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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

S.A.,

Respondent.

G045997

(Super. Ct. No. DP021439)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Jane  
Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

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

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for Respondent S.A.

No appearance for the Minor.

\* \* \*

J.B., mother of J.A., appeals from a judgment terminating this dependency proceeding. The judgment awarded custody of the child to S.A., his father, with mother allowed a four-hour visit once a month within 25 miles of father's residence overseen by a professional monitor paid for by her. Mother contends the juvenile court's visitation order should be reversed because it is so restrictive as to be illusory. Under the circumstances of this case, we conclude the juvenile court did not abuse its discretion in limiting mother's visitation with the child.

## FACTS

The child, born in Texas in January 2011, was the product of an on and off relationship between mother and father. Both parents acknowledged they had a discordant relationship that included not only verbal arguments, but some physical altercations with each one accusing the other of being the aggressor.

In February 2011, mother left Texas with the child and came to California. Over the next several months, the two moved among the homes of several different

maternal relatives. Each time the relative asked mother to leave because she failed to care for the child or pick up after herself, and treated others in a rude manner.

In late June, the child was taken to a hospital emergency room experiencing breathing difficulties. He was diagnosed as suffering from Bronchiolitis. The hospital discharged the child on June 29, directing mother to take him to a pediatrician for a follow-up examination within two days.

Family members informed hospital staff they believed mother lacked the ability to properly care for the child. On June 30, an Orange County Social Services Agency (SSA) social worker and a nurse visited the home where mother and the child then resided. Mother acknowledged she had failed to make the follow-up appointment. When the nurse telephoned a clinic, mother refused to take the phone and schedule one. She also admitted not being capable of caring for the child. Mother lacked documentation of the child's immunization shots and did not have a thermometer or know what to do if he had a fever, nor could she explain how she was supporting herself and the child. After interviewing mother and her family members, the social worker and nurse took the child into protective custody.

SSA filed a petition alleging grounds of failure to protect and lack of support. (Welf. & Inst. Code, § 300, subs. (b) & (g); all further statutory references are to this code.) A social worker contacted father and he expressed a desire to obtain custody of the child. Father told the social worker he had a job in Texas and an aunt willing to care for the child while he was at work. He traveled to California and initially resided with a maternal relative.

At a July 11 detention hearing, the juvenile court ordered the child released to father under certain conditions with mother granted monitored visitation. The court tentatively scheduled a combined jurisdictional and dispositional hearing for August 25.

SSA provided the parents with referrals for parenting, anger management, and counseling. In addition, father received a referral for drug testing. By early August, father had begun working on his service plan and commenced drug testing. The results of each test were negative. Social workers who visited father's residences throughout the dependency proceeding consistently reported father was cooperative, properly cared for the child, and had established a bond with him.

The jurisdictional/dispositional hearing was continued several times and did not begin until October 20. In late August, father informed SSA the maternal relative with whom he initially lived had asked him to leave and he moved to a cousin's residence in Montclair, California. Frustrated by the delays in the dependency proceeding, lacking of funds and readily available means of transportation, father failed to complete his service plan. He told a social worker he needed to find employment to pay for the child's needs. Nonetheless, the service provider that conducted father's parenting class sent SSA a report declaring father had met the program's goals. He had completed all but two of the program's sessions, demonstrated an interest in the child's development, and understood the materials given to him.

Mother continued to live a transient lifestyle, moving four times between July 11 and October 20. She attended Neurotics Anonymous, a noncertified program, but never produced documentation for an anger management program, and failed to begin parenting and counseling courses until two weeks before the jurisdictional/dispositional hearing began on October 20. After attending initial intake meetings, she missed three successive weekly sessions and the provider canceled her program.

As for visitation, initially father complained mother tended to ignore the child and try to spend time with him. The visits improved after the parties agreed father would leave the residence when mother arrived.

On August 17, mother missed a visit. The day before, she had moved to another residence and then asked her aunt, the visitation monitor, to bring the child to another location. The aunt declined because she lacked the funds to do so. In September and October, mother missed three other scheduled visits with the child, each time failing to inform anyone in advance of her nonappearance. When later contacted by SSA, mother claimed she missed the visits to handle errands. On one of these occasions, mother later called father and insisted he bring the child to her for a visit. During a visit in early October, the monitor reported mother “engage[d the child] sporadically and for short periods of time.” The monitor had to counsel mother not to rock the child in his car seat while he attempted to drink a bottle and that mother did not know how to prepare a second bottle for him.

At the completion of the jurisdictional/dispositional hearing, the court struck the petition’s lack of support allegations, but found true the allegations under section 300, subdivision (b) that mother lived a transient lifestyle, had inappropriately cared for the child, and was unable to care for him. It also found true a general allegation the parents engaged in domestic violence, but struck the more detailed allegations concerning the nature of those altercations plus an allegation father abused alcohol. The court further found “by clear and convincing evidence that . . . to vest custody with mother would be detrimental to the child and to vest custody with father is required to serve the child’s best interest.”

The juvenile court then terminated the dependency proceeding, awarding legal and physical custody of the child to father. Before ordering visitation, the court asked for mother’s current address. Mother’s counsel initially stated “my client just recently moved . . . and doesn’t know the current address.” After a recess, counsel declared “I can provide the court with a current mailing address,” but asked “that it remain confidential.” The court counseled the parents about the need to stay in contact

with each other “to have . . . reasonable communication about your son.” Mother’s counsel suggested father could use “the maternal family” to contact mother, but after another conference with mother, said: “[M]y client has no cell phone. The phone number that she has is for her current boyfriend. She’s not comfortable with the father having the address where she’s at with the current boyfriend. . . . [¶] . . . [M]other is not in [regular] contact . . . with [her family members] at this point in time, so that’s not good contact information. . . . One of the allegations is mother live[s] a transient lifestyle. The situation is what it is. Mother will make regular contact with the dad and provide him with the most updated information she has, but at this time she has no permanent contact information.”

The court ordered “mother’s visits shall be one time per month up to four hours per visit,” at a location “within 25 miles of father’s residence,” with visits “monitored by a professional monitor from a professional child visitation monitoring service” paid for by mother. Mother asked that the visitation order be modified to provide monitored visitation “by a third party agreed upon by father,” but the court denied the request.

## DISCUSSION

Mother does not challenge the juvenile court’s decision to award custody of the child to father, nor its decision to terminate the dependency proceeding. Her sole claim is that “the visitation order” “severely restricted [her] visitation,” effectively rendering it “illusory.” Asserting father will “resist . . . visitation,” she also argues the visitation order is invalid because it does not mandate visitation ““must occur”” and to enforce it, she will need to show a change in circumstances. Finally, as to the requirement of a professional monitor paid for by her, mother argues the court erred in rejecting her request to allow for a monitor agreed to by the parties.

All of these claims lack merit. Initially, we note that, except for asserting she was entitled to have visitation with the child and seeking a modification of the requirement that she hire a professional monitor to oversee visits, mother did not object to the terms of the juvenile court’s visitation order. “[T]o encourage parties to bring errors to the attention of the trial court, so that they may be corrected,” “a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citations.]” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) This rule applies in dependency proceedings and, although an appellate court has the discretion to consider an otherwise forfeited claim, its “discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue. [Citations.]” (*Id.* at p. 1293.) Mother has failed to show this case falls within the foregoing exception to the general rule.

But even on the merits, her arguments fail. Under section 361.2, “[w]hen a court orders removal of a child” from a parent’s custody, it “shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child” (§ 361.2, subd. (a)), and “[i]f the court places the child with that parent it may . . . [¶] . . . [¶] . . . [o]rder that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent” (§ 361.2, subd. (b)(1)). If the court thereafter “terminates its jurisdiction,” it “may issue . . . an order determining the custody of, or visitation with, the child.” (§ 362.4.) “Such [exit] orders . . . remain in effect until they are terminated or modified by the family court. [Citation.]’ [Citation.]” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799; see also § 302, subd. (d).)

In issuing “exit orders, the juvenile court must look at the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) As mother acknowledges,

“[w]e review an order setting visitation for abuse of discretion. [Citation.]” (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The juvenile court did not unreasonably limit mother’s visitation. During the dependency proceeding, she not only failed to make any serious effort to comply with her service plan as late as October, comments by visitation monitors reflected mother had failed to establish a bond with her child. SSA’s reports indicated that during visits, mother continued to display both a lack of concern for the child and a lack of knowledge on how to properly care for him. Ultimately, she refused to even provide her current contact information, suggesting she was more concerned about protecting her then boyfriend’s privacy than maintaining a relationship with the child.

Mother complains father’s decision to take the child to Texas will interfere with her ability to visit the child. But from the beginning of the dependency proceeding, father made it clear that if the court awarded custody of the child to him, he would return to Texas where he had a job and family who could assist in raising the child. Mother has relatives in Texas and the parents met there while she was living with them. The child was conceived and born in Texas. This case arose after mother unilaterally and without father’s knowledge brought the child to California. The need for her to either move to or travel to Texas for visits is no more onerous than it was for father who traveled to California and remained here for several months to demonstrate his willingness and ability to properly care for the child and obtain custody of him.

Contrary to mother’s opening brief, this case is not analogous to *In re T.H.* (2010) 190 Cal.App.4th 1119. There, over the father’s objection, the juvenile court

ordered his visitation would “be determined by the parents.” (*Id.* at p. 1122.) The Court of Appeal reversed, declaring the visitation order was “more than simply a delegation of the authority to set the ‘time, place and manner’ of the visitation—it effectively delegates to mother the power to determine whether visitation will occur at all. [Citation.]” (*Id.* at p. 1123.) Here, the record contradicts mother’s assertion the visitation order “d[oes] not specify that some visitation ‘must occur.’” At the hearing, the judge stated “mother’s visits *shall* be one time per month up to four hours per visit.” (Italics added.) The court’s written visitation order states “[m]other to have one time per month monitored visitation for up to four (4) hours.”

Next, mother argues father will refuse to allow her to visit the child and she will have no means of enforcing the visitation order. She is wrong for three reasons. First, this argument presents a factual issue that was impliedly rejected by the juvenile court. “We do not reassess the credibility of witnesses [citation], and we review the record in the light most favorable to the findings of the juvenile court [citation], drawing all inferences from the evidence which support the court’s determination. [Citation.]” (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

Second, mother’s citations to the record do not support her claim father twice refused to allow visitation. As for the reference to visitation on October 14, 2011, the opening brief cites an SSA report prepared October 11 referring to a social worker’s efforts on October 4 to schedule an October 14 visit. While father initially said no, after a further discussion with the assigned social worker, he agreed to allow the visit. Concerning the October 19 missed visit, father complained he had not known about the visit in advance and had already made arrangements for a family member to care for the child. Furthermore, a visit would not have occurred in any event. The social worker arranging the visit could not contact mother because she had again changed her residence without providing SSA any new contact information.

Third, mother's claim she would need to show a change in circumstances to enforce her visitation rights misstates the law. "[I]t [is not] necessary that the moving party show a change of conditions when he [or she] seeks court aid in remedying a frustration of his [or her] visitation rights. [Citation.]" (*In re Marriage of Ciganovich* (1976) 61 Cal.App.3d 289, 294.) To the extent there is evidence in the record supporting mother's claim father will resist her attempts to visit the child, the requirement that visits be monitored by a professional monitor was likely intended to allay his concerns about visitation and thereby encourage him to allow her to see the child.

Finally, we conclude the juvenile court did not err by requiring mother to retain a professional monitor to oversee visits. At the jurisdictional/dispositional hearing, mother requested the visitation order be modified to allow visits "monitored by a third party agreed upon by father." This proposed modification would have effectively rendered the visitation order analogous to the one condemned in *In re T.H., supra*, 190 Cal.App.4th 1119, particularly given mother's concerns about father's purported resistance to visitation. Furthermore, mother's conduct throughout the dependency proceeding both was relevant to the court's decision to require a professional monitor and supports the imposition of this condition. Mother acknowledged at the outset of this case that she could not properly care for the child. Her lack of compliance with SSA's proposed service plan and the observations of her interaction with the child during the visits also support the juvenile court's conclusion that visits should be overseen by a professional monitor. Finally, in light of her apparent lackadaisical attitude towards learning how to properly care for the child, it was appropriate to require her to shoulder the cost of monitor. Contrary to mother's claim the requirement of a professional monitor was not imposed to "punish" her, but rather reflects the court's concern for protecting the child.

We conclude the juvenile court's visitation order constituted a proper exercise of its discretion.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.