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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re IRIS O., a Person Coming Under the Juvenile Court Law.	B243085 (Los Angeles County Super. Ct. No. CK78656)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DORIS O., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Anthony A. Trendacosta, Juvenile Court Commissioner. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Kimberly A. Roura, Associate County Counsel.

Doris O. (mother) appeals from the orders of the juvenile court terminating her parental rights to her daughter Iris O. (Iris) (now age 3) under Welfare and Institutions Code section 366.26,[1] and denying her section 388 petition. Mother contends the juvenile court erred in failing to appoint her a guardian ad litem (GAL) after mother was appointed a conservator, and that county counsel had a conflict of interest by representing both the Los Angeles County Department of Children and Family Services (the department) and the Public Guardian. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family first came to the department's attention in August 2009 after mother gave birth to Iris. Mother had just turned 15 years old. She was living with her grandmother, her grandmother's boyfriend Rick L. (Rick), and her two younger siblings. Mother reported that Rick had repeatedly raped her, including at gunpoint, and that he was the baby's father. After mother threatened to run away with Iris, the department placed mother and Iris in separate foster homes and filed a section 300 petition on behalf of Iris alleging that Rick's abuse of mother placed Iris at risk of harm.

On September 3, 2009, two detention hearings were held: One for Iris and one in a companion case for mother and her two siblings. In the companion case, the juvenile court appointed attorney Carrie Clarke to represent mother as a minor and appointed her as mother's GAL under the Child Abuse Prevention and Treatment Act. In the present case involving Iris, the court appointed Ms. Clarke to represent mother as the parent. Noting that mother was 15 years old, the court asked: "At that age, Ms. Clarke, are you in any way concerned that your client, under the new rules, knows and understands the proceedings, is able to proceed on her own with assisting without the necessity of a guardian ad litem?" Ms. Clarke responded, "I am satisfied that that is the case." The court ordered Iris detained. The same day, mother filed a paternity questionnaire stating she believed her former boyfriend was Iris's father.

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[1] All statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

By September 10, 2009, the department had placed mother and Iris in the same foster home. Less than a month later, mother began running away from the foster home and threatened to take Iris with her. Mother also threatened and attacked another foster child in the house and told the social worker she was planning to kill this child and run away with Iris. After the foster mother moved Iris to another home, mother returned with a closed switchblade knife. Mother went to her bedroom and reported that she had taken 800 milligrams of ibuprofen. Mother was taken by ambulance to a hospital.

Mother was placed on a psychiatric hold and received initial diagnoses of bipolar disorder or major depressive disorder. She reported a history of suicide attempts and hallucinations and displayed homicidal ideation. She was released to a group foster home where she reported hearing voices and exhibited self-mutilating behavior. She was taken to a hospital and placed on another psychiatric hold, during which she was placed in restraints after she tried to attack staff members and harm herself.

On October 22, 2009, the department filed a first amended section 300 petition on behalf of Iris, adding the allegation that mother's mental and emotional problems placed Iris at risk of harm.

After being released from the hospital and attempting to set fire to her group foster home, mother was placed on a third psychiatric hold. She reported she had stopped taking her medication. At the hospital, she swallowed two wires and later assaulted another patient. She was diagnosed with schizoaffective disorder, bipolar type. In late November 2009, mother was placed in a "level 14" locked facility. On December 15, 2009, a "Public Guardian" was appointed as a temporary conservator for mother in the mental health department of the superior court. The conservatorship had an end date of December 14, 2010. The department notified the conservator of the January 6, 2010 jurisdiction and disposition hearing by mail and telephone messages. Though mother and her attorney, Ms. Clarke, appeared at the hearing, the conservator did not appear. The hearing was continued to February 18, 2010, and the department mailed notice of the continued hearing to the conservator.

Meanwhile, mother's monitored visits with Iris did not go well. Iris's crying "stressed . . . out" mother, who called Iris a "brat" and repeatedly left the room.

At the jurisdiction and disposition hearing on February 18, 2010, mother's attorney asked for a continuance because no one had been able to reach the conservator, mother had never met with the conservator (who was apparently on medical leave), and a hearing was scheduled in March to appoint an alternate conservator. The juvenile court denied the request, finding it was not in Iris's best interest, given that the six-month date was approaching, and the conservator had been given notice. The court stated that moving forward would be "harmless error" because mother was still in a level 14 facility and had no plan that would protect Iris. The juvenile court then struck the allegations in the petition regarding Rick, since it was not certain he was Iris's father, and sustained the petition as amended. The court ordered reunification services and that mother comply with her mental health treatment plan, take her prescribed medications and attend parenting classes. The court also ordered that visits with Iris be as frequent as feasible.

The department's report for the August 19, 2010, status hearing stated that while mother was participating in counseling, medical management and psychiatric services, she continued to have "severe difficulty" complying with her treatment plan and remained a danger to herself. Visits with Iris continued to be problematic as mother was still impatient with Iris's crying. Mother expressed concern about her ability to care for Iris. The juvenile court ordered that reunification services be continued.

By the November 2, 2010 status hearing, mother was no longer in compliance with her case plan. She often refused to participate in services and take her medications, she engaged in self-injurious behavior and was violent toward others. She still exhibited impatience and frustration during visits with Iris, but also showed affection. Her attorney stated at the hearing that she had reviewed the contents of the department's report with mother, who was aware of the circumstances of her placement. The juvenile court continued reunification services.

Over the next several months, only a few visits went well. During one visit mother was given medication to prevent her from getting "irritated" with Iris's crying.

Mother told a social worker she was ready and willing to give up her parental rights so that Iris could be raised in a family setting without the trauma and difficulties mother had faced. In April 2011, mother stated, "I do not want to see my daughter any more. It is just too hard to know she is going to be taken away from me." Mother refused to attend the April 21, 2011 status hearing. The juvenile court proceeded in her absence, terminated reunification services, and set a section 366.26 permanent plan hearing that was continued several times.

Iris was placed with a prospective adoptive family in January 2012, and quickly bonded. By the time of the contested section 366.26 hearing on May 30, 2012, Iris was thriving in their care and referred to her caretakers as "mom and dad."

On the day of the section 366.26 hearing, mother filed a section 388 petition seeking additional family reunification services and liberalized visits to include unmonitored and overnight visits, or placement of Iris in the same foster home where mother was living. The petition stated that mother had "been placed and stable in a foster home since March 15, 2012," was regularly attending school, was participating in individual therapy, drug rehabilitation, anger management and parenting classes, and was under the care of a psychiatrist. The petition also stated that mother loved Iris and believed they should be together and that the department had failed to provide ongoing visits.

The juvenile court noted the section 388 petition was conclusory and provided no supporting documentation, but conducted a "blended hearing" on the section 388 and section 366.26 matters. The department produced mother's school records and the "Title XX's" for the previous few months. The documents indicated that mother had unexcused absences from school for almost all of April and the first half of May, had been suspended from school in late May, had repeatedly been "AWOL" from her placements, was using methamphetamine, and had refused therapy, drug treatment, anger management and parenting classes offered to her.

Mother testified that she understood the hearing involved her rights to her daughter and that she did not agree with the social worker that her rights should be

terminated. She last saw Iris "[a]bout a year ago" and could not remember how old Iris was at that time. Mother testified that she did not have a bond with Iris. When asked why not, mother responded, "Because I'm always up and about. I never have time to visit her. She never—she never come to me because I'm always around."

The juvenile court denied the section 388 petition, finding no changed circumstances and that granting the petition would not be in Iris's best interest. The court then terminated parental rights. This appeal followed.

DISCUSSION

Mother contends the juvenile court's orders terminating her parental rights and denying her section 388 petition must be reversed because the court failed to appoint her a GAL after learning that a conservator had been appointed for her and failed to order the conservator to appear.

Code of Civil Procedure section 372, subdivision (a) provides in part that "When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case." Effective January 1, 2009, the Legislature amended Code of Civil Procedure section 372 to allow a minor-parent to appear in a dependency proceeding without a GAL. (Code Civ. Proc. § 372, subd. (c)(1).) Subdivision (c)(2) requires the court to appoint a GAL if the minor is unable to understand the nature of the proceedings or to assist counsel in preparing the case. Also effective January 1, 2009, the Legislature enacted Welfare and Institutions Code section 326.7 stating: "Appointment of a guardian ad litem shall not be required for a minor who is a parent of the child who is the subject of the dependency petition, unless the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case."

At the inception of the case for Iris, the juvenile court inquired of mother's attorney, who was also mother's attorney and GAL in the companion dependency case, if she was satisfied that "under the new rules" mother understood the proceedings and could assist her. The attorney responded that she was satisfied. At the May 30, 2012 hearings,

the orders from which mother appeals, mother testified that she understood the nature of the proceedings and correctly responded that they concerned her parental rights to her daughter. Under these circumstances, the juvenile court's failure to appoint a GAL was not error.

But even assuming error, it was harmless. A court's failure to appoint a GAL is not a jurisdictional defect, but is subject to review for prejudice. (*In re James F.* (2008) 42 Cal.4th 901, 911–913; *In re M.F.* (2008) 161 Cal.App.4th 673, 680; *In re A.C.* (2008) 166 Cal.App.4th 146, 154.) We do not set aside the judgment unless a different result would have been probable had the error not occurred. (*In re Lisa M.* (1986) 177 Cal.App.3d 915, 920, fn. 4.)

Mother makes no showing of how the outcome of this case would have been different had a GAL been appointed. The record clearly demonstrates that mother was not capable of caring for herself or maintaining a stable living situation, even without the added stress of a toddler. Mother was continually "AWOL" from her placements, using illegal drugs, resisting mental health and substance abuse treatment, and failing to attend school and parenting classes. By the time of the May 30, 2012 hearings, mother had not seen Iris in a year and by her own admission had no bond with her. Iris was thriving in the home of her prospective adoptive parents. Given that the juvenile court was required to determine what was best for Iris, there is no probability that the court would have removed Iris and placed her with mother.

Likewise, mother has not shown any prejudice by the juvenile court's failure to order the conservator to appear. The record shows that the mental health court's appointment of a conservator ended more than a year prior to the May 30, 2012 hearings. The record does not indicate whether the appointment was extended. While the department could have been more diligent in following up, mother does not demonstrate how the outcome of the case would have been different if a conservator had been ordered to appear.

Finally, there is no merit to mother's argument that county counsel should not be permitted to represent the department because a separate division of the Office of the

County Counsel represents the public guardian, which at one time was the conservator for mother. In *In re Lee G.* (1991) 1 Cal.App.4th 17, 31–32, the appellate court held that it is not a conflict for different divisions of county counsel to represent child protective services and the public guardian, when a parent in a dependency case is under the conservatorship of the public guardian. As in *Lee G.*, there is no evidence that county counsel ever received confidential information imparted from mother to her conservator.

DISPOSITION

The orders terminating mother's parental rights to Iris and denying her section 388 petition are affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ