Filed 12/22/16 In re Bryan T. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Bryan T. et al., Persons Coming Under the Juvenile Court Law.	B270260 (Los Angeles County Super. Ct. No. DK14451)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JENNY T., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

A juvenile court exerted dependency jurisdiction over three of Jenny T.'s (mother's) children and placed them with K.N. (father). Among other things, the court ordered "[m]onitored visits for [mother] to be monitored . . . in [a] therapeutic setting" and ordered "conjoint counseling" "for minors with mother when deemed appropriate." Mother appeals both orders on the ground that they impermissibly delegated decision-making authority. We conclude there was no error, and affirm.

FACTS ANDPROCEDURAL BACKGROUND

Mother and father have four children together—namely, Brandon (an adult), and juveniles Bryan (born 2000), Katelyn (born 2002) and Jaden (born 2008). By 2015, mother was engaging in ever-escalating erratic behavior: She would disappear for days at a time, and during such times would be seen drinking and kissing men other than father; she would argue with father and aggressively try to bait him into hitting her; she would hit Katelyn with her open palms and with chopsticks, sometimes hard enough to make Katelyn cry and vomit; and she would pull Jaden's arm so hard that it hurt him.

Following a 911 call that brought law enforcement to mother's and father's house, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Bryan, Katelyn and Jaden (collectively, the minors) on three grounds: (1) mother's physical abuse of Katelyn, because it placed all three minors at "substantial risk . . . of suffer[ing] serious physical harm inflicted nonaccidentally" and constituted a "failure . . . to adequately . . . protect the child[ren]" (Welf. &

Inst. Code, § 300, subds. (a), (b), & (j)[1]); (2) mother's physical abuse of Jaden, because it placed all three minors at risk and constituted a failure to protect them (§ 300, subds. (a), (b), & (j)); and (3) mother's and father's history of violent confrontations, because it placed all three minors at risk and constituted a failure to protect them (§ 300, subds. (a) & (b)).

The juvenile court initially detained the minors from mother and placed them with father, ordering "[m]onitored visits for [mother] to be monitored by [a Department] approved monitor" on a mutually agreeable schedule. At the request of the minors' counsel and with father's concurrence, the court specified that the visits should take place "in a therapeutic setting." The parties agreed to a weekly visit at the Department's offices "monitored by a Human Services Aid."

At a later hearing, the juvenile court sustained all of the allegations in the Department's petition and exerted dependency jurisdiction over the minors. The court ordered the minors to reside in father's home, with "[m]onitored visits for [mother] to be monitored by [a Department] approved monitor in [a] therapeutic setting" and granted the Department "discretion to . . . liberalize visitation." The court also ordered "conjoint counseling . . . for minors with mother when deemed appropriate." After pronouncing these orders, mother informed the court that her visits thus far had occurred at the Department's offices. In response, the court stated, "If the Department has amended the order [to no longer require a therapeutic setting], then that is

---

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

fine. They have discretion to liberalize. If they have not done so, they will remain in a therapeutic environment."

The court set a six-month hearing for review, but mother filed a timely notice of appeal.

DISCUSSION

Mother argues that the juvenile court's visitation and counseling orders impermissibly delegated decision-making power to the Department.

I. Visitation Order

In dependency cases, a juvenile court must order visitation "as frequent[ly] as possible, consistent with the well-being of the child," but not when doing so will "jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(A), (B).) Because the right to raise one's children ranks among the most "basic liberties and rights" protected by our Constitution (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756-757), it is the juvenile court—not the Department or any other delegate—that must decide what visitation rights to grant (or deny) a parent. (*In re Korbin Z.* (2016) 3 Cal.App.5th 511, 516-517; *In re Jennifer G.*, at pp. 756-757). Thus, a juvenile court must generally set the frequency and duration of visitation. (*In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1690.) However, it is also important for visitation orders to provide for "'flexibility in response to the changing needs of the child and to dynamic family circumstances.'" (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356, quoting *In re S.H.* (2003) 111 Cal.App.4th 310, 317.) Consequently, a "juvenile court may delegate . . . the responsibility to manage the details of visitation, including time, place and manner thereof" because such details "'do not affect the defined right of a parent to see his or her child.'" (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374

(*Moriah T.*), quoting *In re Jennifer G.*, at p. 757; *In re Donnovan J.* (1997) 58 Cal.App.4th 1474, 1476.) Although we independently review the legal question whether a juvenile court has unconstitutionally delegated its judicial power (see *In re Taylor* (2015) 60 Cal.4th 1019, 1035 [constitutional questions reviewed de novo]), we review orders setting the terms of visitation for an abuse of discretion (*In re Brittany C.*, at p. 1356).

The visitation order in this case allowed the parties to agree upon both the frequency and duration of visitation—and mother did just that.[2] Whether that visitation takes place in a therapeutic setting goes to the "manner" of the visits and, as such, may properly be delegated to the Department. (*Moriah T.*, *supra*, 23 Cal.App.4th at p. 1374.) Thus, the juvenile court's order did not violate the separation of powers. The court also did not abuse its discretion in ordering monitored visits in a therapeutic setting and in granting the Department the power to liberalize those visits to occur in non-therapeutic settings. Indeed, mother had not requested the therapeutic setting in the first place. What is more, the Department acted in accordance with that delegated authority because the Department had the power to "liberalize" the visitation and thus had the authority to remove the requirement that mother's monitored visits take place in a therapeutic setting.

---

[2] For the first time in her reply brief, mother asks us to revisit the duration and length of visitation. This request is not only waived for failure to raise it in her opening brief (*In re Daniel M.* (2003) 110 Cal.App.4th 703, 707, fn. 4), but is also better addressed in the first instance by the juvenile court.

II. Conjoint Counseling

In a dependency case, a juvenile court has the power to issue "all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of [a dependent] child" and to "direct any reasonable orders to the parents or guardians of [that] child." (§ 362, subds. (a) & (d).) This statute confers "'broad discretion'" on the juvenile court to "'determine what would best serve and protect the child's interests,'" so we review dispositional orders deferentially, asking only whether they constitute an abuse of discretion. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

The juvenile court did not abuse its discretion in ordering conjoint counseling with mother and the minors "when deemed appropriate." The juvenile court had before it evidence that the minors did not want to see mother. Accordingly, the court's decision to take an incremental approach and phase in conjoint counseling once the minors had acclimated to mother through weekly visits makes sense.

Mother asserts that leaving it to the Department to decide when conjoint counseling becomes "appropriate" constitutes an unlawful delegation of judicial power. We disagree. Unlike visitation, there is no constitutional right to a specific form of counseling; as a result, the juvenile court could have permissibly ordered counseling without the minors or no counseling at all. Its decision to take a middle course by phasing in conjoint counseling gradually does not violate the separation of powers.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

HOFFSTADT

We concur:

_____, Acting P. J.

CHAVEZ

_____, J.*

GOODMAN

---

* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.