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

In re B.C., a Person Coming Under the  
Juvenile Court Law.

H038111  
(Santa Cruz County  
Super. Ct. No. DP002556)

SANTA CRUZ COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

K.T.,

Defendant and Appellant.

Minor B.C. was declared a dependent child of the court. (See Welf. & Inst. Code, §§ 300, 362.)<sup>1</sup> K.T., minor's mother who was deported to Mexico and then bypassed for reunification services, argues that the juvenile court abused its discretion by leaving all decisions regarding Internet contact between mother and minor entirely to the discretion of the Santa Cruz County Human Services Department (Department).

We find no abuse of discretion and affirm.

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## I

### *Procedural Background*

A dependency petition was filed on behalf of minor B.C. on November 22, 2011. The petition stated that minor came within the jurisdiction of the juvenile court under subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling) of section 300.

On November 23, 2011, following the detention hearing, the court ordered minor detained and temporarily placed under the Department's care and supervision. It found that "visitation between the mother and minor is detrimental while the mother is incarcerated at the main jail and unable to have contact visits."

The Jurisdiction/Disposition Report, dated January 3, 2012, indicated that minor, who was four years old, had been taken into protective custody on November 18, 2011 and placed in a licensed foster home. Minor had not seen mother since November 18, 2011. The report stated that mother's criminal history reflects substance abuse of controlled narcotics from 2004 onward. Mother had repeatedly failed to maintain sobriety from illicit drugs despite court efforts and her participation in at least two recovery programs. The dependency cases for minor's two half-siblings were terminated in 2009 and they were in the "primary custody" of their father, who was not minor's father. The Department recommended that the court declare minor a dependent of the court and not offer mother reunification services pursuant to section 361.5, subdivision (b)(13).

The January 12, 2012 minute order indicates that mother had been deported to Mexico and the court granted the request of mother's counsel to continue the jurisdictional/dispositional hearing. The court found I.C. to be the presumed father of B.C. The matter was continued to January 26, 2012.

An addendum to the Jurisdiction/Disposition Report confirmed that mother had been deported to Mexico. The social worker reported that mother had entered treatment

at a particular facility three times but she had never successfully completed the program. The Department's recommendation that the court bypass reunification services to mother remained the same.

Following a hearing on January 26, 2012, the court sustained the petition. The court found, by a preponderance of the evidence, that B.C. was a person described by subdivisions (b), (d), and (j) of section 300.

At the dispositional hearing on February 9, 2012, mother's counsel informed the court that mother had called her using an email camera, which counsel assumed was the equivalent of Skype. Counsel said that mother had also attempted to contact minor and mother was "asking the Department to facilitate a communication between her and her child . . . ." Counsel reported that she had advised mother to write letters and cards and to send them to the social worker.

The court declared minor a dependent child of the court. It ordered reunification services for father. It denied reunification services to mother pursuant to section 361.5, subdivision (b)(13).

The court ordered visitation for both father and mother. As to visitation between mother and minor, the court ordered supervised visitation a minimum of once a month *if* mother returns to the United States and presents herself to the Department and the court gave the social worker discretion to adjust the frequency, duration, and supervision of those visits. At the end of the hearing, after the court had made its visitation orders, the mother's counsel stated, "I still ask the social worker to hopefully facilitate [I]nternet communication with my client and her child if possible." The court responded, "I'll leave that to them."

The court's formal dispositional findings and orders were filed on February 10, 2012. Mother filed a notice of appeal. Mother does not challenge the court's determination that mother would not receive family reunification services.

## II

### *Discussion*

Mother now asserts that "the court impermissibly abdicated its duty when it left [her] only means of communication with the minor, i.e. Internet, letters and cards, entirely to the discretion of the Department, effectively delegating to the Department the power to decide whether [her] visitation with the minor would occur." On this basis, mother contends that the court's visitation order was an abuse of discretion. She now claims that, by leaving the decision whether she could visit B.C. through email camera or Skype entirely to the Department, the court delegated too much discretion to the Department. Mother maintains that "this case requires remand so that the trial court can properly exercise its discretion in formulating an order that establishes, at the very least, the Department's duty to facilitate email video contact between [her] and the minor a minimum of one time each month so long as [she] remains living outside of California."

The first problem is that the juvenile court was never asked to make any orders regarding contact through the Internet or regular mail. According to mother, her counsel requested the court to order the Department to facilitate communications between her and minor through the Internet while she was not in the U.S. at the dispositional hearing. We have read the record closely and we see no request for such a judicial order. Mother further complains that "the court offered no direction to the Department on how to handle the letters and cards [she] intended to send to her children through the supervising social worker." The court was not asked to give any such direction. Since the trial court was not asked to exercise its discretion as mother claims, it could not have abused its discretion. (See *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339 ["if the law does not require the juvenile court to act in a certain way, the parent bears the responsibility to care for his or her own interests by asking the court to exercise its discretion in a manner favorable to the parent"].)

The second problem, which is related, is that mother has not demonstrated that she had any right to an order facilitating her contact with minor through the Internet or ordinary mail. Section 362.1, subdivision (a), provides in pertinent part: "In order to maintain ties between the parent or guardian . . . , and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian . . . , any order placing a child in foster care, *and ordering reunification services*, shall provide as follows: [¶] (1)(A) Subject to subparagraph (B) [child safety], for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child." (Italics added.) As is obvious, this provision does not apply to mother since the juvenile court found that mother was subject to a statutory bypass provision and the court did not order any family reunification services for mother.

Where the court does not order reunification services pursuant to section 361, subdivision (b)(13),<sup>2</sup> for one parent but orders reunification services for the other parent, the court *may* continue to permit the parent not receiving services "to visit the child unless it finds that visitation would be detrimental to the child." (§ 361.5, subd. (f), italics added; see § 15 ["'may' is permissive"].) Here, the court chose to make a visitation order in favor of mother that was contingent upon her return to California.

The cases cited by mother do not aid her argument. *In re Rebecca S.* (2010) 181 Cal.App.4th 1310 considered a completely open-ended visitation order, which was issued following a section 366.26 hearing. The juvenile court delegated the responsibility for

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<sup>2</sup> "Reunification services need not be provided to a parent or guardian . . . when the court finds, by clear and convincing evidence," 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)(13).)

arranging the frequency, location, duration of visits between father and his children to their maternal aunt, their legal guardian who would monitor the visits. (*Id.* at pp. 1312-1313.) The juvenile court also terminated its jurisdiction. (*Id.* at p. 1312.) The appellate court found the order was an abuse of discretion because the order, in effect, allowed "the guardian to decide whether visitation actually will occur." (*Id.* at p. 1314.)

Section 366.26 governs the selection and implementation of a permanent plan for the dependent child. In cases where the court does not terminate the rights of the parents and order adoption placement at a section 366.26 hearing, the court must "make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child." (§ 366.26, subd. (c)(4)(C).)

The present dependency case has not reached the permanency planning stage; section 366.26 is not yet applicable. In any case, the juvenile court in this case ordered visitation for mother that entitled her to a minimum number of monthly visits if she returned to California; the court's supervision of the dependency case continues.

In *In re Christopher H.* (1996) 50 Cal.App.4th 1001, the juvenile court made a dispositional order providing for the father to have "reasonable visitation" with his son, who had been adjudged a dependent of the court, while father was incarcerated.<sup>3</sup> (*Id.* at pp. 1004-1005.) The father contended that this order improperly delegated judicial power to the Department of Social Services to set visitation. (*Id.* at pp. 1005, 1008.) The appellate court found the visitation order was not an abuse of discretion because,

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<sup>3</sup> Section 361.5, subdivision (e)(1), now provides in part: "If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child." "Services may include" "[m]aintaining contact between the parent and child through collect telephone calls" and "[v]isitation services, where appropriate." (§ 361.5, subds. (e)(1)(A) and (e)(1)(C).) Obviously, this section has no application to mother since she is not incarcerated and the court determined that she is not entitled to reunification services (§ 361.5, subd. (b)(13)).

although a juvenile court "may not delegate its power to grant or deny visitation to the DSS," it may "delegate discretion to determine the time, place and manner of the visits." (*Id.* at p. 1009.) It explained: "Despite dictum to the contrary in *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757 . . . , most courts, including ours . . . , agree the visitation order need not specify the frequency and length of visits. Such specificity is at odds with the purposes and practical necessities of a visitation order intended to protect the well-being of a dependent child while both maintaining ties between the child and parent and providing the parent with an opportunity to demonstrate why his right to custody and care of the child should be reestablished. (*In re Moriah T.*, *supra*, 23 Cal.App.4th at p. 1375.)" (*Ibid.*)

More recently, a reviewing court considered a dispositional visitation order that called for visitation with a presumed father but "fail[ed] to set a minimum number of visits or provide that [the presumed father] could visit the minor 'regularly.'" (*Moriah T.*, *supra*, 23 Cal.App.4th at p. 1371 . . . .)" (*In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136.) The reviewing court held that the order improperly delegated to the county's Department of Health and Human Services "the responsibility to determine whether visitation with the minor would occur at all." (*Id.* at p. 1134.) The reviewing court stated: "In fashioning a visitation order, the court may delegate the responsibility of managing the details of visitation—including time, place, and manner—but not the decision whether visitation will occur. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374 . . . .)" (*Id.* at p. 1135.)

As stated, the juvenile court here established a minimum number of visits contingent upon mother's return to California. This order did not improperly delegate the decision whether or not visitation with mother would occur at all. The order clearly implies that she is not entitled to any visitation in the event she does not return to California. Mother does not assert that the court abused its discretion by conditioning her right to visitation upon her return to California and, hence, she has waived any such

claim. (See *Title Guarantee & Trust Co. v. Fraternal Finance Co.* (1934) 220 Cal. 362, 363 [appellate courts generally reach only those assignments of error raised in an appellate brief; all other claims of error are deemed to have been waived or abandoned].) In any case, mother has not demonstrated that the court's visitation order was a manifest abuse of discretion since mother was deported and not receiving reunification services. (See *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356 [appellate courts review a dependency order setting visitation terms for abuse of discretion and will not disturb the order unless it is arbitrary, capricious, or patently absurd].)

Neither has mother cited any California statute or case law requiring a juvenile court to provide for some form of parental contact other than in-person visitation where a parent, who has been bypassed for reunification services, cannot personally visit a dependent child because the parent has been deported or is otherwise unable to visit in person. Even where a parent is incarcerated or institutionalized *and* receives court-ordered reunification services, an order for visitation or telephone contact is not mandatory. (See § 361.5, subd. (e)(1).)

In any case, mother has not demonstrated that the court abused its discretion by not ordering the Department to allow mother to have contact with minor through the Internet and ordinary mail. (See *People v. Williams* (1998) 17 Cal.4th 148, 162 [the deferential abuse of discretion standard of review "asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts"].) The statutory "bypass provisions represent the Legislature's recognition that it may be fruitless to provide reunification services under certain circumstances. (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159.)" (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.) "[V]isitation is not integral to the overall plan when the parent is not participating in the reunification efforts. This reality is reflected in the permissive language of section 361.5, subdivision (f)." (*In re J.N.* (2006) 138 Cal.App.4th 450, 458-459, fn. omitted [no-contact order with respect to incarcerated

mother who had been denied reunification services not an abuse of discretion].) Mother did not make any showing that judicial orders requiring the Department to facilitate mother's contact with minor, either through the Internet or ordinary mail, would contribute to minor's wellbeing or serve minor's best interests or that the court's failure to make such orders constituted an abuse of discretion.

DISPOSITION

The juvenile court's dispositional orders are affirmed.

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ELIA, Acting P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MÁRQUEZ, J.