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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re A.R. et al., Persons Coming
Under the Juvenile Court Law.

2d Juv. No. B287281
(Super. Ct. No. 17JD-00312)
(San Luis Obispo County)

ANGELIQUE R.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
LUIS OBISPO COUNTY,

Respondent;

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Real Party in Interest.

Angelique R. (mother) seeks extraordinary writ relief from
the juvenile court's dispositional order bypassing family

reunification services for her minor children A.R. and J.R. and setting the matter for a permanency planning hearing. (Welf. & Inst. Code,¹ §§ 361.5, subd. (b)(13), 366.26; Cal. Rules of Court, rules 8.452, 8.456.) Mother contends the court violated her due process rights by conducting the hearing in her absence and by denying her request for a continuance. We deny the petition.

FACTS AND PROCEDURAL HISTORY

Mother and Jose R. (father)² are the parents of A.R. (born in August 2009) and J.R. (born in July 2012). In February 2013, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition as to both children after it was discovered that mother and father were using and selling drugs in their home. Mother successfully reunified with the children and the dependency case was dismissed in September 2013. Father failed to comply with his case plan and was in jail when the dependency case was dismissed.

In February 2015, another dependency petition was filed as to both children following their parents' arrest during a traffic stop. At the time of removal, the family was staying in a hotel room in which open containers of methamphetamine, marijuana, and cleaning fluids used to "wash" checks were within the children's reach. Both children's urine tested positive for methamphetamine. The parents successfully reunified with the children and the second dependency case was dismissed in February 2017.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Father is not a party to the writ petition.

On October 17, 2017, mother and father were arrested again after methamphetamine, marijuana, drug paraphernalia, and guns were found in their home. The children were again taken into protective custody and a third dependency petition was filed. The petition alleged, among other things, that J.R. had once again tested positive for methamphetamine and that marijuana was found in the children's room. A.R. had also reported that "she had to keep her sister out of their bedroom because her parents were doing 'dangerous things' in there." The children were placed with their maternal grandparents.

In its detention report, DSS recommended a bypass of reunification services pursuant to section 361.5, subd. (b)(13). At the October 20, 2017 detention hearing, interim case plans were submitted and the parties stipulated to a visitation and phone-call schedule with the children. At the conclusion of the hearing, the children were ordered detained and the matter was set for a combined jurisdictional and dispositional hearing on November 30.

On November 2, 2017, mother and father were placed in federal custody at the Metropolitan Detention Center (MDC) in Los Angeles. At the November 30 hearing, mother and father's attorneys reported that both parents were opposed to the bypass recommendation and the matter was continued for a contested dispositional hearing on December 27. The juvenile court noted it would preserve a record of its efforts to provide notice to the parents and added that it would "try to arrange for either their physical appearance, which is very unlikely, or their possible appearance by phone, which is also unlikely" due to the fact they were in federal custody. The court also made clear to counsel that it intended to proceed with the contested dispositional

hearing even if the parents were unable to appear due to the fact they were in federal custody.

On December 5, 2017, the juvenile court issued an order on form JV-450 (Order for Prisoner's Appearance at Hearing Affecting Parental Rights) as to each parent regarding the December 27 contested disposition hearing. The order was served on the MDC and conveyed to its warden that the juvenile court could accommodate the parents' appearances at the hearing either personally or telephonically. The order was accompanied by forms JV-451 (Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights) for each parent to complete and return to the juvenile court.

Neither parent was produced for the December 27, 2017 hearing, nor were they made available to appear telephonically. The juvenile court confirmed that the orders to produce had been served and that there was no record of any response from the MDC. The court noted that "an order to produce by the California courts, I don't think, is binding on the federal court." In response to the court's question regarding DSS's position on the matter, counsel for DSS stated: "Your honor, I think we need to proceed. I don't know if [mother's counsel] is able to get in touch with her client. Frequently they will allow attorneys, and I don't have an objection to having [counsel] bring it back, if there's something that could have [been] presented that wasn't. . . . I . . . don't object to the mother appearing by phone if [mother's attorney] can arrange that. But I almost think the only way we're going to get any response is if an attorney tries to contact her."

After acknowledging that she had sent mother a letter but had received no response, mother's counsel requested that the

hearing be continued to give counsel the opportunity to participate. Counsel asserted that although mother had no statutory right to appear at the hearing due to the fact she was in federal custody, “this case . . . certainly brings up constitutional rights and due process rights of our clients And I don’t think an attorney can . . . be the one present in lieu of our clients not being here.” Father’s counsel joined in the postponement request.

The minors’ counsel stated she was “prepared to go forward today.” The social worker indicated that he had heard nothing from either parent but indicated that the maternal grandmother had stated that mother had her next hearing in federal court on January 8, 2018 and that “she’s looking at potentially a two-to-five-year sentence.”

The court denied the request for a continuance. The court stated: “The petition involving these children was filed October 19, 2017. While the parents do enjoy rights here in dependency court, they, by their own actions, . . . are unavailable to exercise those rights to be available at this court date on behalf of their children. Their children have independent rights of their own. And those rights include the opportunity to have jurisdiction . . . regarding this case resolved in a way that can bring them permanency”

The social worker testified as an expert and the parties submitted. After reiterating that it was familiar with the children as a result of the two previous dependency matters, the court found that a bypass of reunification services was warranted and set the matter for a section 366.26 hearing. Mother’s attorney timely sought writ relief on mother’s behalf.

DISCUSSION

Mother contends the court violated her due process rights by holding the contested disposition hearing in her absence. She also claims the court erred in denying her attorney's request to continue the hearing so that "her counsel could consult with her regarding how to present her testimony and evidence in her absence." Neither claim has merit.

Penal Code section 2625, subdivision (d), which mother cites, does not apply here. That subdivision provides in relevant part that "[n]o proceeding may be held under . . . Section 366.26 . . . and no petition to adjudge the child of a prisoner a dependent child of the court pursuant to . . . Section 300 . . . may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner" (Pen. Code, § 2625, subd. (d).) For purposes of the statute, a "prisoner" is defined as "any individual in custody in state prison, the California Rehabilitation Center, or a county jail" (*Id.*, subd. (a).)

Because mother was in federal rather than state custody, Penal Code section 2625 did not apply. (*In re Maria S.* (1997) 60 Cal.App.4th 1309, 1312.) Moreover, our Supreme Court has recognized that a parent who is in federal custody has no due process right to be present at the proceedings set forth in Penal Code section 2625. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 626.)

We also reject mother's contention that the court erred in denying her attorney's request for a continuance. Continuances of dependency hearings "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.” (§ 352, subd. (a).) “In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.” (*Ibid.*) Moreover, “no continuance shall be granted that would result in the dispositional hearing . . . being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance.” (*Id.*, subd. (b).) Finally, in determining whether to grant a continuance “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.” (*Id.*, subd. (a).)

Mother’s request for a continuance was both procedurally and substantively deficient. No written notice of the motion or supporting evidence was filed, and counsel’s oral request did not establish that exceptional circumstances effectively mandated a continuance. The fact that mother had a pending criminal proceeding did not suffice to make such a showing. (§ 352, subd. (a).) Moreover, in an attempt to secure mother’s presence, the court had already continued the dispositional hearing beyond the 60-day period set forth in section 352, subdivision (b). In granting the prior continuance, the court had also made clear that no further continuances would be granted if its efforts to secure mother’s attendance proved ineffective. Although mother claims her attorney should have been given additional time to “consult with [mother] regarding how to present her testimony

and evidence in her absence,” mother had ample opportunity to communicate with counsel prior to the hearing yet declined to do so. Her motion for a continuance was thus properly denied.

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Mary Ann Foster, under appointment by the Court of
Appeal, for Petitioner.

No appearance for Respondent.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy
County Counsel, County of San Luis Obispo, for Real Party in
Interest.