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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JOSHUA R., a Person Coming Under  
the Juvenile Court Law.

B260640  
(Los Angeles County  
Super. Ct. No. DK06278)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Stephen Marpet, Juvenile Court Referee. Affirmed.

Stephanie M. Davis for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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P.G. (Mother) challenges the juvenile court's denial of a continuance during the disposition hearing. No exceptional circumstances justify a continuance. (Welf. & Inst. Code, § 352, subd. (b).)<sup>1</sup> Mother made no offer of proof that a continuance to call witnesses would change the outcome of the hearing. We affirm.

### **FACTS**

Joshua R., born in September 2010, is the son of Joshua R., Sr. (Father) and Mother. Under a 2013 family law order, the parents had joint legal and physical custody of Joshua. Mother had primary physical custody because Father worked out of state for 14 consecutive days every month. Father spent considerable time with Joshua when home from work.

In July 2014, when Joshua was three years old, he was removed from Mother's custody pursuant to court order and placed with Father, after Mother made repeated unsubstantiated accusations that Joshua was physically and sexually abused by paternal relatives. Joshua denied being hurt or touched in a sexual manner. Forensic examinations revealed no signs that Joshua was abused. In addition, Mother has a chicken coop in her bathroom, causing foul odors. Joshua was detained because Mother's behavior emotionally damages him.

A petition filed by the Department of Children and Family Services (DCFS) alleged that Mother's reports of abuse subjected Joshua to unnecessary interviews and invasive hospital examinations, to his emotional and physical detriment. Further, Mother has a history of illicit drug use and currently uses marijuana. On July 10, 2014, the juvenile court found a prima facie case for detaining Joshua from Mother, and placed him in Father's care. Mother was given monitored visitation. Counsel was instructed to cooperate in a psychological evaluation ordered by the family law court.

When interviewed for the jurisdiction hearing, Joshua denied that anyone touched his private parts. Mother stated that Joshua (who suffers from constipation) complained

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<sup>1</sup> Unlabeled statutory references in this opinion are to the Welfare and Institutions Code.

that “his butt hurt.” Mother believes that the boy was improperly touched on his buttocks by her sister and parents; on his anus by a paternal cousin; and by Father. She stated that the doctors who examined Joshua “did a horrible job” and maintains that Joshua has been sexually abused since August 2013. She denied having any mental health issues. Father opined that Mother fabricated allegations of sexual abuse to prevent him from seeing his son. She called the police department three times to do a welfare check on Joshua when he was in Father’s home. Joshua told the DCFS investigator that he wishes to reside with Father.

The petition was adjudicated on September 29, 2014. Minor’s counsel joined with DCFS in urging that the petition be sustained against Mother. The court sustained an amended allegation that Mother created a detrimental and endangering situation for Joshua by making repeated allegations of abuse against paternal relatives, including Father, and subjected the boy to multiple examinations, including hospitalization, all of which resulted in no finding of abuse. Joshua was interviewed by social workers and law enforcement officers on several occasions, without any action being taken because Mother’s reports were inconsistent with the child’s condition. Mother locks the child into his room at night when he sleeps, and continues to believe that Joshua was abused by paternal relatives. When Mother objected to the exercise of jurisdiction, the court replied that there is “ample evidence” Mother put Joshua at risk of physical and mental illness.

At the end of the hearing, the court continued disposition to November 18, 2014, pending completion of a psychological evaluation. DCFS served notice of the disposition hearing on November 7, 2014.

Dr. Mann’s psychological evaluation, submitted November 3, 2014, found no physical evidence of child abuse, nor any display of behaviors consistent with child abuse. When confronted with these findings, Mother was unable to accept them and asserted that because Joshua cried and did not want to go to Father’s house, “his father must have abused him or allowed others to abuse him.” Despite a lack of medical evidence that Joshua was stabbed on his feet with scissors, Mother would not consider

other reasons for his cuts and bruises, and “was only trying to find data to support her belief system that [Father] and others are abusing [Joshua].”

Dr. Mann concluded that Joshua is not the victim of any kind of abuse, other than the risk posed by Mother’s behavior, which includes “causing stress and conflict in [the child’s] life.” He attributed Mother’s “distorted belief system” to a number of factors, including the sexual molestation of her younger sister that caused Mother to become hyper-sensitized; Mother’s dependency on marijuana; her anxiety when Father ended their relationship; and her “mental and emotional problems” that led to Joshua being repeatedly and unnecessarily examined by doctors and interviewed by police and social workers. Dr. Mann opined that Mother “presents a serious risk to [Joshua’s] safety and well-being.” By contrast, Father presents no risk to his son and should have sole custody. Mother may benefit from an intense therapy program, and should be limited to monitored visitation that is not supervised by maternal relatives because “the family is enabling the belief systems of [Mother] to continue” and they have “difficulty in setting limits and boundaries” for Joshua.

The disposition hearing was held on November 18, 2014. Mother’s attorney orally requested a continuance at the morning session because she did not receive all pages of Dr. Mann’s report and wanted to obtain “her own” evaluation. The court trailed the hearing, to give counsel an opportunity to read Dr. Mann’s report. The court noted that counsel cannot show up unprepared on the day scheduled for disposition.

At the afternoon session, Mother’s attorney brought in the maternal grandfather to call as a witness. The court stated that this case “should be handled in family law court, not in this court. So I’m ready to go forward pursuant to the statute to terminate jurisdiction with a family law order today . . . . I don’t see any need for any witnesses, any testimony because this is a family law case.” Mother’s counsel agreed that this is a family law case, but stated that the exit order “is going to affect my client’s rights in the family law case.” Specifically, Mother will face a burden when trying to change the juvenile court’s order. The court offered to indicate in the exit order that Mother can go

immediately to family law court, rather than wait six months or for a change in circumstances, to resolve any disputed issues.

Over Mother's objection that "we want to put on evidence," the court terminated dependency jurisdiction, with joint legal custody and sole physical custody by Father. Mother's visits are to be monitored, but not by maternal relatives. The court recommended that the matter be returned for immediate review in the family law court, to consider the psychological evaluation and "make any change orders" as necessary. Appeal is taken from the disposition.

### **DISCUSSION**

Mother argues that the court violated her due process rights "by denying appellant a disposition hearing." Mother is mistaken. There was a disposition hearing on November 18, 2014. Mother first received notice of the disposition hearing when the petition was adjudicated on September 29, 2014, and a second notice from DCFS, served on November 7, 2014. Mother's attorney arrived at the hearing under the misimpression that "the matter was here . . . for receipt of the [Evidence Code section] 730 evaluation" and not for disposition, though the minute order from the jurisdiction hearing and a separate notice plainly identify November 18 as the disposition date. When Mother requested a continuance, the court trailed the hearing to give counsel time to review Dr. Mann's report.

At the afternoon session, Mother's attorney sought to call the maternal grandfather as a witness, without any offer of proof as to how his testimony could refute the findings and recommendations contained in Dr. Mann's evaluation or shed any light on Mother's false accusations against Father and his relatives. The court refused to allow Mother to present her father as a witness or subpoena Dr. Mann. The court is required to hear evidence only if it is relevant, and the burden of showing relevance is on the party seeking to offer it. (*In re Mark C.* (1992) 7 Cal.App.4th 433, 445.) Mother's failure to make an offer of proof means the issue is not preserved for review on appeal. (*Ibid.*)

Continuances are disfavored in dependency cases. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) A child is entitled to a prompt resolution of his custody status

and a stable placement. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604-605.) Once Joshua was detained from Mother's custody by court order on July 10, 2014, the court could not grant a continuance "that would result in the dispositional hearing . . . being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance." (§ 352, subd. (b).) Here, the period between the detention order and disposition was 131 days, far more than 60 days. This alone justified denial of the oral motion for a continuance during the disposition hearing, because Mother made no attempt to argue the existence of "exceptional circumstances" at the hearing.

Exceptional circumstances were not created by counsel's failure to (1) read the minute order designating November 18, 2014, as the disposition date, or (2) file a proper written request for a continuance before the hearing, showing "good cause." (§ 352, subd. (a).) Mother's last-minute attempt to stall disposition by retaining a new attorney and demanding a new psychological evaluation cannot be countenanced, especially after the court waited months for Dr. Mann to complete his report.

The problem here is not due process, as Mother *twice* received personal notice of the disposition hearing, in September and in November. Rather, the problem is counsel's inadequate preparation for the noticed hearing and inability to show how a continuance would change the outcome.

No continuance may be granted that would cause the disposition hearing to be completed more than six months after detention. (§ 352, subd. (b).) We are now *one year* after detention. Mother's remedy is to contest in family law court the orders awarding sole physical custody to Father and monitored visitation for her. This remedy was offered to Mother when the court terminated its jurisdiction. We decline to resurrect this dependency case based on an untimely request for a continuance that lacked a showing of good cause or any offer of proof regarding proposed testimony.

**DISPOSITION**

The judgment is affirmed.

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BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.