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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re HANNAH S., a Person Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JENNIFER R.,

Defendant and Appellant.

G051738

(Super. Ct. No. DP024990)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Jennifer R. (mother) appeals from the juvenile court order terminating her parental rights to her daughter, Hannah S. (born in July 2008).¹ Mother contends the court abused its discretion when it denied her request to continue the Welfare and Institutions Code section 366.26 hearing (all further statutory citations are to the Welfare and Institutions Code) after she failed to appear at the hearing. We discern no abuse of discretion and therefore affirm the order terminating parental rights.

I

FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 2014, the Orange County Social Services Agency (SSA) received a phone call from an unidentified caller stating mother was mentally ill, using drugs, and homeless. The caller asserted mother had moved out of three apartments because of mold and was treating Hannah with an unknown medication for mold exposure. The caller also claimed mother had exposed Hannah to domestic violence between mother and a boyfriend, including a May 13, 2014, altercation involving punching and the breaking of a window.

Senior Social Worker Loretta Hernandez-Lopez visited the home of Hannah's maternal great aunt, Linda F., where mother and Hannah had been staying. Linda stated she feared for Hannah's safety based on mother's erratic behavior. Mother told Linda she and Hannah both wanted to die. Linda also asserted mother was abusing the drug Adderal, which she took for attention deficit hyperactivity disorder. The social worker stated mother exhibited disorganized thinking and the absence of reality-based perceptions concerning her current circumstances. Hannah's maternal grandmother, Anne C., and a family friend, Karen G., also called the social worker to express concerns about mother.

¹ Father's whereabouts are unknown. He is not a party to the appeal.

Mother had a history of contacts with law enforcement for drug and alcohol-related offenses. In 2007, SSA investigated allegations of abuse and neglect concerning mother's older children, and mother received voluntary family services. Mother ultimately lost custody of these children through family court.

SSA obtained a protective custody warrant and detained Hannah, placing her in the maternal grandparents' home. At the time of detention, Hannah was extremely dirty and complained mother hit her in the face, called her names, drove her around in a car for hours, and neglected to feed her. Hannah reported seeing domestic violence between mother and the boyfriend.

SSA filed a petition alleging Hannah had suffered, or was at substantial risk of suffering, "serious physical harm or illness . . . as a result of the failure or inability of . . . her parent . . . to supervise or protect [her] adequately" and "by the inability of the parent . . . to provide regular care for [her] due to the parent's . . . mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).) At the detention hearing, the court ordered SSA to prepare a case plan and initiate reunification efforts, including referrals for housing, counseling services, drug testing, and a mental health evaluation. The court acknowledged the prominence of mother's mental health issues, and advised SSA to get the "diagnosis correct, making sure that you have the right medication for that, and I understand what that diagnosis is and what the symptoms are." The court set a progress review in June 2014 to initiate the mental health evaluation.

At the June 3 progress review, the court admonished mother to comply with SSA's demands to arrive on time for scheduled visits, therapy appointments, and drug testing. Mother expressed reluctance about drug testing, and questioned why she could not use a doctor assigned in another case. Mother complained of health and transportation difficulties.

Mother did not appear for the pretrial hearing on June 26, 2014. She later claimed she was unaware of the court date. On the date set for the jurisdiction hearing

mother arrived approximately six hours late. The court granted counsel's request to be relieved, and appointed new counsel for mother. Mother said she had asked counsel to seek a continuance because she was at her doctor's office and asserted counsel had "quit." When the court admonished mother about missing drug tests, mother responded, "I'm not going to test."

At the jurisdiction hearing, reset for August 4, mother continually interrupted the proceedings. The court appointed a guardian ad litem for mother over her objections and continued the hearing to September 3. On that date, however, mother failed to attend the scheduled hearing. Her guardian, Larry Aufill, reported he spoke with mother on the phone before the hearing. She told him she might have mistakenly recorded the incorrect date, she was homeless, and she could not make it to the hearing. The court granted her guardian's request to trail the hearing to the following day.

The next day, the court denied mother's request for a continuance, and ordered her to return for the jurisdictional hearing at 1:30 p.m. Mother claimed she needed to return "home" for documents, but by 2:23 p.m. she had not appeared. The court denied counsel's request for a continuance, found the allegations of the petition to be true, and set a disposition hearing for October 15, 2014. The court also ordered a mental health evaluation to determine whether mother had a mental disability rendering her incapable of benefiting from family reunification services within twelve months.

Mother refused to submit to an evaluation by a court-appointed psychologist and failed to appear at the October 15, 2014 dispositional hearing. The court conducted the hearing, declared Hannah a dependent of the court, found reunification services need not be provided (§ 361.5, subd. (b)(2) [no need to offer reunification services where a parent's mental disability renders her incapable of utilizing those services]), and scheduled a section 366.26 hearing for February 10, 2015.

In its section 366.26 report, SSA opined Hannah was likely to be adopted and recommended termination of parental rights. Six-year-old Hannah was doing well in

the maternal grandparents' care. She was healthy, happy, developmentally on target, and succeeding in school. She and her grandparents shared a loving and comfortable relationship. She had lived with her grandparents on and off since she was a baby, and had been placed with them for about nine months. The grandparents were meeting her needs and providing her with a stable, secure, and nurturing home. They were committed to adopting her.

The court had authorized mother to visit Hannah six hours per week, but mother missed over half the allotted time, failed to call to confirm visits, or arrived after the grace period.

On February 10, 2015, mother did not appear for a hearing on SSA's section 388 petition requesting a reduction in mother's visits. The court did not reduce visits but continued the section 366.26 hearing to March 11, 2015.

Mother failed to appear at the section 366.26 hearing in March. Mother's counsel moved for a continuance based on the need to have mother testify as to the parent-child relationship. Counsel conceded mother had received notice of the hearing, and stated she had not heard from mother since February 10, 2015. On that date, counsel met with mother briefly in the courthouse after mother arrived late for the hearing. The court denied counsel's request for a continuance, and terminated parental rights.

II

DISCUSSION

Mother contends the trial court erred in denying her continuance request because she demonstrated good cause to postpone the section 366.26 hearing. She asserts a symptom of her mental disability was the failure to arrive at scheduled events on time. She argues the court should have excused her nonappearance, or waited as it did at the July 9, 2014, hearing, when she arrived six hours late. Mother asserts counsel was

prepared to call her to testify about the nature of the mother-daughter bond and her testimony would have shown she had an indispensable parental role in Hannah's life. We review denial of a continuance for abuse of discretion. (*In re Emily D.* (2015) 234 Cal.App.4th 438, 448; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585 [appellant must demonstrate "juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice"].)

Section 352 provides in relevant part, "(a) Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.

"[T]he interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights." (*In re B. G.* (1974) 11 Cal.3d 679, 688-689.) Section 352, however, places great weight on the child's interests, including "a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a).)

Here, indulging all reasonable inferences to support the juvenile court's order (see *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395), mother's arguments fail to convince us the court abused its discretion in denying her request for a continuance. Mother had a long history of mental illness, addiction, and homelessness. In their tumultuous history together, mother exposed Hannah to erratic behavior and domestic

violence. Hannah stated mother hit her, called her names, and neglected to feed her. Mother repeatedly refused referrals for drug testing and mental health evaluations. The court continually admonished mother to arrive on time for scheduled visits and appointments, but she did not appear for court hearings and missed approximately half of the scheduled visits.

Nothing in the record suggests mother would have appeared had the court rescheduled the hearing. Indeed, counsel had not spoken to her client since mother skipped the prior hearing, about two weeks earlier, and counsel had only minimal contact with mother. Counsel proffered only a generic purpose for mother's testimony and nothing in the record suggests mother's testimony would have established a compelling reason for determining termination of parental rights would have been detrimental to Hannah. (See § 366.26, subd. (c)(1)(B)(i) [parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship].)

On the other hand, the record established Hannah was doing well in the maternal grandparents' care, where she had frequently resided since birth. The grandparents were meeting her needs and providing her with a stable, secure, and nurturing home. She was healthy, happy, developmentally on target, and succeeding in school. Hannah and her grandparents shared a loving and comfortable relationship. The grandparents were committed to adopting her.

The court did not abuse its discretion in denying mother's request to continue the section 366.26 hearing.

III

DISPOSITION

The order terminating parental rights is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.