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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

E056212

(Super.Ct.No. J237144)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A. Buchholz, Judge. Dismissed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant and Appellant A.B.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

A.B. (Mother) has made no less than six appeals/writs in the dependency case involving her son, J.B. In the present one, she appeals from the March 27, 2012, order denying her request to conduct a *Marsden*¹ hearing. She contends that “[a]fter refusing to inquire further, the court stripped [her] of educational rights over her son. And at a subsequent 12-month review hearing, the court terminated [her] reunification services and set a permanent plan hearing. All of this was done with the attorney that [she] had sought to replace.” Thus, Mother asks this court to conditionally reverse the order and direct the trial court to conduct her *Marsden* hearing.

I. PROCEDURAL BACKGROUND AND FACTS²

On January 24, 2011, seven-year-old J.B. came to the attention of San Bernardino County Children and Family Services (CFS) when the child reported that Mother had told him she would “laugh if he were killed at school,” that he did not feel safe when Mother was yelling and mad, and that he is sent to his room with no food. (*In re J.B.* (June 7, 2012, E054134 [nonpub. opin.].) An investigation of the family home revealed it to be in a deplorable condition, littered with trash and scattered clothes, rotting food all around the kitchen, and filthy and grimy. (*In re J.B.*, *supra*, E054134.)

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

² The procedural background and facts are derived from the prior appeals/writs in this case, namely, case Nos. E054134 and E056231, of which we take judicial notice pursuant to Evidence Code sections 452, subdivision (d), and 459, subdivision (b). Other related cases involving this dependency include case Nos. E055740, E053298, and E056675.

On January 26, 2011, a Welfare and Institutions section 300³ petition was filed on behalf of J.B., alleging he was within subsections (b) (failure to protect and provide), (c) (serious emotional damage), and (g) (child left without provision for support). (*In re J.B., supra*, E054134.) Specifically, it was alleged that Mother suffered from an undiagnosed mental health issue, which compromised her ability to properly care for and parent J.B. and led her to verbally abuse him. It further alleged that Mother failed to provide a safe, sanitary and healthy place, and that J.B. expressed depression and hopelessness that Mother did not love him. J.B. was detained and placed with CFS. (*Ibid.*)

On March 1, 2011, approximately five weeks after the dependency petition was filed, Mother's first appointed counsel filed a motion to be relieved on the ground there was a "complete breakdown of the attorney-client relationship." According to counsel, Mother claimed he was incompetent, threatened to file a complaint against him, and believed counsel had held a hearing in her absence. On March 2, the Children's Advocacy Group (the Group), who represented J.B., filed for a restraining order against Mother on the ground that her continual calls to the office, despite being represented by counsel, were disruptive. Her contacts were harassing the employees. Finally, the Group sought orders to stop Mother from approaching and threatening J.B.'s counsel in court. The Group's motion was granted on March 2, the motion of Mother's first counsel was granted on March 4, and new counsel was appointed. (*In re J.B., supra*, E054134.)

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On March 21, 2011, Mother filed an affidavit of prejudice under Code of Civil Procedure section § 170.6, seeking reassignment to another judge on the grounds of prejudice. On March 22, the matter was reassigned to Judge Buchholz. (*In re J.B.*, *supra*, E054134.)

At the contested jurisdictional hearing on March 30, 2011, Mother requested a *Marsden* hearing to relieve her second appointed counsel. Her motion was granted, and the court also held a *Faretta*⁴ hearing. The court found that Mother could not adequately represent herself without assistance of counsel. New counsel was appointed to represent her and the matter was continued. (*In re J.B.*, *supra*, E054134.)

On June 10, 2011, less than five months after the petition was filed, Mother's third appointed counsel filed a motion to be relieved. According to counsel, there was "a complete breakdown of the attorney-client relationship thus making it impossible for the continued representation of [her]." Apparently, Mother refused to "follow any advice given and ha[d] accused [her attorney] of being in collusion with County Counsel and the Social Worker in this matter." Counsel further informed the court that "Mother is adamant of representing herself." During the hearing, the court noted there was no information to preclude counsel from adequate representation, and thus, the motion was denied. (*In re J.B.*, *supra*, E054134.)

On June 20, 2011, Mother filed a motion to relieve her third appointed counsel and proceed in propria persona. She claimed ineffective assistance of counsel and collusion

⁴ *Faretta v. California* (1975) 422 U.S. 806.

with CFS and county counsel. She also filed, in propria persona, a motion to continue the trial, a motion for modification of visitation, and a demand for an evidentiary hearing.

(In re J.B., supra, E054134.)

In evaluating the motions, the court reviewed the record and found ““there was no agreement behind anyone’s back,”” and ““Mother’s ‘claim of fraud doesn’t exist with regard to this petition.’” The court explained that dependency proceedings are collaborative and all attorneys on the case, along with the court, work together to obtain the result that would be in the best interests of the child. Thus, if there was a negotiation, Mother’s counsel would have prepared an informal agreement; however, because all parties were present for trial, no agreement was reached. *(In re J.B., supra, E054134.)*

The court pointed out it had ““allegations made by [Mother] about every single attorney this Court has appointed. It is the same claim [Mother] make[s] on every single attorney. . . .”” Regarding Mother’s allegations that counsel had failed to subpoena the investigating deputy and the caregiver, the court explained to Mother it was not the duty of her counsel ““to proceed at [Mother’s] request or whim””; rather, in her service to the court, counsel was obligated to ““use her best judgment and her ability to make a decision as to how best to proceed.”” All of Mother’s motions were denied and the matter proceeded to the contested jurisdiction/disposition hearing. *(In re J.B., supra, E054134.)*

After considering the evidence, the court sustained jurisdiction under section 300, subdivisions (b), (c), and (g), and declared the child a dependent of the court. The court approved a case plan and ordered Mother to participate in reunification services. The case plan included the requirements that she participate in an anger management class,

general counseling, and a parenting education program, as well as undergo a psychological evaluation. (*A.B. v. Superior Court* (August 28, 2012, E056231 [nonpub. opin.])

Mother appealed from the jurisdiction/disposition orders, contending she was denied effective assistance of counsel and the evidence was insufficient to support the allegation that Mother had undiagnosed mental health issues. We reversed the true finding on the allegation but otherwise affirmed. (*In re J.B., supra*, E054134.)

On July 22, 2011, CFS filed a packet requesting the court to suspend visitation. At the hearing on the request, the court noted its concern for J.B.'s emotional well-being. It observed that during the hearing Mother was repeatedly disrespectful to the court and court personnel and tried to usurp the court rules. The court suspended visitation, including telephonic visits, and authorized CFS to revisit the issue once Mother received psychological evaluation per the court's prior order, which Mother was failing to comply with. (*A.B. v. Superior Court, supra*, E056231.)

On August 11, 2011, less than seven months after the dependency petition was filed, Mother's third appointed counsel filed another motion to be relieved as counsel because there had been a "complete breakdown of the attorney-client relationship." The court granted the motion on August 29 and appointed new counsel, Harold Lai, Jr. (*A.B. v. Superior Court, supra*, E056231)

On November 8, 2011, the court held a hearing pursuant to Mother's section 388 petition to address her request to transfer the matter to Siskiyou County and place J.B. with the maternal great grandmother. The court noted that Mother had recently moved to

Siskiyou County and was apparently being offered all of the services there. Mr. Lai informed the court that he had explained to Mother there was an order that she undergo a psychological evaluation, and that the social worker provided a referral for a psychologist in Northern California. Because the psychologist was located 100 miles away from Mother, the social worker offered to provide gas script or transportation, but counsel had not yet informed her of this offer. The court agreed to continue the hearing, noting that Mother's change in circumstances was "somewhat suspect," in that the move appeared to be "orchestrated by [Mother] . . . simply to circumvent this court and the court's authority."

The continued section 388 petition hearing was held on December 5, 2011. Prior to proceeding with the hearing, Mr. Lai stated: "Can I put on the record the fact that prior to the court calling the case I did indicate to the court that [Mother] did not want me as her lawyer, felt that I was not working for her. [¶] The court did make findings that [Mother] has made those same statements in the past, about prior counsel, and therefore was not going to revisit the issue about new counsel. However, I did want to get on the record that [Mother] again, this morning, indicated to me that she wanted different counsel."

The court replied: "All right. And, the court is well aware of [Mother]. The court has, on a number of occasions, known that [Mother], at every instance, has attempted to get rid of various counsel. [¶] The court does see it as a tactic on [Mother's] part. That she does it as matter of course that she indicates to the court at various important places in the continuing of this case that she is unhappy; accuses her counsel of various and

sundry misdeeds, none of which the court has found to be significant. [¶] [Mother] is not here, as the court understands it. She is not present to do a *Marsden*. So, the court has no other information in front of it to relieve [Mother's counsel] as attorney of record in this matter.”

Proceeding with the hearing, Mr. Lai informed the court that Mother had not participated in a psychological evaluation because she claimed she was unaware of the need to do so, despite counsel having advised her. The court noted that J.B. was flourishing in his current placement with a relative so there was no need to move him. Finding that Mother had not engaged in any services and had not done the psychological evaluation, the court concluded her move to Northern California did not qualify as a change in circumstances, and that it was in the child's best interest to leave him in his current placement.

On January 12, 2012, Mother participated in a psychological evaluation with Dr. J. Reid McKellar. Upon interviewing Mother, the doctor noted she “presented as an intense, intelligent person,” and although she did not demonstrate any signs of psychosis, she had some signs of “institutional mistrust that bordered on paranoid thinking.” Mother felt she had been wronged by the child welfare system and was “consumed with [this] idea.” Dr. McKellar noted that Mother claimed she did not have issues “meriting intervention,” and thus she did not feel that reunification services were needed. Mother also claimed “they” would keep telling her she needed services “for years to keep [her] away from [her] baby.” Dr. McKellar observed that Mother “launched into her verbal attack [of him] seemingly unprovoked.” He believed Mother's “distrust of systems and

paranoid thinking [was] inhibiting her from effectively engaging in services.” He opined that Mother would not benefit from services, but noted “that may be beside[] the point given that [she did] not want services, nor [did] she think she need[ed] them.” He concluded as follows: “Based on [Mother’s] clear stance and verbalizations regarding her lack of a need for services, and her belief that services would only be recommended to ensure a reunification failure, no services are recommended.” According to Dr. McKellar, Mother “would be highly unlikely to benefit or experience appreciable change based on any services that could be provided.”

On March 1, 2012, the court reaffirmed its prior order suspending visitation. However, on March 12, Mr. Lai vehemently argued for visitation. “I’m just asking the court to amend its prior order of no visitation, and to allow visitation with her son.” As a result of Mr. Lai’s advocacy, the court authorized supervised letter contact between Mother and J.B.

On March 27, 2012, Mr. Lai informed the court that Mother “would like to appear by telephone. She is up in the Northern California area indicating that she’s up there for financial reasons. And she is unable to live in Southern California because she has no money to pay rent. And the relative that she lives with up there is not charging her. She also wishes to make a *Marsden* hearing. And, I have no problem being relieved, your honor, I think that there’s been a breakdown.” The court replied, “Well, we need [Mother] to be here to do a *Marsden*. And, to be quite candid with you . . . your client requests a *Marsden* every single hearing, or has requested that some of her attorney’s [sic] be relieved as attorney of record. And the Court is not inclined to conduct a

Marsden when your client is not present. And, I'm not inclined to grant her telephonic hearing." The court further added, "Your client chose to, I believe, move to another county of her own accord. She could have stayed here. She chose not to. The court has information, quite candidly, that is in contradiction to your representation that your client was forced to move to Siskiyou County for financial reasons."

Regarding CFS's request that J.B.'s educational rights be transferred to the current caretaker, Mr. Lai stated that Mother "would be objecting. And since while she's outside the area, that she can be contacted by phone. So that regarding that, . . . she could still exercise . . . minor's educational rights by telephone." In response, county counsel noted that Mother has no visitation, and she insists on recording every telephone conversation with CFS, who "does not consent to having phone calls recorded." Thus, county counsel pointed out that "[a]ny communication is, basically, going through mail, at this point. And that is extremely limited." The court granted the request to transfer educational rights and set a contested 12-month review hearing.

On May 4, 2012, Mr. Lai appeared at a special setting hearing requesting a continuance of the contested 12-month review hearing and that he be relieved as Mother's counsel. He explained Mother had another appointment that prohibited her from attending the contested hearing. Regarding the request to be relieved, Mr. Lai stated "the relationship between [Mother] and I, I believe, has broken down. To the point where I believe I'm unable to effectively represent her. I believe the differences that have occurred between the two of us, that we are unable to communicate and unable to properly represent her." Denying both requests, the court stated: "The court is

historically aware that [Mother] has pretty much made herself uncooperative and unavailable and been, shall we say, less than cordial to every single attorney that the court has had appointed to [her]. [¶] The court does see this as a pattern of [Mother]. She does it with the intent to create controversy and to postpone these matters indefinitely. She does that so that she can manipulate this court and the system. [¶] It is not in the best interest of the minor. And, based on the date that we have set for trial in this matter, the court would not be inclined to relieve the current court appointed attorney for [her].”

On May 9, 2012, at the time of the contested hearing, Mother submitted a written motion for a continuance, a written *Marsden* motion, and a written motion for telephonic appearance. The *Marsden* motion was made on the following grounds: “My current attorney . . . has refused to subpoena witnesses for May 9, 2012 hearing, claiming I fired him and he no longer is under obligation to represent me or do anything for me.” Noting Mother’s written motions, the court observed it was “well aware that Mr. Lai on a previous occasion and at the last court hearing, did specifically request a postponement of the trial, at the Mother’s request. [¶] The court would find the request by [Mother] moot, number 1. She has no authority to file it without her counsel filing it on her behalf. She does indeed still have counsel, irrespective Mr. Lai did make a request on behalf of [Mother] at the prior hearing. And the court denied the request. [¶] With regard to the other issues, the *Marsden* hearing, Mr. Lai did make a motion to withdraw as attorney of record. The court denied that motion. Mother is not present here today. Court does not feel it would be appropriate to do a *Marsden* hearing telephonically. [¶] Additionally,

this is Mother's standard request with every single attorney that the court has appointed her, that she make a *Marsden* request. And, for that reason, the court will deny the *Marsden* request." The court further denied Mother's request for a telephonic appearance on the grounds that, because it was very hard to control her behavior when she was in the courtroom, "the court would have no way to control [her] behaviors [telephonically], with the exception of discontinuing or cutting off the telephone contact."

At the conclusion of the contested hearing, the court commented on Mother's "less than cooperative" demeanor with the court, as well as other individuals. It noted that everyone was at a loss as to how to help her with "understanding what she needs . . . and what benefit she should have derived from these services." The court stated that to some degree, Mother delayed CFS assisting her by postponing the psychological evaluation for approximately one year. The court found that reasonable services had been offered, but Mother had not benefitted, and there was not a substantial likelihood she could benefit from any additional services. Concluding there was not a substantial likelihood J.B. could be returned to Mother within the statutory timeframe, the court terminated services and set a section 366.26 hearing.

II. *MARSDEN* HEARING

Mother's sole contention on appeal is that the trial court erred in refusing to hold a telephonic *Marsden* hearing on March 27, 2012. More specifically, she argues "the problem is that the court did not conduct the inquiry required to figure out if new counsel was needed." She phrases this as "not a question of *how* the court exercised its discretion over the replacement of counsel, but whether it did so at all." In response, CFS claims

Mother is precluded from presenting her issue on appeal under the well-established doctrine of disentitlement by which an appellate court may stay or dismiss an appeal by a party who has refused to obey the trial court's legal orders. We agree with CFS.

“Appellate disentitlement ‘is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction’ [Citation.] In criminal cases, it is often applied when the appellant is a fugitive from justice. [Citation.] In dependency cases, the doctrine has been applied only in cases of the most egregious conduct by the appellant, which frustrates the purpose of dependency law and makes it impossible to protect the child or act in the child's best interests. [Citations.]

“In the dependency context, the disentitlement doctrine has been applied to conduct other than the abduction of children. For example, in *In re C.C.* [(2003)] 111 Cal.App.4th 76, . . . the court held that because the mother refused to comply with a court-ordered psychological evaluation she was disentitled to reunification services. In explaining the application of the disentitlement doctrine to the facts before it, the court observed that, in addition to abduction cases, the doctrine applies to ‘other kinds of conduct [in dependency proceedings]. In particular, it extends to conduct that . . . frustrates the ability of another party to obtain information it needs to protect its own legal rights. In *TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377 [, 379-380] . . . judgment debtors refused to comply with a court order to answer postjudgment interrogatories designed to secure information to aid in enforcement of the money judgment against

them. The court dismissed their appeal from the judgment, holding it had the inherent power to do so without a judgment of contempt. [Citation.]’ [Citation.]

“The court in *In re C.C.*, *supra*, 111 Cal.App.4th 76 [Fourth Dist., Div. Two], concluded that the mother’s refusal to participate in the court-ordered psychological evaluation barred her right to reunification services. ‘[The m]other’s conduct makes it impossible for the court to perform its obligation to determine, pursuant to section 361.5(b)(2), whether her mental disability renders her incapable of utilizing reunification services. [The m]other’s conduct also interferes with the legal rights of [the m]inor. . . . [The m]other, like the offending father in *Kamelia S.* [(2000) 82 Cal.App.4th 1224, 1229], is “entirely responsible for paralyzing the court’s ability to implement the procedures intended to benefit the interests of the dependent minor.” [Citation.]’ [Citation.]” (*In re E.M.* (2012) 204 Cal.App.4th 467, 474-475.)

““The disentitlement doctrine is based on the equitable notion that a party to an action cannot seek the assistance of a court while the party “stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]” [Citation.] A formal judgment of contempt, however, is not a prerequisite to exercising [an appellate court’s] power to dismiss; rather, we may dismiss an appeal where there has been *willful disobedience or obstructive tactics*. [Citation.]’ (Italics added.) [¶] This broader formulation of the doctrine suggests that it is not limited to cases in which the appellant is in violation of the order from which he or she appeals, but rather may also apply to cases in which the appellant has violated orders other than the one from which the appeal has been taken. . . . [¶] . . . [¶] Thus, the disentitlement doctrine is not only applicable to

disobedience of the order being appealed; it also applies to ‘egregious’ conduct that frustrates the juvenile court from carrying out its orders. . . .” (*In re E.M.*, *supra*, 204 Cal.App.4th at pp. 476-477.)

Here, the record shows that Mother possessed “an attitude of contempt to legal orders” and a desire to delay compliance with various court orders. (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277.) Her conduct frustrated, if not paralyzed, the ability of CFS, the court, and her own attorneys to obtain the information necessary to determine and provide the services designed to enable her to reunify with her son. She harassed those representing J.B., forcing them to seek a restraining order against her. She delayed submitting to a psychological examination. She complained about every attorney appointed to represent her, asking for appointment of new counsel, or forcing them to seek to be relieved as counsel of record due to breakdowns in the attorney-client relationships. In fact, by August 2011, seven months after the petition was filed, Mother was on her fourth appointed counsel, Mr. Lai. She frustrated Mr. Lai’s ability to represent her by moving to Northern California within a few short weeks of his appointment. While she claims the move was necessitated due to her financial situation, other evidence suggests she moved to be out of the control of San Bernardino County.

Turning specifically to the March 27, 2012, request for a *Marsden* hearing, Mr. Lai relayed Mother’s request, adding “I have no problem being relieved, your honor. I think that there’s been a breakdown.” Mother was not available to convey her reasons for wanting new counsel, nor had she submitted anything in writing to be presented to the court at that time. She continually refused to be present at any of the court hearings from

September 2011 on, more specifically, after she relocated up north. In order to understand her reasons for requesting a *Marsden* hearing in March 2012, we turn to her written motions submitted on May 9, 2012.

According to the May 9, 2012 motions, Mother claimed her attorney “refused to inform the court that [she was] unable to attend [the] May 9, 2012, hearing due to previous commitment” Her attorney refused to file a motion to postpone the May 9 hearing, and he “refused to subpoena witnesses for [the] May 9, 2012, hearing claiming [she] fired him and he no longer is under obligation to represent [her] or do anything for [her].” Mother’s appellate briefs offer no other reasons for requesting that new counsel be appointed to replace Mr. Lai. Turning to the record before this court, there is no evidence that Mr. Lai was anything less than competent and diligent in advocating on Mother’s behalf. As we have noted in our summary of the facts, Mother’s counsel conveyed all of Mother’s requests, concerns, and much more. Mother could not have asked for more competent counsel. The problem was not with Mr. Lai. Rather, the problem was with Mother herself.

As the trial court observed, “The court is historically aware that [Mother] has pretty much made herself uncooperative and unavailable and been, shall we say, less than cordial to every single attorney that the court has had appointed to [her]. [¶] The court does see this as a pattern of [Mother]. She does it with the intent to create controversy and to postpone these matters indefinitely. She does that so that she can manipulate this court and the system.” We agree. Mother’s uncooperative attitude towards CFS, the court and her own counsel, along with her significant delays in participating in a

psychological evaluation, has paralyzed the court’s ability to implement the procedures intended to benefit the interests of the dependent child. When a parent’s actions thwart the purpose of the dependency proceedings, he or she is barred the right of seeking the assistance of the courts.

“Under these circumstances, there is an adequate basis for determining that [M]other’s conduct was sufficiently egregious to warrant the application of the doctrine of disentitlement and dismissing [her] appeal[.]” (*In re E.M.*, *supra*, 204 Cal.App.4th at p. 478, fn. omitted.)⁵

III. DISPOSITION

The appeal from the March 27, 2012, order denying Mother’s request to conduct a *Marsden* hearing and transferring J.B.’s educational rights from Mother to his caregiver is dismissed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.

⁵ Even if we were to conclude that Mother’s *Marsden* claim has merit, the only issue she seeks to modify is the transfer of J.B.’s educational rights from Mother to his caregiver. Given Mother’s egregious conduct towards CFS, the court, and her own attorneys, the transfer of the educational rights was, and remains, justified.