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

In re NATHAN D. et al., Persons Coming Under
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

LAURA W.,

Defendant and Appellant.

F063666

(Super. Ct. Nos. 510365, 510366)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Marin Williamson, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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Laura W. (mother) appeals from the juvenile court's orders appointing a guardian for her children, Nathan D. and Sabrina D., granting her visitation, and terminating dependency jurisdiction. She argues one of the written visitation orders failed to comply with the juvenile court's oral pronouncement, and that the juvenile court abused its discretion when it terminated dependency jurisdiction.

We will remand the matter to allow the juvenile court to correct the erroneous written order, but otherwise affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

The issues in this appeal do not require a detailed recitation of the proceedings in the juvenile court.

On October 1, 2007, the Stanislaus County Community Services Agency (the Agency) filed a petition under Welfare and Institutions Code section 300 that alleged all six of mother's and father's children came within the provisions of section 300, subdivisions (b) and (c)¹ because there was a substantial risk the children would suffer serious physical harm or illness and because there was a substantial risk the children would suffer serious emotional damage. The allegations of the petition were found true at a contested hearing on December 4, 2007, and the children were placed outside of the home, with the exception of the oldest child who had run away from home. The essence of the problem, as identified in the petition, was that the parents' developmental disabilities prevented them from providing the care the children needed. Subsequent psychological reports opined that the parents would not be able to care for the children adequately, even if substantial services were provided.

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

On November 25, 2008, reunification services were terminated. Two of the children, Sabrina and S.D., were ordered into guardianship with their caregiver on March 10, 2009. Supervised visitation was ordered for mother and father. The permanent plan for two other children, Nathan and K.D., was permanent placement with their respective caregivers, with guardianship established as the final goal. The permanent plan for the fifth child, J.D., was placement in a group home. This plan was necessitated because of serious mental health issues.

Sabrina was removed from the care of her guardian and a new permanent plan of legal guardianship with a new caregiver was established on November 8, 2010. At the same hearing, the juvenile court identified a relative as a potential guardian for Nathan.

On September 20, 2011, a hearing was held regarding Nathan and Sabrina pursuant to section 366.26. The juvenile court ordered a permanent plan of guardianship for both children and appointed their respective caregivers as guardians. The parents were granted the same visitation as had existed before the hearing. The juvenile court then ordered dependency dismissed once the letters of guardianship were issued.

DISCUSSION

At issue are two parts of the juvenile court's orders that were made at the September 20, 2011, hearing. First, the juvenile court ordered that mother would be granted the same visitation as existed before the hearing. Second, the juvenile court ordered that after the letters of guardianship were issued, the dependency cases for Nathan and Sabrina would be dismissed. Mother argues that the orders subsequently signed dismissing the cases do not accurately reflect her visitation rights as to Sabrina, and that the juvenile court erred when it ordered the two cases dismissed because of possible issues that could arise related to visitation.

Visitation

Prior to the September 20, 2011, hearing, mother enjoyed the right to visit with Nathan and Sabrina once a month for two hours. At the hearing, the juvenile court ordered visitation to continue as previously ordered.

The letters of guardianship for Nathan were issued on September 21, 2011. The letters of guardianship for Sabrina were issued on September 30, 2011. On October 4, the juvenile court issued orders in each case to conform to the decisions made at the September 20 hearing.

In Nathan's case, the relevant portions of the order declared the permanent plan to be legal guardianship and granted mother two-hour visits at the Agency once a month. Dependency also was terminated.

In Sabrina's case, the relevant portions of the order declared the permanent plan to be legal guardianship and permitted visitation with mother, but the order did not specify how often and where the visitation was to occur. Dependency also was terminated.

Mother argues the order in Sabrina's case failed to conform to the oral orders of the juvenile court and asks us to order the juvenile court to correct this clerical mistake. The Agency does not dispute that the order was incomplete, but argues the remedy is to make a motion in the juvenile court. The Agency has represented that it would not object to a petition to have the order modified to contain the same language as the order in Nathan's case.

To support its contention that mother's remedy is in the juvenile court, the Agency cites *In re Joshua S.* (1986) 186 Cal.App.3d 147 (*Joshua S.*) for the proposition that mother does not have a legally cognizable interest because the issue is trivial. *Joshua S.* is not authority for the proposition cited by the Agency. While the statement referred to by the Agency appears in *Joshua S.*, it is in a portion of the opinion that is quoting *In re Candy S.* (1985) 176 Cal.App.3d 329. The *Joshua S.* court then goes on to explain why *Candy S.* was wrongly decided because the issue of appealability in Welfare and

Institutions Code section 300 cases is governed by Welfare and Institutions Code section 395, not the Code of Civil Procedure.

Since *Joshua S.* does not support the Agency's argument, it has not cited any authority to support its contention. Moreover, we think that a mother has a legally cognizable interest in visitation with her child, and section 395, subdivision (a)(1) provides that any order after a judgment may be appealed. Accordingly, mother has standing to appeal, and, as the Agency concedes, the written order does not conform to the juvenile court's oral order. Thus, we will remand the matter to the juvenile court to permit the order to be corrected.

Termination of Dependency

Mother also argues the juvenile court abused its discretion when it terminated dependency of both Nathan and Sabrina. The essence of mother's argument is that the juvenile court can terminate jurisdiction only if there is no need for continuing jurisdiction. Mother asserts there was a continuing need for court supervision over visitation because of problems with past visitations.

Mother concedes the juvenile court has discretion to determine whether to terminate dependency once a child has been appointed a legal guardian. In relevant part, section 366.3, subdivision (a) provides: "Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4." This provision gives the juvenile court two options once a legal guardianship is established. In both options, the juvenile court retains jurisdiction over the child. By giving the juvenile court an option, the Legislature has vested the juvenile court with discretion to determine which option would best suit the needs of the child.

We review a court's exercise of statutory discretion under the deferential abuse of discretion standard of review. (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.) A court does not abuse its discretion "unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

The evidence on this topic presented at the hearing consisted of a representation by the Agency's attorney that because the other three children were still under the dependency jurisdiction of the juvenile court, visitation with Nathan and Sabrina would be conducted at the same time as mother's visits with the other children. Mother then joined with father's offer of proof that Nathan had missed visits in three of the preceding five months, while Sabrina had missed one visit in the preceding four months. No makeup visits occurred. Father expressed concern the guardians would simply refuse to attend visits if the juvenile court terminated its jurisdiction.

Mother cites three cases she contends support her argument. *In re Twighla T.* (1992) 4 Cal.App.4th 799 held that the juvenile court did not abuse its discretion when it appointed a guardian and terminated dependency jurisdiction, even though the mother argued there might be future problems with visitation. The appellate court noted there was no evidence the guardian opposed visitation—indeed, the evidence indicated she favored visitation with the mother—and further noted that if a problem arose in the future, the juvenile court retained jurisdiction to address that issue. (*Id.* at pp. 805-806.)

In re Grace C. (2010) 190 Cal.App.4th 1470 held that the juvenile court did not abuse its discretion in dismissing dependency jurisdiction because substantial evidence supported the juvenile court's finding that the guardians supported continued visitation. (*Id.* at p. 1476.)

Finally, *In re K.D.* (2004) 124 Cal.App.4th 1013 held that since the juvenile court found that adoption would not be in the best interests of the child pursuant to section 366.26, subdivision (c)(1)(A), it was required to maintain dependency jurisdiction to

supervise visitation. Our reading of the opinion leads us to conclude that the appellate court came to this decision because the foster father was moving out of state and that while he supported visitation, he felt that telephone calls and video messages would be sufficient visitation for the time being. (*K.D.*, at p. 1019.)

None of these cases is directly on point. *In re K.D.* involves facts far different from those in this case. The guardians are not relocating out of state and have not expressed any opposition to mother's visitation. The records in *In re Grace C.* and *In re Twighla T.* suggest the guardians there supported visitation more strongly than the guardians here.

Nonetheless, we conclude the juvenile court did not abuse its discretion because its decision was not irrational or arbitrary. The Agency remained obligated to supervise and arrange visits for the three children who remained dependents of the juvenile court. The Agency also assured the juvenile court it would continue to invite Nathan and Sabrina to these visits. There was no evidence the guardians were derelict in their obligations to participate in visitation. Instead, it appeared that Nathan's participation in after-school activities was the primary reason he had missed visits in the past. Therefore, it was logical for the juvenile court to conclude that Nathan and Sabrina would continue to participate in visits with mother.

Even if there were some concern about participation in visitation by the guardians, the juvenile court retains jurisdiction over Nathan and Sabrina. If visitation becomes an issue, mother retains the right to file a section 388 petition alleging changed circumstances that would require juvenile court intervention.

For all of these reasons, we conclude the juvenile court did not abuse its discretion in terminating dependency jurisdiction over Nathan and Sabrina.

DISPOSITION

The matter is remanded to the juvenile court to permit it to correct the October 4, 2011, order in Sabrina's case that failed to specify the terms of visitation for mother. The orders appealed from are affirmed in all other respects.

CORNELL, Acting P.J.

WE CONCUR:

GOMES, J.

FRANSON, J.