The children refused to return to mother's care because they were afraid of mother. Both children were in therapy and were being treated for posttraumatic stress disorder (PTSD) caused by severe physical abuse and abandonment. On November 16, 2010, DCFS filed Welfare and Institutions Code section 300¹ juvenile dependency petitions regarding both children. DCFS alleged that the children had suffered serious physical abuse and that mother had willfully or negligently failed to provide proper care or to adequately protect the children. At the detention hearing held on that date, the court found a prima facie case for detaining the children. The court ordered monitored visits with mother but allowed DCFS to liberalize visits if appropriate.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Jurisdiction/Disposition in Los Angeles County

At the jurisdiction hearing held on January 13, 2011, the juvenile court found true as to mother allegations that the children had suffered serious physical harm (§ 300, subd. (a)) and mother failed to protect them because of her drug use (§ 300, subd. (b)).

At the disposition hearing held on February 7, 2011, the juvenile court ordered mother to continue in counseling and to drug test. Mother was to have unsupervised visits with the children three times each week. At the objection of DCFS, which argued there was no statutory basis for a progress hearing, the court set a progress report date for March 23, 2011, to determine whether the children should be returned to mother.

At the March 23, 2011 hearing, DCFS submitted a progress report. DCFS recommended against returning the children to mother because mother's drug tests showed excessive levels of marijuana beyond that medically necessary, and because mother was not complying with the individual counseling portion of her case plan. Mother had obtained employment and housing in San Bernardino County. The juvenile court ordered DCFS to assess mother's home in San Bernardino County and prepare a supplemental report on the possibility of returning the children. The court set the continued progress report hearing for April 18, 2011, at which time it would determine whether to return the children to mother and then transfer the case to San Bernardino County. DCFS again objected.

Transfer Out from Los Angeles County

In the progress report for the April 18, 2011 continued hearing, DCFS recommended the children remain in their placement instead of being returned to mother.

On the plus side, mother's new home in San Bernardino County was nicely furnished and ready for the children. On the minus side, mother had missed most of the one-hour visits scheduled for three times a week at a fast food restaurant near the children's school, which was only 20 minutes from mother's new home. From February 16 to April 6, 2011, mother attended only six visits and was a "no show" for 12 visits, including a three-hour visit that mother had scheduled to make up for previously missed visits. In addition, the social worker interviewed the children in person monthly; they both expressed that they loved their mother and wanted to visit with her, but did not want to stay overnight for fear that she would hit them. Both children became very quiet when told they might return to mother soon, and eventually stated they were afraid of mother hitting them.

At the hearing on April 18, 2011, both DCFS and mother submitted on the two progress reports without introducing any other evidence. The juvenile court determined that mother had completed the counseling component of her case plan, but ordered her to continue to drug test to address DCFS concerns about the levels of marijuana in her system. However, the court declined to return the children to mother based on their statements and on the marijuana levels, and declined to authorized overnight visits. The court then transferred the case out of Los Angeles County to San Bernardino County and set a date for the six-month review hearing for August 3, 2011.

Transfer to San Bernardino County

At the hearing held in San Bernardino County on May 10, 2011, the juvenile court accepted transfer of the case from Los Angeles County and set an appearance review

hearing for June 24, 2011, at which it requested the children be present and an update on family reunification services be prepared. The court confirmed the six-month review hearing for August 3, 2011.

The Challenged Order in San Bernardino County—June 24, 2011

The San Bernardino County Children and Family Services (CFS) filed with the juvenile court an interim review report on June 23, 2011. CFS recommended the court continue reunification services to mother and that the children remain in their current placement, but that visitation be reduced and mother be required to participate in individual counseling and parenting classes. The social worker found mother to be uncooperative in arranging an initial interview. Mother was not home on the day they had agreed the social worker would come to meet with mother regarding the case plan, as mother had been arrested and detained at Lynwood County Detention Center the previous day.² That same day, the social worker met in person with the children after the foster mother reported they smelled strongly of marijuana after a day visit to mother's home. The children stated that mother smoked marijuana in front of them and the older child described how mother rolled her cigarettes. The foster mother also complained that the children had to drop out of therapy to accommodate mother's demands to visit the children at mother's home and at times convenient for mother. The social worker met with mother in custody on June 17 to go over the case plan and give mother referrals for

² The record does not contain the reason for mother's arrest.

services. The case plan included individual counseling and parenting classes.³ The two discussed that mother would have to provide the social worker with certificates to prove that she had already completed these services. The social worker also explained the CFS plan to recommend visitation be reduced to once weekly supervised and scheduled for a time and place so the children could return to therapy. Mother stressed that she wanted to get her children back.

The interim review hearing was held on June 24, 2011. The children were present. Mother was not present as she was still in custody. Mother's counsel had been appointed and received the interim review report only that day. She requested a continuance so she could speak with her new client and review any discovery. She also asked that the juvenile court not make any changes to the current visitation order or make any other orders until she could speak with mother and review any discovery. Both CFS and counsel for the children asked that visitation be reduced immediately to once a week so the children could begin therapy again. The juvenile court adopted the case plan proposed by CFS, including the reduction in visits to once a week with authorization for CFS to liberalize, weekly drug counseling and parenting classes, and again confirmed the six-month review hearing for August 3, 2011. This appeal followed.

³ Mother told the social worker that she had provided the Los Angeles County social worker with certificates showing she had completed counseling and parenting classes, but these could not be located in mother's file.

DISCUSSION

Mother argues the juvenile court's decision to deny her newly appointed counsel's request for a continuance both was an abuse of discretion and deprived her of due process of law.

Section 352, subdivision (a), provides that a juvenile court may continue any hearing at the request of a party, "provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." Accordingly, "[c]ontinuances are discouraged [citation] and we reverse an order denying a continuance only on a showing of an abuse of discretion [citation]." (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

Here, the reason for the change in visitation was to allow the children to attend therapy, which they very much needed to address their PTSD symptoms caused by mother's violence toward them and their later feelings of abandonment. The children suffered from anxiety and depression, sleep disturbance and "intrusive thoughts related to past trauma." Thus, the evidence indicated that the immediate change in visitation was necessary to allow the children to obtain the treatment they needed to cope with the abuse they had suffered at mother's hands and the feelings of abandonment at having been separated from her. In addition, the juvenile court authorized CFS to liberalize visitation "as to time, frequency, and duration." If the court had granted the continuance, this

would have caused a delay in the children returning to the much-needed therapy, which would have been contrary to their best interest.

In addition, the entire point of the June 24 hearing was to make sure that reunification services were in place⁴ instead of waiting for the six-month review on August 3. This lack of delay in providing services to mother was an advantage to her as the purpose was to assist mother in reunifying with her children as soon as possible. Thus, the juvenile court did not abuse its discretion when it denied the request for continuance.

Mother also argues her due process rights were violated because she did not have adequate notice of the proposed changes made at the June 24, 2011 hearing, nor a meaningful opportunity to be heard.

The essence of due process in the statutory dependency scheme is fairness in the procedure employed by the state to adjudicate a parent's rights. (See *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412.) The due process attributes of a dependency hearing include proper notice of the hearing and the right to present evidence and cross-examine adversarial witnesses—that is, the right to be heard in a meaningful manner. (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *Crystal J.*, at pp. 412-413.)

Assuming, without deciding, that mother was denied her due process rights, we are convinced beyond a reasonable doubt that any error was harmless in this case.

⁴ At the May 10, 2011 transfer-in hearing, the juvenile court set the appearance review for May 24 “to see if services are in place and that a social worker has been assigned . . .”

(*Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705].)

Although mother asserts in her reply brief that she could have “cross-examined the social worker, testified on her own behalf, as well as brought in other witnesses such as her aunt Sylvia or her program counselors to challenge the proposed changes to her case plan and visitation,” this evidence would have had no bearing on the children’s need to have visitation changed so they could return to therapy to address their serious mental health issues. In addition, if mother was truly averse to building on her previous drug counseling and parenting classes, she would be able to address this at the six-month hearing six weeks later, while having had the opportunity to benefit from those services in the meantime if she so chose. Thus, even if the June 24, 2011 ruling was made without affording mother her due process rights to notice and a hearing, we conclude beyond a reasonable doubt that any error was harmless.

DISPOSITION

The juvenile court’s rulings are affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

MILLER
J.