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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JENNA R.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G049368

(Super. Ct. No. DP021952)

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, Dennis J. Keough, Judge. Petition denied.

Peggy Oppedahl 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.

Marsha Levine, under appointment by the Court of Appeal, for Real Party in Interest the Minor.

* * *

This is a dependency writ, filed subsequent to an appeal in the same matter (*In re Virginia R.*, case No. G048767), and filed concurrently herewith. Jenna R. (the mother) contends the trial court erred by failing to return custody of her daughter to her at the continued 18-month review, arguing there was no detriment in returning custody. The Orange County Social Services Agency (SSA) does not contest the petition, but the minor (Virginia) argues the court's order should be upheld.

Prior to the 18-month review in November 2013, SSA continued to recommend returning custody to the mother. Virginia persistently refused to return to the mother. She wanted to live with the maternal grandmother, Beverly S., and an Interstate Compact on Placement of Children was initiated in the event the court made such an order. A home study was completed and approved and Arizona agreed to provide supervision.

At the hearing, both Virginia and the mother were present. The court was under the impression the parties had come to some agreement. The mother's counsel stated: "Your Honor, the mother made gallant attempts at negotiations this afternoon. She is in agreement with the recommendation to return the minor to her care. However, because the minor has been adamant that she did not want that and she wanted a hearing, the mother has in the end chosen to forego a hearing on that issue and put the minor through that yet again. . . . Since the minor has not moved an inch with respect to that,

she is going to submit on the statements of the minor in the report for today. She is not stipulating that there is any detriment, but she is submitting on the fact that her child does not want to return to her care and termination of that.”

Virginia’s counsel stated: “[M]y client is grateful that her mother is not challenging this particular hearing and just submitting on the reports with the understanding that she will be placed with her grandmother and that that is mother’s wishes, that [this] placement with the maternal grandmother will take place.” The mother’s attorney agreed: “[Virginia’s counsel] is correct, the mother is under full understanding that the minor will be placed with the maternal grandmother. . . . She is just hopeful that her visitation will remain the same, that Virginia will enjoy some overnights before she leaves for Arizona, and we will address visitation [at the next hearing].”

SSA’s reports were then offered into evidence. When asked if anyone wished to cross-examine the social worker or call any witnesses, Virginia’s counsel stated: “Your Honor, I am not putting my client on this stand. I realize that the reports today indicate that the recommendation was to return Virginia to her mother’s care. I am not calling the social worker to the witness stand. I’m not calling the mother to the witness stand. I’m not calling my client to the witness stand today, based on my understanding that mother is not challenging Virginia’s desires not be placed in her care. So I want to make that clear. I don’t want to give up — because the recommendation is to place with [the mother] and I know mother has an appeal pending on the last review, the last time we were here, but I don’t want to be giving up my rights or imply that I would not otherwise be putting on the case, but for the fact of the negotiations and the time we have spent this afternoon trying to come to some sort of resolution.” The mother’s counsel did not offer any response.

The court then stated: “There has been, in fact, movement in terms of mother’s willingness to basically submit on Virginia’s . . . apparently strongly stated desires with reference to returning to her mother. [¶] . . . [¶] [The mother] notes that she has taken a magnanimous step in this particular and it is, I think, in terms of the exchange that occurred, that it seems to be based on a desire to build trust between mother and daughter.” The court said it would “trust that this gesture will be [] a basis on which the relationship between the parties can move forward.”

After asking for further comments, and there being none, the court then ruled “that the continued supervision is necessary, and that based on the totality of the evidence from the SSA reports, the noted positions of the parties, along with the CASA reports, that the court would find that there is a substantial risk of detriment to the emotional well-being of Virginia, that the return to mother would create a substantial risk of detriment to the emotional well-being of Virginia, and the court would find that, by clear and convincing evidence, that reasonable services have been provided or offered to specifically address this issue. [¶] The court would find the extent of progress which has been made towards alleviating or mitigating the cause necessitating placement has been moderate, and, again, the court would note the time for reunification has expired and the court would order that reunification services as to mother are ordered terminated. The court would be setting a permanency planning hearing. The court understands that all parties are in accord with the presumptive placement will be with the maternal grandparent. . . .” The court set a permanency planning hearing for March 25, 2014.

The mother now seeks relief by extraordinary writ, arguing the court lacked sufficient evidence from which it could find that returning Virginia to the mother’s custody would be detrimental to her emotional well-being. Virginia argues that the mother agreed to the order placing her with Beverly at the continued 18-month review, and she cannot now claim it was supported by insufficient evidence.

We agree. Whether considered as a matter of waiver or invited error, the result is the same. “A party forfeits his or her right to attack error by implicitly agreeing or acquiescing at trial to the procedure objected to on appeal. [Citation.]” (*People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1408.) ““Under the doctrine of invited error, where a party, by his conduct, induces the commission of an error, he is estopped from asserting it as grounds for reversal. [Citations.] Similarly an appellant may waive his right to attack error by expressly or *impliedly agreeing at trial to the ruling* or procedure objected to on appeal.” [Citations.]” (*Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 552.)

The mother argues she did not agree to the court’s finding with regard to detriment, and therefore she can contest it. But this is entirely disingenuous. The mother agreed to the order as a whole, specifically the part of the agreement where Virginia would not be returned to her care, but instead placed with Beverly. She cannot pick and choose which parts of the order she wishes to contest, particularly because overturning that part would result in a reversal of the outcome to which she explicitly consented.

The mother also argues she was forced into a “Catch-22,” because contesting the hearing would have demonstrated that she did not possess sufficient compassion and decision-making skills to adequately parent her daughter. This is not reflected by the record — at no point did the mother or her counsel indicate that they were choosing not to contest the hearing based on such duress or coercive grounds. Moreover, the mother does not cite any case in which a parent’s decision to contest a hearing in accordance with their due process rights had been used as evidence they were unfit to parent. If anyone actually made such an argument in similar circumstances, it would, undoubtedly, be rejected out of hand as an infringement of the parent’s right to due process.

The petition, accordingly, is denied.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.