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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

B.R.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G048733

(Super. Ct. No. DP023160)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Deborah C. Servino, Judge. Petition denied.

Juvenile Defenders and Linh Redhead for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Real Party in Interest Orange County Social Services
Agency.

Law Office of Rebecca N. Captain and Lawrence A. Aufill for Real Party
in Interest A.H.

* * *

INTRODUCTION

By means of a petition for a writ of mandate, B.R. (mother) challenges the juvenile court's order restricting her visitation with her infant daughter, A.H. (the minor). Mother was initially denied reunification services because she had failed to reunite with her six other children, and her parental rights to those children had been terminated. Under such circumstances, the juvenile court had discretion to authorize visitation between mother and the minor. The court was acting within its authority when it limited the hours of visitation and required that visitation be monitored and occur at a neutral location. The maternal grandmother, who was supposed to monitor the visits, left mother alone with the minor. The maternal grandmother's lapse in judgment could have necessitated a change in placement for the minor, which could, in turn, have negatively affected the minor's stability and permanency. We find no error in the juvenile court's order, and we therefore deny the petition for a writ of mandate.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The minor was born while mother was in custody. Mother's parental rights to her six other children (the minor's half siblings) had previously been terminated. One month before the minor's birth, mother had been arrested; at that time, mother tested positive for amphetamines, and admitted to the nursing staff that she had used methamphetamine, methadone, and heroin while pregnant with the minor. After the minor's birth, however, mother told the social worker she had never used drugs while

pregnant with the minor. The minor was in the care and custody of B.H. (the presumed father). The juvenile court authorized mother to have monitored visits with the minor—once a week while in custody, and for four hours per week when out of custody—with the Orange County Social Services Agency (SSA) authorized to liberalize or restrict visitation.

SSA filed a juvenile dependency petition alleging the minor was within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (mother’s failure to protect) and (j) (mother’s abuse of sibling). (All further statutory references are to the Welfare and Institutions Code.) The petition alleged that mother had a history of unresolved substance abuse; she had completed a six-month drug treatment program in 2010 and 2011, but had resumed using illegal drugs; mother chose not to take psychotropic medication to address her diagnosed anxiety issues; and mother’s criminal history included arrests and/or convictions for drug possession, fraud, burglary, and various theft-related offenses. The petition also set forth mother’s history of having her parental rights to the minor’s half siblings terminated. Mother had been offered reunification services as to the minor’s half siblings, but she had failed to reunite with any of them.

The juvenile court found the allegations in the petition, as amended, were true by a preponderance of the evidence. At a later dispositional hearing, the court found that reunification services need not be provided to mother, pursuant to section 361.5, subdivision (b)(10), (11), and (13).¹ The court continued to authorize SSA to provide

¹ “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the

mother with one hour of monitored visitation per week while incarcerated, and four hours of monitored visitation per week after her release.

After the presumed father missed several court-ordered drug tests, a new petition was filed by SSA, alleging the minor came within the juvenile court's jurisdiction based on section 300, subdivision (b) (the presumed father's failure to protect). The minor was detained and placed in the care of the paternal grandmother. The presumed father requested a paternity test; ultimately, he was determined to be genetically excluded as the minor's parent. The minor was placed with the maternal grandmother.

A June 20, 2013 status review report, prepared by SSA, included a proposed visitation plan authorizing twice-weekly monitored visitation for mother. In fact, the social worker had authorized mother to have visitation with the minor all day, three days per week. The social worker reported that the visits took place "under the watchful eyes of the [maternal grandmother] as she monitors all visitations between mother and baby." The social worker observed that mother was "affectionate, appropriate, attentive and nurturing toward [the minor] during monitored visits," and that the minor responded to mother "with delight."

problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent. [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible." (§ 361.5, subd. (b)(10), (11) & (13).)

In an addendum report dated July 16, 2013, SSA reported that mother was visiting the minor “as per schedule that is 3 days each week (Wednesday, Friday and Saturday) from 8 am to 8 pm.” The report also noted: “[Mother] has unlimited monitored visitation time in her parents['] home and does most of the baby care tasks . . . while monitored by the maternal grandmother who stated that the mother does well with the chil[d] and is very helpful.”

At the six-month review hearing, counsel for the minor expressed concern regarding mother’s visitation. Specifically, the addendum report described two contradictory levels of visitation, both of which were in excess of the previously authorized visitation. The minor’s counsel also advised the court that when she made a scheduled home visit, mother was present in the home, but the maternal grandmother was not. The minor’s counsel therefore made the following request: “So I was requesting today that the visits be ordered to be in a neutral location, not to be in the maternal grandmother’s home; [¶] that the visits would be reduced to a more appropriate amount of time as would be typical in a case—which would be actually more like six, but I believe off the record we had talked about eight hours of visits for mother per week, monitored; [¶] and I was also requesting that mother’s visits not be further liberalized without five days['] notice to my office.”

Mother’s counsel objected to the requested change in visitation: “I believe the court has to find that it has to be detrimental to the child.” Mother’s counsel also stated that the maternal grandmother had believed other adult siblings could monitor the visits between mother and the minor in the maternal grandmother’s absence, but had now cleared up her misunderstanding with the social worker. Deputy county counsel relayed that the social worker supervisor concurred that the change in visitation proposed by the minor’s counsel was appropriate “since grandma may not have appropriate boundaries.”

The court approved an amended version of the visitation plan attached to the June 20, 2013 status review report. “I am going to approve the visitation plan per that

report, but amend as follows: That the visits are to occur in a neutral location, not at the child's home, and they are to be supervised pursuant to the plan. [¶] The court is also going to order the agency to provide five days['] notification to minor's counsel should [the] social services agency contemplate liberalizing mother's visitation hours, frequency, duration, or need for monitoring. [¶] The court is concerned about information that was brought to light. I am going to be giving the caregiver the benefit of the doubt. However, I need to make sure that the boundaries are clear to all parties so that we don't jeopardize any type of placement. [¶] The court does not believe that there needs to be a detriment finding in order to have that visitation be supervised and reduced back from what mom has become accustomed to." The court then set the matter for a hearing to determine a more permanent plan for the minor.

Mother filed a timely notice of intent to file a writ petition.

DISCUSSION

We review the juvenile court's visitation order for abuse of discretion. (*In re J.N.* (2006) 138 Cal.App.4th 450, 457-459; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) ""["]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.]' [Citation.] The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court. [Citation.]" (*In re J.N., supra*, at p. 459.)

When a parent is denied reunification services, the juvenile court generally retains the discretion to permit visitation between the child and the parent: "If the court, pursuant to paragraph . . . (10), (11), . . . [or] (13) . . . of subdivision (b) . . . , does not order reunification services, it shall, at the dispositional hearing, . . . determine if a hearing under Section 366.26 shall be set in order to determine whether adoption,

guardianship, or long-term foster care . . . is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. . . . The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.” (§ 361.5, subd. (f).) “We construe the word ‘may’ in the last sentence of subdivision (f), therefore, as permissive, i.e., as giving the juvenile court discretion to permit or deny visitation when reunification services are not ordered, unless of course it finds that visitation would be detrimental to the child, in which case it must deny visitation.” (*In re J.N., supra*, 138 Cal.App.4th at p. 458.)

“[S]ection 361.5, subdivision (f) does not dictate a particular standard the juvenile court must apply when exercising its discretion to permit or deny visitation between a child and a parent who has not been receiving reunification services. The Legislature instead has left this determination to the court’s discretion for the narrow group of parents described in section 361.5, subdivision (f), who have been denied reunification services at the outset. [Citation.]” (*In re J.N., supra*, 138 Cal.App.4th at p. 459.) In this case, the juvenile court ordered that mother need not be provided reunification services, pursuant to section 361.5, subdivision (b)(10), (11), and (13).

The court was not required to make a finding that visitation would be detrimental to the minor before limiting and placing conditions on mother’s visitation. A finding of detriment is required when visitation is completely denied, not when it is merely restricted or limited. (See *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407.) Mother was not denied all visitation, and the restrictions on visitation imposed by the juvenile court will not prevent mother from being able to establish (in connection with the section 366.26 hearing) that she has maintained regular and positive contact with the minor.

“[V]isitation is not integral to the overall plan when the parent is not participating in the reunification efforts.” (*In re J.N., supra*, 138 Cal.App.4th at

pp. 458-459.) The cases, which mother cites for the proposition that regular visitation is a necessary prerequisite to reunification, are inapposite.

The juvenile court explained it was amending mother's visitation plan because of its concerns that the minor's placement with the maternal grandmother could be jeopardized due to the failure to comply fully with the terms of visitation. The limits imposed on the visits further the minor's chances of being successfully placed with the maternal grandmother, thus ensuring the minor's stability and permanency, which was properly the focus of the juvenile court's order. (*In re K.C.* (2011) 52 Cal.4th 231, 236 [after reunification services are bypassed or terminated, ““the focus shifts to the needs of the child for permanency and stability””].) We conclude the court did not abuse its discretion in amending mother's visitation with the minor.

DISPOSITION

The petition for a writ of mandate, pursuant to California Rules of Court, rule 8.450, is denied.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.