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

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

B286679

(Los Angeles County  
Super. Ct. No. CK63734)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

C.S., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of  
Los Angeles County. Lisa R. Jaskol, Judge. Affirmed.

Valerie E. Lankford, under appointment by the Court of  
Appeal, for Defendant and Appellant C.S.

Jacques Alexander Love, under appointment by the Court  
of Appeal, for Defendant and Appellant Myles S.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Stephen D. Watson, Deputy  
County Counsel for Plaintiff and Respondent.

Appellants C.S. (mother) and Myles S. (father) appeal from the order terminating their parental rights over minor Rachel S. (born June 2015). Both parents contend the trial court denied them due process by improperly terminating their visitation with Rachel, thereby depriving them of the ability to establish a parental benefit exception to termination of parental rights under Welfare and Institutions Code<sup>1</sup> section 366.26(c)(1)(B)(i).<sup>2</sup>

We affirm the juvenile court's order.

## **BACKGROUND**

### **Initial referral and section 300 petition**

Shortly after Rachel's birth, the Los Angeles County Department of Children and Family Services (the Department) received a referral from Pacific Alliance Medical Center alleging that mother was talking to herself and father was being verbally aggressive. A Department social worker responded to the hospital and met with the parents. Father told the social worker mother had been diagnosed with bipolar disorder and schizophrenia and that he was frustrated because the hospital wanted to evaluate mother while she was taking morphine.

Mother confirmed she had bipolar disorder and schizophrenia. Mother also had a child welfare history involving

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

<sup>2</sup> Section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds "a compelling reason for determining that termination would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) The exception relevant to the instant case provides as follows: "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

her three older children based on sustained allegations of mother's substance abuse and mental health issues, domestic violence with the children's father, and physical abuse of the children. Mother failed to reunify with the children, who were permanently placed in a legal guardianship.

In the instant case, both mother and father denied any domestic violence or drug or alcohol use. The Department determined that it was safe to release Rachel to parental custody after mother and father agreed to a safety plan in which father and the maternal grandmother would assist in caring for Rachel at all times, mother would not be left alone with the child, father would provide the Department with information on the status of mother's mental health, and the Department would assess the family home.

On June 16, 2015, the Department assessed the family home and found no safety hazards or concerns. The maternal grandmother was present and said she was willing to sign the safety plan and to ensure Rachel's wellbeing. Neither mother nor father could remember what psychotropic medications mother had been taking before her pregnancy, but both parents stated they would follow up with mother's psychiatrist to obtain a refill.

On June 20, 2015, mother called the police twice. The first time, mother claimed she and father were arguing and that she needed help escorting him out of the home. The second time, mother stated that father was breaking plates in the house and yelling at her. When officers arrived at the home, both parents denied any physical altercation. Father told the officers that mother suffers from mental illness and had not fed the baby the entire day. The officers informed the Department social worker that they were concerned about the child's safety.

When the social worker spoke with father about the incident, he said that mother has mental health issues and that

was the reason she called the police. He said they had not yet made an appointment with mother's psychiatrist but would do so as soon as they could. Father refused to meet with the social worker, refused to attend a team decision meeting, and refused to drug test. As of July 24, 2015, the Department had not received any verification that the parents had followed up on mother's mental health issues.

On August 4, 2015, the Department filed a non-detained section 300 petition, alleging that Rachel was at risk of harm due to mother's mental, emotional, and substance abuse problems. Mother was present at the August 4, 2015 hearing at which the juvenile court found a prima facie case for assuming jurisdiction over Rachel and ordered her released to mother's custody. The court set a jurisdictional hearing for October 9, 2015.

**Ex parte application, detention, and amended section 300 petition**

On August 10, 2015, the Department obtained a protective custody warrant and detained Rachel from both parents. On August 14, 2015, the Department filed an ex parte application pursuant to section 385 based on the parents' failure to attend a team decision meeting, participate in drug testing, or address mother's mental health issues. A confidential informant had also advised the Department that the parents fought all the time in the presence of the child. The informant further stated that mother believed her older children still lived with her, and that father often left Rachel alone with mother.

Both parents appeared at the detention hearing held on August 17, 2015, and denied the allegations of the petition. The juvenile court found a prima facie case for detaining Rachel and ordered her detained from both parents. Mother and father were accorded monitored visits, two to three times a week, for two to three hours per visit.

The Department filed an amended petition on October 7, 2015, alleging that mother's failure to take her prescribed medication had resulted in a prior psychiatric hospitalization, that the parents had a history of domestic violence, and that both parents had a history of unresolved drug use.

**Jurisdiction/disposition**

In a September 2015 interview with the Department's social worker, father was hostile and defensive. He denied any domestic violence with mother and claimed mother's mental health was improving.

In its October 2015 jurisdiction/disposition report, the Department reported that Rachel was placed with a caregiver, Ms. H.

The Department included in its report a police department service log indicating that officers had responded to the parents' home for domestic violence 38 times between June 2012 and June 2015. The report also included father's criminal history involving drug possession, and noted that mother had a history of substance abuse as well.

In December 2015, the parents informed the Department that they were divorcing. Father said mother did not take her medication and was unstable, and mother said father could no longer remain in the home. An updated police service log indicated that officers had responded to the home for domestic violence 10 times between October 31, 2015 and December 2, 2015.

Father had failed to appear for three scheduled drug tests. He had previously been enrolled in a drug treatment program that he failed to complete as part of a criminal case. While enrolled in that program, father tested positive for cocaine in July 2015 and November 2015.

At an uncontested jurisdiction/disposition hearing, the juvenile court sustained the section 300 petition, declared Rachel a dependent of the court, and ordered her removed from parental custody. The court ordered father to participate in individual counseling, parenting and infant care classes, a drug and alcohol program with aftercare, random or on demand drug testing every other week, and a 12-step program.

Mother was ordered to undergo a psychiatric evaluation and psychological assessment and to participate in individual and mental health counseling, to take all prescribed medication, to participate in random or on demand drug testing every other week, to enroll in a drug and alcohol program with aftercare, a 12-step program, a domestic violence support group for victims, and parenting and infant care classes. The court granted mother and father two to three monitored visits per week for two to three hours per visit, and ordered them not to visit together.

#### **Six-month review proceedings**

In July 2016, mother was seen at the Exodus Recovery Urgent Care Center for “urgent medication services to reduce risk of decompensation.” She was referred to the West Central Family Mental Health Center for mental health stabilization.

In August 2016, the Department reported that both parents had enrolled in a parenting program, mother had completed the program, and father had attended six out of ten sessions. Mother had also enrolled in a drug treatment program and was attending 12-step meetings with Narcotics Anonymous. She had three negative drug tests in July and August 2016, and failed to appear for testing once.

Father claimed to be enrolled in a drug treatment program, but the Department was unable to verify his enrollment. Father had failed to submit to any court ordered drug testing.

The parents' visits took place at the Department's office on Thursdays and on some Fridays. The parents arrived together for the visits, and then visited separately with Rachel for approximately an hour and a half.

On March 21, 2016, father was granted a criminal protective order against mother for domestic violence.

In September 2016, the Department reported that mother had missed four sessions of her domestic violence support group and was being terminated from the program. A staff member at SCHARP Oasis House informed the Department that mother was not formally enrolled in its drug treatment program but voluntarily attended sessions and received advice.

In November 2016, the Department reported that law enforcement had responded to the parents' home for domestic violence 12 times between February 6, 2016 and August 22, 2016. With the exception of one incident, father was identified as the suspect. Law enforcement call logs also indicated that father was under the influence of methamphetamine on March 17, 2016 and August 5, 2016, and under the influence of cocaine on March 12, 2016. Father had not enrolled in a drug treatment program and had not submitted to any court-ordered drug testing.

Mother visited Rachel consistently every Thursday. Mother was affectionate and appropriate, and her interactions with Rachel during the visits were positive. Father visited sporadically and missed visits on September 16 and 30, October 21, and November 4, 2016.

Mother and father violated the March 21, 2016 protective order on several occasions. The social worker advised mother in September 2016 that she could not have contact with father, and mother said she would comply. The parents nevertheless arrived together at the Department's offices on October 3, 2016. Father contacted mother by telephone during his visits with Rachel on

October 7 and October 14, 2016. During an October 28, 2016 visit between father and Rachel at a McDonald's restaurant, mother was present and father disclosed he had been with mother for most of that day.

At the November 21, 2016 six-month review hearing, the juvenile court found that returning Rachel to parental custody would create a substantial risk of detriment to the child. The court terminated reunification services and set a section 366.26 hearing.

### **Ex parte application and termination of visitation**

On February 1, 2017, the Department filed an ex parte application asking the court to terminate the parents' visits. Mother had informed the Department in January 2017 that she and father had moved in together and that she intended to continue her relationship with him. On January 26, 2017, mother, accompanied by father, arrived at the Department's offices for a visit with Rachel. Mother told the social worker that she had told father not to come to the visit, but he had followed her anyway. She said father's chronic substance abuse had continued, as had violent disputes with him, and that she was unable to control him.

In its ex parte application, the Department informed the court that it could not ensure Rachel's safety during the parents' monitored visits. Father's behavior had become erratic, hostile, and intimidating, requiring intervention by multiple staff members. Mother's visits presented concerns as well, given mother's choice to continue living with father and her inability to keep him away from the Department's office during her visits.

At the February 23, 2017 hearing on the Department's ex parte application, counsel for both mother and Rachel objected to terminating mother's visitation, noting that father's conduct, not mother's was the issue. The juvenile court granted the



request to terminate visits for both parents, noting that doing so as to father was not a “close case.” As to mother, the court found that she had disregarded the criminal protective order by allowing father to accompany her to visits when his disruptive behavior presented a danger to people in the Department’s office.

**Mother’s first section 388 petition**

On March 20, 2017, mother’s counsel asked the juvenile court to set a contested section 366.26 hearing and to reinstate mother’s visits. The court denied the request to resume visitation and suggested that mother file a section 388 petition.

Mother filed a section 388 petition on May 22, 2017, asking that her monitored visits be reinstated. She alleged changed circumstances in that she continued to be stable, attended mental health treatment, and had obtained a temporary restraining order against father.

The Department opposed the petition, noting that mother had obtained a temporary restraining order against father when an existing criminal protective order already prohibited contact between the parents, and that mother had a history of violating court orders by maintaining contact with father and by allowing father to accompany or follow her to visits with Rachel.

At the June 27, 2017 hearing on mother’s section 388 petition, the juvenile court denied a request by mother’s counsel to orally amend the petition to include a request to reinstate reunification services. After receiving the Department’s reports into evidence and hearing argument from counsel, the juvenile court denied mother’s petition, stating as follows:

“I did look over . . . what the department submitted last February, and . . . I’m not sure I made the right call at that point in terminating mother’s visits, and unfortunately at this point, given where we are, I’m not -- I don’t think that there is any basis for granting mother’s 388. . . . I don’t believe there

has been a showing of changed circumstances or best interest of Rachel.”

Counsel for both parents then argued that mother and father satisfied the beneficial parent-child relationship exception to terminating parental rights. The juvenile court disagreed, stating, “I did not see anything that would support a finding that terminating parental rights would break a child/parent bond of the type you are mentioning, so I am going to terminate parental rights.” The matter was continued, however, for an ICWA determination as to father.

### **Mother’s second section 388 petition**

Mother filed a second section 388 petition on July 5, 2017, asking that her visits be reinstated. Mother alleged that the juvenile court had conceded at a previous hearing that mother’s visits should not have been terminated. Mother further alleged that she had obtained a restraining order against father, that she had completed parenting and individual counseling, was currently participating in a domestic violence program for victims and a drug aftercare program, and was compliant with her mental health medication. Mother claimed that granting the petition was in Rachel’s best interests because mother was ready, willing, and able to provide a home for Rachel and her visits with the child had been positive.

The juvenile court denied mother’s petition on July 20, 2017, finding that mother had failed to demonstrate changed circumstances or that reinstating visitation would be in Rachel’s best interests.

### **Status review reports**

In March 2017, the Department reported that Rachel remained placed with her caregiver, Ms. H., who was committed to providing her with permanency. In May 2017, the Department reported that Rachel was bonded with Ms. H., who wanted to

adopt her. An adoptive home study was approved on June 27, 2017.

In November 2017, the Department reported that father had been arrested twice for violating a court order and for battery. He was currently incarcerated. Mother admitted there had been domestic violence by father and that he had an unresolved history of substance abuse. She said she intended to remain in a relationship with father and to work on their marriage.

### **Mother's third section 388 petition**

Mother filed a third section 388 petition on November 14, 2017, requesting return of Rachel to her custody or reinstatement of reunification services. She alleged as changed circumstances her enrollment in mental health counseling, her completion of a parenting class and a drug treatment program, and her participation in a 12-step program and a 52-week domestic violence class. Mother further alleged that granting the petition would be in Rachel's best interests because mother was now ready, willing, and able to take custody of the child, Rachel had expressed a desire to reunify with mother, and mother had visited consistently with Rachel on a weekly basis.

### **Section 388/366.26 hearing**

On November 20, 2017, the juvenile court denied mother's section 388 petition, finding that mother had failed to demonstrate that reinstatement of services was in Rachel's best interests. The court further found that mother's continued violation of the criminal protective order presented serious concerns.

The court then proceeded to the section 366.26 hearing and found that ICWA did not apply. Both parents then testified about their respective relationships with Rachel. Counsel for mother and father asked the court to find that the beneficial

parent-child relationship exception to terminating parental rights applied. The trial court found that the exception did not apply:

“I do not find that the parents have met their burden of showing that the exception to termination of parental rights applies here. And I understand that it may seem unfair to the parents since their visits have been terminated and it has prevented them from visiting the child for the last nine, ten months or so, but in fact, because they have not had the opportunity to maintain a relationship with the child, the child has not maintained a bond with her parents. And, in fact, the child has a very good relationship with the current caregiver and there just is not the kind of evidence I would need to see to find that the relationship with the parents is of a nature that would justify applying the exception to termination of parental rights today.”

The court found that Rachel was adoptable, that any benefit from her relationship with the parents was outweighed by the benefit she would receive through the permanence and stability of adoption, and that it would be detrimental for her to be returned to parental custody. The juvenile court terminated parental rights and ordered Rachel freed for adoption.

Mother and father both appeal from the order terminating parental rights.

## **DISCUSSION**

### **I. Father’s appeal**

Father forfeited any issue regarding the juvenile court’s order terminating his visits by failing to file a timely appeal from that order.

All orders in a dependency proceeding subsequent to the dispositional order, except orders setting a section 366.26 hearing, are directly appealable. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) ““A consequence of section 395 is that

an unappealed . . . postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.” [Citation.]’ [Citations.]” (*In re S.B.* (2009) 46 Cal.4th 529, 532.) A party seeking to file a petition for extraordinary writ from an order setting a section 366.26 hearing must file a notice of intent to seek such review within no more than 7 days of the order challenged, depending on the circumstances. (Cal. Rules of Court, rule 8.450(e)(4)(A).) A party seeking to appeal a post-disposition order must file a notice of appeal within 60 days of the order being appealed. (Rule 8.406(a)(1).)

The February 23, 2017, order terminating father’s visitation with Rachel was a separately appealable post-dispositional order. Until this appeal, father did not challenge that order nor did he at any time seek to reinstate his visits. Father’s notice of appeal was filed on December 4, 2017, long after the 60 days permissible for appeal had expired. Any argument by father that the juvenile court erred in terminating his visitation has been forfeited by his failure to timely appeal that order.

Even absent any forfeiture, the record discloses no violation of father’s due process rights. Father’s visits were terminated because his behavior at the Department’s offices for monitored visits with Rachel had become erratic, hostile, and intimidating, at times requiring intervention by multiple staff members. During one monitored visit, father appeared disheveled and was disengaged with Rachel. On other occasions he was disoriented and could not remember basic information, causing the monitor to question whether father may have been under the influence. He appeared on days that were not scheduled for visits and demanded visits with Rachel. There is ample evidence to support a finding that continuing father’s visits would have been detrimental to Rachel.

## II. Mother's appeal

Mother contends she was deprived of constitutional due process by the juvenile court's improper termination of her visitation with Rachel based solely on father's conduct. We disagree.

The record shows that the juvenile court considered mother's conduct in disregarding the criminal protective order by continuing to live with father and by allowing him to accompany her to her visits with Rachel when his behavior presented a danger to others in the Department's office. Mother contends this evidence was insufficient to establish that continuing her visits with Rachel would be detrimental to the child. She cites *In re Dylan T.* (1998) 65 Cal.App.4th 765 in support of her position. That case is inapposite. In *Dylan T.*, an incarcerated parent was denied visitation at the outset of dependency proceedings in which the child was removed from parental custody. Here, mother was accorded monitored visits with Rachel at the outset of the case. Her visits continued for a three-month period following termination of family reunification services until her continued violation of the criminal protective order resulted in safety concerns at the Department's office.

*In re Hunter S.* (2006) 142 Cal.App.4th 1497, on which mother also relies, is equally inapposite. In that case, the parent was deprived of visitation because the juvenile court failed to enforce the visitation order, effectively delegating sole discretion over visitation to the child and the child's therapist. (*Id.* at p. 1500.) The appellate court reversed the juvenile court's denial of the parent's section 388 petition as well as the order terminating parental rights, ruling that the juvenile court's failure to enforce the visitation order effectively denied the parent any post-reunification opportunity to establish a relationship with the child. (*Id.* at p. 1506.)

Here, the juvenile court did not fail to enforce the visitation order. Rather, the court determined that mother's conduct in violating a criminal court order by maintaining contact with father despite his continued substance abuse, ongoing domestic violence with him, and his hostile and erratic behavior, presented a danger to others.

The record discloses no due process violation. Mother was notified of the Department's request to terminate visitation and was given the opportunity to argue the issue prior to the juvenile court's order terminating visitation. Mother also had ample opportunity during the 10 months following termination of her visitation to demonstrate that reinstating visits would be in Rachel's best interests. Mother in fact sought to do so by filing three section 388 petitions in May, July, and November 2017, asking that her visits be restored. Each petition was denied because mother could not demonstrate that resuming visitation was in Rachel's best interests. Substantial evidence supports the denials, given mother's disregard of the criminal protective order, ongoing domestic violence with father, and her admitted inability to control him.

### **DISPOSITION**

The order terminating parental rights is affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT