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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re H.B. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

E065127

(Super.Ct.No. INJ1300415)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.

Affirmed.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Julie
Koons Jarvi, Deputy County Counsel for Plaintiff and Respondent.

T.B. (Mother) appeals after the termination of her parental rights to L.B. and H.B. (the children) at a Welfare and Institutions Code section 366.26 hearing.¹ Mother contends on appeal the juvenile court erred by imposing a condition at the time of termination of her parental rights that she was not to “talk about” the children on any social media under threat of contempt proceedings. Mother insists such restriction violates her First Amendment rights, was overbroad, and exceeded the juvenile court’s jurisdiction.

We do not view the restriction imposed by the juvenile court as broadly as stated by Mother in her appeal. The juvenile court’s order was narrowly tailored to meet the confidentiality requirements for juvenile court proceedings pursuant to section 827 and was imposed in order to protect the privacy of the children. We affirm the juvenile court’s order.

FACTUAL AND PROCEDURAL HISTORY

A. DETENTION

On November 19, 2013, L.B. (female; born Sept. 2000) and H.B. (female; born Dec. 2005) were detained from Mother by the Riverside County Department of Public Social Services (the Department). They were placed in foster care. On that day, the Department received notice from the police that Mother was being arrested for being under the influence of a controlled substance and that the Department needed to respond.

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

Mother was taken to the hospital because she was incoherent and suspected of being under the influence of drugs. The Department responded to the home where the children had been left with a family friend.

The children disclosed they had lived with Mother's husband, J.G. He brought drugs into the house. Mother was in the process of divorcing him and he no longer lived with them. Their biological father L.B. (father), had died of a heart attack when H.B. was five years old. The children believed Mother had been diagnosed with a brain tumor and that she was taking medication. They were all planning to move to Atascadero or San Luis Obispo. L.B. reported she was afraid of J.G. Mother had a substantial sum of money from a life insurance policy she received after father's death, and she received Social Security survivor benefits for the children.

While at the home, the social worker received a call from a deputy with the Riverside County Sheriff's Department. The deputy reported he suspected Mother was under the influence of a controlled substance due to her odd behavior. The deputy had found an empty Xanax bottle in the house. Mother had called them because she claimed J.G. had drugs in the house, but they never found any illegal drugs. Mother told them J.G. was putting poison in the food that he made for her.

The social worker visited Mother in the hospital. She complained of a headache and refused anti-anxiety medication. Mother did not make any sense when she was talking; she was not speaking in complete sentences. Mother claimed that her seizure medication, which she used for her epilepsy, made her appear to be under the influence.

She denied she took any controlled substances. Mother claimed J.G. had beaten her and raped her. She tried to show the social worker bruises, but none were apparent.

J.G. was interviewed. He indicated Mother's epilepsy and seizures caused her to have hallucinations. Mother was getting worse and had been diagnosed with a brain tumor. J.G. denied any illicit drug use.

Mother tested positive for amphetamines, benzodiazepine and tricyclic. Mother insisted that J.G. put the drugs in her food.

In May 2013 Mother had reported that a man she met online had touched L.B.'s vagina. On four other occasions, she had made false accusations of rape. The Department was concerned that Mother's emotional instability, and her refusal to take medication, endangered the children.

On November 21, 2013, the Department filed a section 300 petition against Mother for the children. It was alleged under section 300, subdivision (b), that Mother was unable to provide regular care due to her mental illness, developmental disability or substance abuse. The detention hearing was held on November 22, 2013. The juvenile court found a prima facie case and ordered the children be detained.

B. JURISDICTION/DISPOSITION REPORT AND HEARING

A jurisdiction/disposition report was filed on January 3, 2014. The Department recommended that the children be placed back with Mother on a Family Maintenance Plan because the circumstances that led to the removal had been stabilized.

The children both wanted to reside with Mother. L.B. expressed Mother was better when she was not with J.G. Mother denied any drug abuse. Mother continued to

report she did not know how she had methamphetamine in her system. Mother denied she ever had a brain tumor. She claimed to have a seizure the day she was arrested. The foster mother reported Mother was the “best mom I have ever seen.”

The jurisdiction/dispositional hearing was held on January 8, 2014. The juvenile court found the allegations in the petition true after Mother waived her rights. The children were returned to Mother’s care on Family Maintenance. An addendum report was filed on May 12, 2014. Mother tested positive for methamphetamines on March 19, 2014. It was recommended that Mother complete an outpatient substance abuse program and a domestic violence program.

A status review report was filed on June 19, 2014. Mother and the children had moved to a new residence in Riverside County. Mother was separated from J.G. The children were developing normally. Mother missed several drug tests. It was recommended that Family Maintenance be continued.

C. SECTION 387 PETITION

On August 12, 2014, prior to the review hearing on the continuation of Family Maintenance, the Department filed a section 387 petition seeking removal of the children from Mother’s custody. The children had been detained on August 8, 2014. The Department stated, “The previous disposition has not been effective in the protection of the children, in that the mother failed to comply with her Court ordered case plan and fled out of State with the children. On August 7, 2014, the mother and children were found in Las Vegas, Nevada. Consequently, the mother was placed under arrest.”

The Department received notice from the Las Vegas Sheriff's Department that Mother had been arrested in Las Vegas, Nevada because she had an outstanding warrant in Kansas. The children were taken to the local children's protective services agency. The children had reported they were moving to Kansas and thought that it was approved by the Department. For the first time, L.B. stated she did not feel safe with Mother because of her health.

The detention hearing on the section 387 petition was heard on August 13, 2014. The juvenile court found a prima facie case for detention of the children and ordered removal from Mother's home.

A jurisdiction/disposition report on the section 387 petition was filed on August 29, 2014. The Department recommended that Mother receive reunification services and submit to two psychological examinations.

The children would remain in the foster home. The Department alleged Mother had failed to comply with Family Maintenance as she absconded with the children and tried to flee to Kansas. Mother had not completed any of her services. Mother was awaiting extradition from Nevada to Kansas to face charges of theft.

L.B. reported that Mother had been staying up for two days and then sleeping for two days. L.B. blamed Mother's behavior on J.G.; H.B. wanted to be back with Mother and live in Kansas. However, both were comfortable in foster care.

A jurisdiction/disposition hearing was held on September 4, 2014, on the section 387 petition. The juvenile court found the allegation in the section 387 petition true. Mother was granted reunification services and two doctors were appointed to evaluate

Mother once she returned to California. An Interstate Compact on the Placement of Children (ICPC) was ordered for a paternal cousin who lived in Arkansas and wanted custody of the children.

D. REVIEW HEARING REPORTS

A review report was filed on December 23, 2014. The Department recommended six additional months of reunification services. Mother had moved back to California and was living in an apartment. She was seeking employment. Mother entered a plea to the theft charge in Kansas and was placed on probation. An ICPC was ongoing for the paternal cousin. Mother had negative drugs tests and was completing services. The children had expressed fear of Mother during visitation. The children wanted to live with the paternal cousin.

An addendum report was filed on February 5, 2015. The Department recommended that reunification services be terminated. The permanent plan was adoption with the paternal cousin in Arkansas.

According to the report, L.B. no longer wanted to visit with Mother. L.B. had viewed a posting on Mother's Facebook page that embarrassed her. H.B. did not want to see Mother because she believed Mother was seeing J.G. The foster mother indicated Mother constantly called and it was disruptive. The children wanted to live with their paternal cousin, who had been approved for placement. Mother was not consistent in attending substance abuse treatment. One of the evaluating therapists reported Mother was very evasive and would require long-term treatment.

The Facebook post was included as an exhibit. In that post, Mother asked for money to help with her 10- and 14-year-old daughters, who were in foster care. L.B. wrote a letter to Mother, which was submitted with the report, in which she stated it was best for her not to be with Mother because she wanted to focus on her own life. L.B. also reported that the money Mother stole in Kansas, for which she had been convicted of theft, was from L.B.'s inheritance from Father. It was recommended by the Department that all visitation cease.

The contested review hearing was conducted on April 21, 2015. The children had been placed out of state with the paternal cousin. Mother filed a notice of intention to file a writ petition, but one was not filed. Mother testified she only went to Las Vegas on vacation. She had to work to make restitution for the probation case, which impeded her ability to do services. The juvenile court criticized Mother for not understanding the trauma she was inflicting on the children. The juvenile court did not believe further services would be in the best interests of the children. Mother's reunification services were terminated.

E. SECTION 366.26 REPORTS

The Department filed section 366.26 reports on July 28, 2015, and November 23, 2015. The permanent plan was termination of Mother's parental rights and adoption by the paternal cousin. The children had been living with the paternal cousin in Arkansas since February 2015. The children were thriving in their new home, doing well in school, and were involved in numerous activities. The children still wanted no contact with Mother. The paternal cousin was willing to adopt the children. L.B. reported she was

upset that Mother was posting pictures and personal information about her and H.B. on Facebook. It made L.B. angry and she felt violated.

On December 14, 2015, the matter was called for the section 366.26 hearing but Mother was not present as she had informed her counsel she was in the hospital. Minor's counsel complained Mother was posting on Facebook that she was upset the children were choosing adoption. Minor's counsel objected to a continuance as it was suspect whether Mother was in the hospital, and the children were suffering emotionally by continuing the case. L.B. made comments in court that she wanted the case to be completed. H.B. begged the court not to return her to Mother. The matter was continued but the juvenile court assured the children that it would terminate Mother's parental rights and affirm the adoption.

Minor's counsel also asked the juvenile court to admonish Mother to stop posting on Facebook about the children. The juvenile court asked Mother's counsel to advise Mother, "not to post on Facebook anything confidential about juvenile proceedings." The minute order for that date states, "Mother to not post on Facebook any confidential information regarding this juvenile case."

F. SECTION 366.26 HEARING

The section 366.26 hearing was conducted on January 4, 2016.

At the section 366.26 hearing, numerous Facebook posts were submitted to the juvenile court. Some of these posts were after the prior hearing where the trial court asked counsel to admonish Mother not to disclose confidential proceedings. There were numerous posts referring to the court case and that the children were choosing to be with

the paternal cousin and not Mother; she made pleas to the children to choose to be with her. Mother referred to the “court minutes” which allowed the children to contact her. Minor’s counsel asked that the juvenile court admonish Mother not to post on Facebook anything about the children. Mother responded, “They are my children, and I have freedom of speech, and I will continue to do it.”

The trial court terminated Mother’s parental rights and freed the children for adoption.

The juvenile court further ruled at the hearing, “For the record, I am also filing with the court a copy of a Facebook page which purports to be the dialogue referenced by [Minor’s counsel] by the mother. I’m ordering the mother at this time not to disclose confidential proceedings of [the] juvenile court in any social media, specifically Facebook as well. It is against the law actually. It overrides your First Amendment right to free speech. It is against the law to disclose confidential juvenile proceedings in any social media, and you cannot subject your daughters and identify them and talk about them in this way in social media. It hurts them, but it is also against the law.” Mother responded that the children did not have to look at her Facebook page.

The juvenile court responded, “You are committing a violation of the law by revealing confidential juvenile proceedings. The reason we have confidential proceedings is so nobody knows what’s going on, and you are disclosing it, and it’s again[st] the law. If you continue to do so and it is brought to my attention, I will set a hearing for contempt of proceedings. I am ordering you not to talk about [the children] on Facebook or any other social media.”

Mother responded, “I will not talk about what’s gone on here, but I will continue to talk about my children as far as vacations, school, Christian—me praying for them. But I will not disclose what’s happened, if anything, in here.” The juvenile court responded, “I made my order clear. So we’ll—hopefully we don’t have to address that issue ever again “

Mother filed a timely notice of appeal.

DISCUSSION

A. SOCIAL MEDIA RESTRICTIONS

“There is a strong public policy of confidentiality of juvenile records.” (*J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1337.) However, some records can be disclosed to certain persons. “Section 827 governs the granting of access to confidential juvenile records by individuals and the public.” (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541; § 827, subd. (a)(1)(A)-(P).) “Generally, a juvenile court has broad and exclusive authority to determine whether and to what extent to grant access to confidential juvenile records pursuant to section 827.” (*Elijah S.*, at p. 1541.)

“Section 827 and California Rules of Court, rule 1423^[2] which control the dissemination of confidential juvenile records, reflect a determination by the Legislature that the juvenile court has both the “sensitivity and expertise” to make decisions about access to juvenile records.” (*People v. Superior Court* (2003) 107 Cal.App.4th 488, 491.)

² California Rules of Court, rule 1423 has since been renumbered as rule 5.552.

This case is similar to *In re Tiffany G.* (1994) 29 Cal.App.4th 443 (*Tiffany G.*). In that dependency case, the mother and stepfather disseminated juvenile court reports, psychological evaluations and other juvenile case reports to numerous people. The juvenile court was informed of the disclosure. (*Id.* at pp. 447-448.) The juvenile court advised the mother and stepfather that the documents were confidential. The juvenile court ordered, ““Now, the order I'm going to issue to the two of you is that you are ordered not to distribute confidential materials generated as part of this dependency process to anyone, period,”” and that dissemination of the information would result in contempt of court proceedings. (*Id.* at p. 448.)

On appeal, stepfather argued that the order was in excess of the court’s jurisdiction and contrary to section 827. He additionally argued the order was overbroad and violated his First Amendment rights. (*Tiffany G.*, 29 Cal.App.4th at p. 448.) Initially, the appellate court noted section 827 should be read broadly and that the court was “obliged to hold paramount [the minors’] best interests [citation] and consider the dependency law’s objective of protecting them.” (*Tiffany G.*, at pp. 450-451.) It additionally noted there “[e]xists in this state a strong public policy protective of the confidentiality of juvenile court records and proceedings.” (*Id.* at p. 451.) The appellate court concluded the juvenile court’s order that mother and stepfather not circulate confidential information was well within the juvenile court’s authority and was aimed at protecting the minors. (*Id.* at pp. 451-452.)

The appellate court also rejected that the order infringed on the stepfather's First Amendment rights. First, the court recognized it only prohibited the release of confidential information. It additionally found, "Furthermore, even assuming the nondissemination order does in some way implicate [stepfather]'s right to free speech, disclosure of the confidential materials infringes upon [the minors]' constitutionally protected privacy right. (Cal. Const., Art. I, § 1.), and the stepfather failed to demonstrate an interest superior to that of the children." (*Tiffany G.*, *supra*, 29 Cal.App.4th at p. 452.)

Here, the juvenile court's order is properly interpreted to foreclose Mother from disclosing confidential information in her Facebook posts. She had already posted that, according to court orders, the children could contact her. She also disclosed that the court proceedings would involve the children being adopted by their paternal cousin. Such dissemination of confidential information was improper and the juvenile court acted appropriately in seeking to curtail any further dissemination of information.

Although the juvenile court at one time stated, "I am ordering you not to talk about [the children] on Facebook or any other social media," it is clear from the totality of the order it was only addressing confidential information. Mother interprets the order too broadly.

Further, Mother attempts to distinguish her case from *Tiffany G.* by arguing she never released confidential records, and the juvenile court's order prohibited her from expressing her own thoughts and perceptions. We disagree. Here, Mother did disclose confidential information in that she referenced the court order regarding contact, and that the next court hearing would address adoption. Moreover, we have set forth in detail the

order by the juvenile court in which it expressly forbid her from disclosing confidential information. The juvenile court's order is not properly interpreted to mean she could not post "anything" about the children on Facebook. The juvenile court's order foreclosing the dissemination of confidential information about the case was proper.

DISPOSITION

The juvenile court's orders are affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.