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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SOFIA P., a Person Coming Under
the Juvenile Court Law.

B242216
(Los Angeles County
Super. Ct. No. CK74819)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

FRANCISCO P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Terry Truong, Juvenile Court Referee. Reversed and remanded with directions.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and
Appellant.

John Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Denise M. Hippach, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court appointed a relative as Sophia P.'s legal guardian and terminated dependency jurisdiction. Sophia's father Francisco P. (Father) challenges the parental visitation order, which gives Father a vague right to visit, without specifying whether visitation must occur regularly. The order impermissibly delegates absolute discretion to the guardian to decide whether any visits will take place. The case must be remanded for the court to fashion a more specific visitation order.

FACTS

Events Leading To The First Appeal¹

Sophia (born in 1997) lived with Father; her mother is a heroin addict in Mexico. In 2008, the Department of Children and Family Services (DCFS) learned that Father was sexually abusing Sophia. When Sophia was eight or nine, Father began massaging, caressing and kissing her neck and shoulders. Over time, he gave her "more kisses" and touched her buttocks and breasts. When she pulled away and asked Father to stop, he replied that this is normal parental behavior. Sophia often awoke to find Father licking and touching her breasts. He asked her to watch him rub his erect penis, kissed her on the mouth with his tongue and had her touch his penis. She once woke to find Father naked on top of her, and he put his finger in her vagina. The last molestation occurred two weeks before Sophia spoke with the police. Sophia fears Father and expressed suicidal thoughts. Father characterized his touching and kissing as "endearments."

At the jurisdiction hearing on February 3, 2009, Sophia described Father's sexual abuse: "He would touch me; he would lick me. He would do things that a father should not do to his daughter." Sophia added, "I just feel like I want to die." She does not want to live with Father again. The court found Sophia credible and disbelieved Father's testimony that he never touched the child inappropriately. It sustained allegations that Father sexually abused Sophia by touching her breasts and vagina, making her touch his penis, kissing her with his tongue, and laying on top of her in bed. The court also

¹ This is the second appeal in this case. We summarize below the facts detailed in the unpublished opinion in the first appeal, B214519, filed November 30, 2009.

sustained allegations that Father hit Sophia's mother. The court declared Sophia a dependent and removed her from Father's custody. Father was granted monitored visitation and ordered to participate in parent education, conjoint counseling, and sexual abuse counseling.

Father challenged the sexual abuse finding on appeal. This Court affirmed the judgment. There was substantial evidence of sexual abuse, and Father did not deny that he engaged in domestic violence, which is an independent basis for asserting jurisdiction over Sophia.

Events Following Disposition

After disposition, Sophia lived in numerous foster homes. She informed her therapist that she will not return to Father's custody due to the sexual abuse she suffered at his hands. She had weekly monitored visits with Father, who gave her food, toys and money. The visits went well and they were happy to see each other.

Father refused to participate in court-ordered programs: he felt that compliance would be an admission of wrongdoing. On August 4, 2009, the court warned Father, "if you have not done anything or substantially complied with what has been ordered of you, [] the court will be entertaining a recommendation by the department and will most likely terminate family reunification services for you." Father replied, "I do understand what I was ordered to do." Despite the warning, Father did not enroll in counseling or parenting classes.

On February 2, 2010, the court terminated reunification services because Father made no progress in resolving the problems that led to Sophia's removal from his home. He did not demonstrate the capacity to complete the objectives of the case plan or provide for his child's safety and well-being. The court set a permanent plan hearing, identifying the goal as adoption or legal guardianship.

In the permanent plan report, Sophia indicated willingness to be adopted, saying "There is no reason for me to stay in foster care forever. If my dad is not going to do anything then I am okay with being adopted and I am okay if they terminate his parental rights." Because Father told Sophia that he intended to ignore court orders, she wanted to

find a permanent home. After participating in several adoption fairs, Sophia decided not to sever family ties and instead requested a guardianship.

At a hearing on July 30, 2010, Sophia requested unmonitored visits with Father because “she feels comfortable with him.” Upon learning that Father and Sophia had not attended conjoint counseling, the court refused to allow unmonitored visits without the approval of Sophia’s therapist. The court found that Father’s progress was “minimal.”

In January 2011, DCFS reported Father had consistent weekly monitored visits, and he and Sophia are always happy to see each other. However, Father made inappropriate remarks about Sophia’s maturing body, said he will “buy her Kotex like the other girls,” and that she “is looking really good/hot.” He looks her body up and down “the way a man looks at an attractive woman.” When the monitor catches Father looking at Sophia in an inappropriate way, he realizes it and stops.

DCFS reported that Sophia was defiant in foster care and misbehaved at school, resulting in suspensions for fighting and receiving a stolen cell phone. The foster mother expressed fear of Sophia, who threatened the caregiver’s family and hit a foster sister in the face. Sophia acknowledged that she might benefit from a more structured household.

Maternal aunt Betty D. expressed interest in having custody of Sophia. Father opposed the placement because Sophia made sexual abuse allegations against Mrs. D.’s sons in 2008, though she recanted the accusations in 2011. In July 2011, the court found that Father’s progress was “minimal.” It placed Sophia with Mrs. D.

In January 2012, DCFS reported that Sophia is receiving exceptional care in a loving, stable and secure environment in Mrs. D.’s home. Sophia is happy and comfortable there, and her defiant behavior ceased. She hoped to be adopted by Mrs. D. Father continued to object to Sophia’s placement. The court identified an adoptive placement with Mrs. D. as the likely permanent plan. The court later changed the goal to a legal guardianship because Mrs. D wished to obtain financial assistance to care for Sophia.

Father visited Sophia once a month, monitored by Mrs. D. He would like to visit more, but Sophia refuses to see him. Sophia’s therapist opined that she was managing

conflict with others in appropriate ways, thanks to the influence of her aunt and uncle, who provide her with a sense of belonging and stability. The court scheduled a new permanent plan hearing, finding that Father's progress in alleviating the causes of dependency jurisdiction is "minimal."

The permanent plan hearing was conducted on June 15, 2012. Sophia's mother waived notice and indicated that she does not expect to return to the United States; she supports her sister's guardianship of Sophia. Father objected to Mrs. D. and the legal guardianship. The court found that Sophia is adoptable, but an exception to adoption applies. It found that it would be detrimental to return Sophia to parental custody and a guardianship is in her best interest. The court appointed Mrs. D. as the legal guardian of Sophia and terminated jurisdiction. The guardianship order signed by the court reads, "Monitored visits for mother and father. The legal guardian has the discretion to liberalize parents' visits."

DISCUSSION

Father contends that the juvenile court abused its discretion when it delegated authority over visitation to Sophia's legal guardian without providing "guidelines regarding the frequency of visits, which are necessary to protect his right to visit." When the court selects guardianship as the permanent plan, it "shall also make an order for visitation with the parents . . . 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." (Welf. & Inst. Code, § 366.26, subd. (c)(4)(C).) The court has sole power to determine whether visitation will occur and cannot delegate its power to grant or deny visitation to DCFS, to the guardian, to the child's therapist, or to the child. (*In re M.R.* (2005) 132 Cal.App.4th 269, 274; *In re S.H.* (2003) 111 Cal.App.4th 310, 319; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-49.)

Once visitation is ordered, the court may delegate discretion to manage the details of the visits. For example, the court may allow a therapist to "facilitate" visits and to decide when visits should begin based on a therapeutic determination that a violent parent has made satisfactory progress. (*In re Chantal S.* (1996) 13 Cal.4th 196, 213. But see *In*

re Donovan J. (1997) 58 Cal.App.4th 1474, 1477 [order cannot say “no visitation rights without permission of minors’ therapist” because it sets no criteria—such as satisfactory progress—to guide the therapist’s determination].) A guardian may manage the details such as time, place and manner of visits, which does not affect a parent’s defined right to see his or her child. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374-1376; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.)

The visitation order must give some indication as to how often visitation should occur. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 [an order giving a parent “reasonable” visits is sufficient]; *In re Moriah T., supra*, 23 Cal.App.4th at pp. 1375-1376 [court specified that visitation must be “consistent with the well-being of the minor”].)

A growing line of cases holds that a guardianship order merely authorizing parental visitation, without more, is unacceptably vague. For example, a visitation order granting the parents monitored visitation while giving the guardian responsibility over everything else, including the frequency of visits, was unacceptable because it “allows the guardian to decide whether visitation actually will occur” and thereby “transfer[s] this important decision to the possible whims of the legal guardian.” (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314.) Other cases with similar holdings include *In re M.R., supra*, 132 Cal.App.4th at pp. 272-274 [order stating that “Visitation between the child and parents shall be supervised and arranged by the legal guardians at their discretion” is impermissible because it left every aspect of visitation up the guardians]; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136 [the court’s written order allowing visitation but not specifying the frequency or even “regular” visits is impermissible]; and *In re Grace C.* (2010) 190 Cal.App.4th 1470, 1478 [court must specify frequency of visits].

The court order states only that Father is entitled to monitored visits with Sophia. This order is insufficient because it impermissibly allows Mrs. D. to decide whether visits will occur once a week, once a month, or once a year. “[B]y failing to mandate any minimum number of monitored visits per month or even to order that *some* visitation

must occur each month, the court’s abstract recognition of [a parent’s] right to visitation is illusory” (*In re S.H.*, *supra*, 111 Cal.App.4th at p. 319.)

Sophia is now an outspoken teenager who recently refused to see Father. Given Father’s adamant and continuing refusal to accept responsibility for the sexual misconduct that led to the sustained dependency petition, followed by his refusal to comply with the case plan, Sophia may have lost respect for him. Coupled with his inappropriate comments about Sophia’s physical appearance and maturing body, Father is in a tenuous situation of his own making. In fashioning an appropriate visitation order, the juvenile court should ideally have input from Father, Sophia, Sophia’s therapist (if she still has one) and the legal guardian. The order may allow flexibility to meet the changing needs of the child. (See *In re Grace C.*, *supra*, 190 Cal.App.4th at pp.1478-1479; *In re Moriah T.*, *supra*, 23 Cal.App.4th at p. 1376; *Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 72.)

DISPOSITION

The portion of the guardianship order regarding visitation is reversed, and the matter is remanded to the juvenile court with directions to issue an order describing the scope of Francisco P.’s visitation rights with greater specificity.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.