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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re I.L. et al., Persons Coming
Under the Juvenile Court Law.

2d Juv. No. B277740
(Super. Ct. No. 16JD-00061)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

A.L. (mother) appeals orders of the juvenile court which terminated juvenile court dependency jurisdiction over her children, I.L. and S.L., minors under the juvenile court law, following a jurisdiction/disposition hearing. In jurisdiction exit orders, the court granted father custody of the children. (Welf. &

Inst. Code, § 300, subd. (b)(1).¹ We conclude, among other things, that: 1) the juvenile court did not abuse its discretion by denying mother’s counsel’s request for a continuance of the jurisdiction/disposition hearing when mother did not appear for that hearing, and 2) its decision to proceed to decide the merits in mother’s absence did not contravene her due process rights. We affirm.

FACTS

On March 10, 2016, the San Luis Obispo County Department of Social Services (DSS) filed a juvenile dependency petition alleging mother was not able to supervise or protect her children following mother’s “hospitalization” for a “medical emergency.” (§ 300, subd. (b)(1).) DSS said mother had a “history of mental illness and has made prior suicide attempts.” It said, “At the time that [mother] was hospitalized there were no identified caregivers for the children” and law enforcement requested DSS intervention. DSS temporarily placed the children with their father with supervised visitation for mother.

The jurisdiction hearing occurred on March 30, 2016. With the consent of the parties, the juvenile court continued the case “for a combined jurisdictional-dispositional report” for May 5, 2016.

At the May 5th hearing, mother and father asked for “a mediation.” The juvenile court continued the case to June 1st. The social worker advised the court that mother “has missed a couple of visits” with her children. DSS recommended that mother undergo psychological and “medication” evaluations “to

¹ All statutory references are to the Welfare and Institutions Code.

more accurately assess” what child reunification services she should receive.

At the June 1st hearing, mother did not appear. The court set the case for a contested hearing for July 6th.

Mother did not appear at the July 6th hearing. Mother’s counsel claimed mother had been “hospitalized.” The court continued the case. It determined the case should be heard by another judge. DSS’s counsel was concerned about granting a continuance. She said, “[M]other’s hospitalizations tend to coincide with court dates.” The court responded, “I’m not surprised.” It added, “If [mother] is not here when you come back, some judge will have to decide what to do, but I wouldn’t continue it.”

Mother’s counsel decided she had a conflict of interest. She scheduled a hearing for July 28th to seek appointment of new counsel for mother. Mother did not appear for this hearing. The juvenile court appointed new counsel. DSS’s counsel told the court that mother has not maintained contact with DSS and that “she has not been available for any court date.” The court set an August 3rd “readiness” hearing and a contested hearing for August 18th.

Mother did not appear for the August 18th contested hearing. Her counsel said he notified her that the hearing “had been set for . . . August 18th.” He said, “I don’t know how to get a hold of her.” He requested a continuance.

Counsel for the father, the children and DSS opposed a continuance. Counsel for father said, “[M]other has been given more than adequate notice of the prior proceedings where she’s absented herself. . . . These children have been waiting a very long time to have this case resolved.”

The juvenile court denied the request for a continuance and found mother had notice of the hearing date.

The juvenile court admitted the jurisdictional report into evidence. It took “jurisdiction” of the children, found that father was “providing an appropriate home for them,” and dismissed the petition. It ordered custody to the father and supervised visitation for mother.

DISCUSSION

Denial of a Continuance

Mother contends the juvenile court erred by denying her counsel’s request for a continuance of the jurisdiction/disposition hearing. We disagree.

“We review the denial of a continuance for abuse of discretion.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605.) “Continuances are discouraged in dependency cases.” (*Id.* at p. 604.) “Throughout the dependency and parental termination statutes we find the admonition to accelerate proceedings so that the child is not kept ‘in limbo’ any longer than necessary.” (*In re Emily L.* (1989) 212 Cal.App.3d 734, 743.)

The dependency statutes provide that “no continuance shall be granted that is contrary to the interest of the minor.” (§ 352, subd. (a).) “In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (*Ibid.*) Granting a continuance for the convenience of a parent is not appropriate where it conflicts with “the law’s overriding concern for the child’s need for a permanent and secure home.” (*In re Emily L., supra*, 212 Cal.App.3d 734, 743.)

Mother did not appear for the August 18, 2016, jurisdiction/disposition hearing. As DSS notes, she did not “advise anyone of her whereabouts or the reasons she could not appear.” She also had not attended the June 1st jurisdiction/disposition hearing and the July 6th and 28th hearings. The court had repeatedly continued the jurisdiction/disposition hearing. Prior to the August 18th hearing, the court held six hearings without deciding the jurisdiction and disposition issues. More than five months had elapsed since the filing of the juvenile dependency petition. Counsel for the children opposed a continuance. She said, “These children have been in the system for quite a long period of time. I think unnecessarily.” The court could reasonably find that further delays would be detrimental to the children’s interests.

A party seeking a continuance must also show “good cause.” (§ 352, subd. (a).) Here mother’s counsel did not present a declaration or evidence to show a valid justification for mother’s failure to attend the August 18th hearing. He could not assure the court that she would be present at a continued hearing. Mother had not responded to his recent email messages and he did not know her current whereabouts. The trial court could consider her prior absences and the duration and history of the case in deciding the good cause issue. (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 258-259.) Mother has not shown that the court abused its discretion by denying a continuance.

Due Process

Mother contends proceeding with the hearing on the merits in her absence contravened due process and “denied [her] the opportunity to present her evidence.”

“[D]ue process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”” (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106.) DSS served a notice of hearing advising mother of her right to present evidence. At the hearing the juvenile court found “mother had knowledge of today’s hearing.” Mother’s counsel also told the court that mother had notice of the date and time of the hearing. Mother consequently was not denied “notice and an opportunity to be heard.” (*In re A.C.* (2008) 166 Cal.App.4th 146, 157.)

Mother’s absence did not prevent the court from deciding the issues. (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 863; *Warden v. Lamb* (1929) 98 Cal.App. 738, 741.) Mother’s counsel represented her interests at the hearing. He requested the court to “maintain dependency” jurisdiction for “three-to-six months so we can make sure [mother] does have contact with her children.” The absence of mother’s testimony was the result of her not attending the hearing.

Moreover, mother has not shown a reasonable probability of a different result. (*In re A.C., supra*, 166 Cal.App.4th at p. 157.) Mother had not visited the children for the three months prior to that hearing. She had not maintained contact with the DSS. DSS said her “mental health has impacted her ability to care for her children.” A DSS social worker said, “At the time of placement the children appeared to have poor hygiene. [They] had dirty hair, exhibited foul odors, and it appeared that they had not been bathed in several days.” The court found father, by contrast, had provided an appropriate home for them. That finding is supported by DSS evidence.

Mother claims she should be given the opportunity to present evidence. But she has not made an offer of proof about what she would testify about or why she did not attend the hearing. Nor has she shown how she could prevail on the custody issue given the DSS evidence about the risk her mental health condition poses for the children, her failure to visit them, and her history with them.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Teresa Estrada-Mullaney, Judge
Superior Court County of San Luis Obispo

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Marian E. McGuire,
Deputy County Counsel, for Plaintiff and Respondent.