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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re KATRINA H., a Person Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

SHEILA H.,

Defendant and Appellant.

F063512, F063859

(Super. Ct. No. 10CEJ300216-1)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Jane A. Cardoza, Judge.

Jennifer A. Gibson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J. and Detjen, J.

In this consolidated appeal, Sheila H. challenges the juvenile court's reasonable services finding and visitation order issued at the six-month review hearing (Welf. & Inst. Code, 366.26, subd. (e))<sup>1</sup> and its visitation order issued at a visitation review hearing as to her 16-year-old daughter Katrina.<sup>2</sup> We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Sheila and her husband (hereafter "the father") are an intact couple and the parents of Katrina, the subject of this appeal. In September 2010, then 14-year-old Katrina was taken into protective custody by the Fresno County Department of Social Services (department) after Katrina disclosed to the authorities that her father physically and emotionally abused her. The department filed a dependency petition alleging under section 300, subdivision (c) (serious emotional damage) that Katrina suffered ongoing denigration, violence, and cruel and unusual punishment by her father. Such abuse consisted of telling Katrina that she was fat and worthless, hitting her while she was riding her bicycle, and forcing her to ride her bicycle to exhaustion. As a result of the abuse, Katrina had thoughts of suicide and was anxious in her father's presence. The department also alleged under section 300, subdivision (b) (failure to protect) that Sheila knew or should have known Katrina was being abused and failed to protect her and provide her adequate medical care. Katrina was placed in foster care.

In late September 2010, the juvenile court conducted the detention hearing and ordered Katrina detained. The court also ordered reasonable supervised visitation and mental health evaluations and treatment for Katrina and her parents.

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

<sup>2</sup> Sheila also filed a writ petition from the juvenile court's orders terminating reunification services and setting a section 366.26 hearing at the 12-month review hearing in February 2012. The writ petition is currently before this court for review (F064504). On our own motion, we take judicial notice of the appellate record in the writ proceeding.

In December 2010, following a contested jurisdictional hearing, the juvenile court sustained an amended petition alleging one count under section 300, subdivision (c), which stated that Katrina's father subjected her to ongoing denigration in the course of her athletic program and that such abuse consisted of her father making degrading and disparaging comments regarding her weight and personal worth and that, as a result, Katrina suffered such mental anguish that it negatively and substantially impacted her emotional and mental health as evidenced by her statements that she suffered bouts of anxiety and depression. The court set the dispositional hearing for January 7, 2011.

On January 7, 2011, the juvenile court convened the dispositional hearing, appointed a court appointed special advocate (CASA) for Katrina and set a contested dispositional hearing. The contested hearing was set for a trial to be conducted on February 18, 2011.

Meanwhile, Katrina's therapist, Jennell Casillas, advised the department that Katrina was not prepared to reunify with her parents or visit them unsupervised. Katrina told Ms. Casillas that she was uncomfortable with her father because he did not speak to her and she believed that the visits were unhealthy for her and caused her increased worry and anxiety. Ms. Casillas opined that reunifying Katrina with her parents at that time would cause her greater anxiety, stress and sadness. In light of Ms. Casillas's opinion, the department recommended that the juvenile court provide Sheila and the father reunification services but maintain supervised visitation.

On February 18, 2011, the juvenile court conducted a contested dispositional hearing. Ms. Casillas testified that Katrina told her that visits with her parents were not going well. Katrina said that she was very uncomfortable and described the heart palpitations and stress that she experienced by stating, "My heart hurts." Katrina also told Ms. Casillas that she was fearful of both of her parents because neither of them were able to maintain boundaries. Katrina did not believe that Sheila would protect her if she returned home. Ms. Casillas did not recommend a change in visitation.

Katrina testified that she wanted “everyone to be happy again and everything to be how it should” but that changes had to occur first. She said she would not feel safe returning to the custody of either of her parents that day.

At the conclusion of the hearing, the juvenile court sustained the section 300, subdivision (c) allegation, ordered Katrina removed from Sheila and the father’s custody and ordered that visitation remain supervised. The court also ordered the department to continue joint visitation but granted it discretion to arrange for separate visitation. The court set a post-disposition mediation (mediation) hearing in April 2011 and a six-month review hearing in August 2011.

On April 8, 2011, the juvenile court conducted the mediation hearing. At that time, Katrina had refused to attend the three latest visits. At the hearing, the court ordered supervised therapeutic visits with Katrina and granted the department the discretion to advance to regular supervised visitation. Finally, the court ordered Katrina, Sheila and the father to participate in conjoint therapy when recommended by Ms. Casillas and Sheila and the father’s therapists.

On May 17, 2011, Sheila and the father arrived for their first therapeutic supervised visit. When Katrina arrived with her foster mother, the foster mother informed the therapist, Tammy Exum, that Katrina did not want to see her parents. Ms. Exum met with Katrina privately. Katrina was nervous and tearful and told Ms. Exum that she felt nervous all day anticipating the visit with her parents. She said she had memories of “being beaten” and felt physically ill just seeing her parents from the parking lot. She said she did not feel ready to see them. Ms. Exum explained the nature of therapeutic visits and her own role in the process and told Katrina that she would not force visitation. Ms. Exum offered Katrina the options of visits for only 10-15 minutes, visiting with one parent only or visiting with the parents separately. However, Katrina refused all the options. Katrina did, however, agree to briefly greet her parents. She hugged Sheila and hesitantly hugged her father at Sheila’s urging. The next visit was

scheduled for May 25, however, on that date, Katrina's foster mother told Ms. Exum that Katrina had a "breakdown" just thinking about coming to visit her parents. She said Katrina was crying, nervous and angry. Ms. Exum cancelled the visit and informed Sheila. Katrina declined the following visit and, on June 3rd met with Ms. Exum and told her that she did not want to visit her parents. She said that when she saw her father, she saw a "monster" that "beat" her.

On July 1, 2011, Sheila filed an ex parte application asking the juvenile court to enforce the visitation order it issued on April 8, 2011. The court set a hearing to review the matter on July 8, 2011. Meanwhile, the department filed an interim review report for the hearing, recommending that the juvenile court temporarily suspend visitation until therapeutically appropriate based on Ms. Exum's recommendation.

On July 8, 2011, the juvenile court convened the hearing on visitation and temporarily suspended it until the six-month review hearing in August. In doing so, the court stated that Katrina's aversion to visitation needed to be addressed in therapy and asked what the department's next step was in facilitating visitation. The court officer responded that the social worker was in the process of scheduling a meeting with the therapists to address visitation. The court reminded the court officer that the six-month review hearing was scheduled for August 12, 2011, and asked the department to be diligent in scheduling that meeting before then.

On August 12, 2011, the juvenile court convened the six-month review hearing. The department asked the court to continue reunification services and to continue its order suspending visitation. The department also asked for discretion to arrange a spectrum of visitation from the more restrictive therapeutic supervised visitation to unsupervised visitation. Katrina's attorney advised the court that Ms. Casillas recommended that Katrina write a letter to her parents addressing her issues. Katrina said she was willing to accept letters from her parents through Ms. Casillas as a way of communicating with them. Sheila's attorney argued that Sheila was not provided

reasonable visitation or mental health services and asked the court to find that services were not reasonable. The court continued the hearing so that the social worker could review the CASA's report.

On August 24, 2011, the juvenile court reconvened the six-month review hearing. Sheila's attorney renewed her argument that Sheila was not provided reasonable services. The juvenile court found that the department provided reasonable services and ordered them continued. The court also found that visitation was detrimental to Katrina and ordered no visitation. However, the court granted the department discretion to arrange visitation, including unsupervised visitation. The court set a visitation review hearing for October 12, 2011, and a 12-month review hearing for November 9, 2011. Sheila filed a notice of appeal challenging the juvenile court's reasonable services finding and visitation order.

The department filed an interim report for the visitation review hearing, informing the juvenile court that Katrina was willing to participate in conjoint visits with Sheila but not her father. Katrina also said that she wanted a relationship with her parents but did not want to reunify with them or visit with them outside of a therapeutic setting.

On October 12, 2011, at the visitation review hearing, Sheila's attorney advised the juvenile court that Sheila ran into Katrina twice at a bicycle shop and that Katrina approached Sheila both times and engaged her in conversation. Sheila's attorney asked the court to order unforced, unscheduled, unsupervised visits. The juvenile court ordered unforced unsupervised visitation between Katrina and Sheila and, at Sheila's request, reset the 12-month review hearing for December 2011. This appeal ensued.

## **DISCUSSION**

### **I. Reasonable Services**

Sheila contends that her ability to reunify with Katrina depended upon Katrina participating in individual therapy and in therapeutic supervised visitation. Further, she argues, the department knew that Katrina missed some of her therapy sessions and had a

duty to ensure that some level of visitation occurred but failed to do so. As a result, she further contends, the department's efforts to help her reunify were not reasonable and the juvenile court's reasonable services finding was error.<sup>3</sup> We disagree.

“When a finding that reunification services were adequate is challenged on appeal, we review it for substantial evidence. [Citation.] “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” [Citation.] Even if there is no substantial conflict in the evidence, we must nevertheless draw all legitimate inferences in support of the findings of the juvenile court. [Citation.]

“A finding that reasonable reunification services have been provided must be made upon clear and convincing evidence. [Citation.] ‘When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. [Citations.]’ [Citation.]

“When applying the substantial evidence test, however, we bear in mind the heightened burden of proof. [Citation.] ‘Under this burden of proof, “evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.” [Citation.]’ [Citation.]” (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971 (*Alvin R.*))

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<sup>3</sup> Respondent contends that the juvenile court's reasonable services finding is not appealable, citing *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147 (*Melinda K.*), which held that where, as here, the juvenile court orders reunification services to continue, its finding that reasonable services were provided is not itself directly appealable. (*Id.* at pp. 1153-1156.) We find *Melinda K.* distinguishable because Sheila also challenges the juvenile court's visitation order which was issued at the same hearing. (*Id.* at p. 1154.)

“Visitation is an essential component of any reunification plan.” (*Alvin R.*, *supra*, 108 Cal.App.4th at p. 972.) The juvenile court has broad discretion in fashioning visitation orders in performing its duty to protect the welfare and best interests of the child. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) In turn, the department has an obligation to comply with and effectuate the juvenile court’s order. (See *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1364.) As an arm of the court and a representative of the state, the department is also charged with protecting the child’s best interests. (*In re Walter E.* (1992) 13 Cal.App.4th 125, 137.)

We conclude that the department made reasonable efforts to comply with the juvenile court’s visitation order. When the juvenile court exercised its dependency jurisdiction over Katrina, it did so because she suffered severe emotional damage while in Sheila and the father’s custody. As a result, the court ordered supervised visitation and individual therapy for Katrina and her parents. Katrina began weekly therapeutic sessions with Ms. Casillas in December 2010 and was participating in supervised visits. However, Katrina experienced emotional and physiological signs of stress associated with contact with her parents. As a result, in April 2011, the juvenile court ordered therapeutic supervised visitation. However, Katrina still reported distress related to visitation. She reported feeling physically ill at the mere sight of her parents and became emotionally upset at the thought of visiting them even in a therapeutic setting with Ms. Exum present. Ms. Exum tried to negotiate some form of therapeutic visitation but Katrina refused. Short of forcing Katrina to visit her parents, there was nothing anyone could do, including the department, to ensure that visitation occurred without causing Katrina further emotional damage.

Further, Sheila fails to show how the department is at fault because Katrina missed a few therapy sessions with Ms. Casillas or how that fact impacted visitation. She relies on *Alvin R.*, *supra*, 108 Cal.App.4th 962, a case in which the appellate court vacated the

juvenile court's reasonable services finding (*Id.* at p. 975) and which Sheila contends is analogous. We find *Alvin R.* readily distinguishable.

In *Alvin R.*, *supra*, 108 Cal.App.4th 962, reunification depended on a series of events that had to occur in the following order: eight individual therapy sessions for Alvin, conjoint therapy for Alvin and his father, and visitation. (*Id.* at pp. 972-973, 975.) However, the department in that case ignored the juvenile court's order eliminating the eight-session requirement and made no attempt to get Alvin into therapy except to refer him to a therapist with a waiting list. (*Id.* at p. 973.) The appellate court found the department did not make a good faith effort to facilitate the therapy sessions and provide the father reasonable services. (*Ibid.*)

In this case, Katrina, unlike Alvin, participated in weekly therapy with Ms. Casillas with the exception of a few missed sessions. Further, unlike Alvin, Katrina's need for therapy, though important, was not as critical a precondition for visitation. In that sense, Katrina was more emotionally predisposed to visitation and could visit her parents whenever she was ready.

In sum, we conclude that the department's efforts to promote visitation and Katrina's participation in individual therapy were reasonable.<sup>4</sup> Thus, we affirm the juvenile court's reasonable services finding.

## **II. Visitation Orders**

Sheila contends the juvenile court's visitation orders issued on August 24, 2011, and October 12, 2011, were erroneous and must be vacated. We disagree.

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<sup>4</sup> In her reply brief, Sheila raises a new reasonable services argument; i.e., that Katrina's foster mother influenced Katrina not to visit and that the department knew this and failed to address it. However, Sheila does not attempt to establish good cause for her failure to raise the issue in her opening brief. Because points raised for the first time in a reply brief will not be considered unless there is a good cause showing for failure to present them earlier (*Monk v. Ehret* (1923) 192 Cal. 186, 190), we will not address Sheila's new argument.

### **August 24, 2001 Visitation Order**

Sheila contends the juvenile court's order suspending visitation on August 24, 2011 was error because there was insufficient evidence to support a finding that visitation was detrimental to Kristina. "[T]he power to decide whether *any* visitation occurs belongs to the court alone. [Citation.]" (*In re S.H.* (2003) 111 Cal.App.4th 310, 317.) Nevertheless, it is generally improper to suspend visitation absent a showing of detriment caused by visitation. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) We review the court's finding that visitation between a parent and his or her child would be detrimental to the child for substantial evidence. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581 & fn. 5.)

In this case, the juvenile court did not err in suspending visitation. Katrina had only progressed to the point that she was willing to communicate with Sheila and the father in writing through her therapist. In addition, the mere thought of visitation caused her emotional distress. Consequently, there was sufficient evidence for the juvenile court to find that visitation was detrimental to Katrina.

### **October 12, 2011 Visitation Order**

Sheila contends that the juvenile court's visitation order for unforced, unsupervised visitation was an improper delegation of authority. Specifically, she argues that the order as written allowed Katrina and/or Ms. Casillas to decide whether visitation would occur. We conclude there was no error associated with the juvenile court's visitation order and if there was, it was invited.

The juvenile court has the sole power to determine whether visitation will occur. (*In Re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) The juvenile court improperly delegates that power when it grants it to a third party. (*Id.* at p. 1009.) In this case, the juvenile court ordered unforced, unsupervised visitation. Ideally, the court would have imposed some minimum requirement on visitation. (*In re S.H., supra*, 111 Cal.App.4th at p. 319.) However, it is clear that the juvenile court intended that visitation

would occur. The court closely monitored visitation throughout the proceedings and the court stated, “[W]hatever helps to facilitate contact between this child and her parents.”

Further, even if, for the sake of argument, the juvenile court impermissibly delegated its authority to determine if visitation would occur, Sheila invited the error by requesting the visitation order. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 772 [when a party persuades the court to follow a particular procedure, the party is stopped from claiming the procedure is unlawful].) Thus, she cannot now claim that the juvenile court erred. We find no error in this record.

### **DISPOSITION**

We affirm.