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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B271122
(Los Angeles County
Super. Ct. No. DK14411)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

Appeal from a judgment of the Superior Court of the
County of Los Angeles, Stephan Marpet, Referee. Affirmed.

William Hook, under appointment by the Court of Appeal,
for Defendant and Appellant.

Office of County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Acting County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

D.A. (father) appeals from the juvenile court's order regarding monitored visitation with his minor sons.¹ According to father, the juvenile court's visitation order unlawfully delegated to the minors' mother (mother) the responsibility to monitor, or to select the monitor for, father's visits with the minors. The Department of Children and Family Services (DCFS) argues, *inter alia*, that father forfeited his challenge to the visitation order by failing to object to it in the juvenile court.

We agree that father forfeited his challenge to the visitation order. We therefore affirm that order on appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2015, the minors came to the attention of DCFS based on a referral alleging that father had physically abused the minors, ages 10 and seven, respectively. According to the referral, when the minors visited with their mother on November 22, 2015, she noticed that the older minor "had bruises and lacerations from his shoulder down to his wrist." Father allegedly "put[] the [minors] in a push up position and hit[] them repeatedly with a belt." The referral also informed DCFS that

¹ Because father and his two minor sons share the same initials, the sons will be referred to collectively as the minors and individually as the older minor and the younger minor.

the younger minor complained that father shoved him against the wall, causing “his back [to] hurt for a long, long time.” The minors reportedly “wanted . . . father in jail.” The referral further advised that father admitted the abuse and was arrested.

In an interview with a children’s social worker, mother stated that she separated from father in 2009 and thereafter lost custody of the minors when she moved to Colorado to care for a sick aunt while father took care of the minors in California. According to mother, while she was in Colorado, and without her knowledge, father fraudulently obtained full custody of the minors in California. Mother also informed the social worker that she was employed in Colorado and living in a four-bedroom home with “plenty of space” for the minors.

Based on its investigation, DCFS filed a petition under Welfare and Institutions Code section 300² alleging that father physically abused the minors. At the detention hearing, the juvenile court removed custody of the minors from father, temporarily vested custody of them with DCFS, and ordered them released to mother.

At the jurisdiction/disposition hearing, the juvenile court noted that the parties agreed to terminate jurisdiction and accordingly sustained the petition as modified and dismissed it. According to the juvenile court, it was “terminating jurisdiction . . . with a Family Law order of sole, legal, physical and primary [custody] to mother. [¶] Father’s visits to be monitored by a monitor approved by mother.” The attorney for DCFS then clarified that the parties were “all in agreement with mother being the monitor if she’s agreeable doing it. Right now

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

they have to be Skype-type [visits].” In response, the juvenile court confirmed that “if [mother was] willing to monitor the visits . . . she [could] monitor those visits. They can be done through Skype or any other Facetime or, . . . Facebook or Face anything.” Mother’s attorney agreed that mother was willing to monitor the visits, but advised the juvenile court that the oldest minor “may not be ready for visitation with . . . father yet.” Her attorney asked the juvenile court to “carve out monitored visits [by] father by a monitor approved . . . by mother or in a therapeutic setting, if recommended by a therapist.” Father’s counsel agreed to the visitation order, but asked for contact information, which mother’s counsel agreed to provide in the form of a telephone or “Skype number.” At the conclusion of the hearing, the juvenile court stayed the termination of jurisdiction to allow mother’s attorney to prepare an appropriate order and continued the hearing for entry of that Family Law custody order.

At the continued hearing, the juvenile court phrased the custody order as follows: “It’s sole legal, physical and primary [custody] to mother. Father’s visits to be monitored by a monitor approved . . . by mother. It may start in a therapeutic setting if necessary[] and recommended by either of the children’s therapists.” The form Family Law custody order entered by the juvenile court provided that father was granted “monitored visitation [with] both [of the minors] by [a] monitor approved by [mother]. Visitation may begin in a therapeutic setting if necessary and recommended by either of the [minor’s] therapist[s].” That order also provided that the juvenile court had terminated jurisdiction over the minors and that any request for modification or termination of that order must be made in the “family court case in which [the Family Law custody order] is

filed.” Father filed a timely notice of appeal from the juvenile court’s custody and visitation order.

DISCUSSION

We find that, by failing to raise it with the juvenile court, father forfeited his claim that the juvenile court’s order regarding visitation constituted an unlawful delegation of the court’s authority.

““An appellate court will ordinarily not consider procedural defects or erroneous rulings in connection with relief sought or defenses asserted, where an objection could have been, but was not, presented to the lower court by some appropriate method.” [Citation.]’ (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98 [105 Cal.Rptr.2d 705].) This is the general rule, because any other rule would allow a party to deliberately stand by in silence and permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 412 [286 Cal.Rptr. 592] (*Riva M.*), citing *In re Christian J.* (1984) 155 Cal.App.3d 276, 279 [202 Cal.Rptr. 54].) The forfeiture doctrine has been applied in dependency proceedings in a wide variety of contexts, including cases involving failures to obtain various statutorily required reports (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [102 Cal.Rptr.2d 196]); failure to object to the adequacy of an adoption assessment (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 885-886 [89 Cal.Rptr.2d [sic]] (*Urayna L.*); *In re Aaron B.* (1996) 46 Cal.App.4th 843 [54 Cal.Rptr.2d 27]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412 [15 Cal.Rptr.2d 613]); failure to request an alternative placement (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1830-1831 [30 Cal.Rptr.2d 245]); and failure to require

expert testimony and to make the required findings using the beyond-a-reasonable-doubt standard as mandated by ICWA. (*Riva M.*, *supra*, 235 Cal.App.3d at p. 411).” (*In re G.C.* (2013) 216 Cal.App.4th 1391, 1398-1399.)

In *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, the father raised for the first time on appeal an argument similar to the one made by father here, i.e., the juvenile court purportedly violated the father’s due process rights when it delegated visitation authority to the father’s parole officer. (*Id.* at pp. 685.) The Court of Appeal held, *inter alia*, that the father had forfeited his due process challenge by not raising the unlawful delegation issue in the juvenile court. (*Id.* at 686.) We reach the same conclusion in this case.

Here, father’s counsel not only failed to object to the visitation order or request any clarification or modification of that order on the ground that it unlawfully delegated the juvenile court’s visitation authority, but he expressly agreed to that order. Indeed, his counsel’s only expressed concern with respect to visitation was that father needed contact information to effectuate any visitation. The juvenile court readily addressed that request by requiring mother’s counsel to provide telephonic and/or other contact information sufficient to allow for “Skype-type” visitation. Had father taken issue with the delegation of authority over visitation monitoring to mother, the juvenile court could have considered the views of all parties and addressed the issue prior to issuing its final order regarding visitation. By failing to provide the juvenile court with the opportunity to address this issue in the first instance, father forfeited the issue on appeal.

Father contends that, notwithstanding his failure to object in the juvenile court, we have discretion to consider the issue for the first time on appeal because it raises a pure issue of law based on undisputed facts. We recognize that we have discretion to reach father's forfeited claim, but the cases upon which father principally relies for his request that we should do so counsel otherwise. In *In re V.F.* (2007) 157 Cal.App.4th 962, 967-968, the father contested in the juvenile court the request to remove his children from parental custody, and, on appeal, the court exercised its discretion to consider one of the forfeited grounds for opposing removal that father had not raised before the juvenile court. In *In re Alana A.* (2006) 135 Cal.App.4th 555, 561-562, the father forfeited his right to contest termination of reunification services, but the court reached the issue on appeal after DCFS urged the court to do so because it presented an issue of "first impression" that had "broad public interest." Here, by contrast, father in no way opposed or raised any concern about reduced contact with his children; rather, he agreed to mother's full custody of them and consented to mother's oversight of any visitation. Further, the particular visitation arrangement in this case does not present any novel legal issues that ought to be addressed in the public interest. Moreover, as the juvenile court's custody and visitation order recognizes, should father ultimately find himself prejudiced by the terms of the visitation order, further modifications or termination of any of the juvenile court's orders may be sought "in the family court case in which these orders are filed." For all of these reasons, we decline to reach father's forfeited claim.

DISPOSITION

The exit order granting father visitation rights is affirmed.

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KIN, J.*

We concur:

TURNER, P. J.

BAKER, J.

* Judge of the Superior Court of the County of Los Angeles, appointed by the Chief Justice pursuant to article IV, section 6 of the California Constitution.