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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re H.P., a Person Coming Under the
Juvenile Court Law.

B255923
(Los Angeles County
Super. Ct. No. CK99838)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.K.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Emma Castro, Commissioner and Teresa Sullivan, Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawn R. Harrison, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

L.K., the mother, appeals from the juvenile court's March 3, 2014 orders declaring H.P., N.P. and K.K. dependents of the court under Welfare and Institutions Code section 360.¹ The mother challenges an order suitably placing H.P. outside the home and ordering any visitation with the youngster be monitored. The mother contends the jurisdictional findings are void because Commissioner Emma Castro lacked authority to make them and substantial evidence does not support the visitation order. We affirm.

II. STATEMENT OF FACTS AND PROCEDURE

The child was born to mother and S.P., the father, in 1998. The mother and the father ended their relationship in 2007. The child lived with mother and N.P., who was born in 2001. The mother and B.K., the stepfather, entered into a relationship in 2011. The stepfather moved in with the family in 2012 and K.K. was born. The mother and stepfather were married in March 2013.

On October 9, 2014, we affirmed the adjudication findings and orders in this case in a separate appeal brought by the stepfather involving K.K. (*In re Ka. K.* (Oct. 14, 2014, B253542) [nonpub. opn.].) As to the facts developed during the adjudication proceedings, we adopt by reference our recitation of them in our October 14, 2014 unpublished opinion. However, in summary, the testimony and other evidence indicated the following. The stepfather sexually molested the child on many occasions from January 2012 to June 2013, including penetrating her anus from behind with his fingers and penis. The child's anus was severely mutilated. It was "mangled and shredded." The child was afraid to report the abuse, because stepfather was the sole provider for the family. Stepfather exposed the child to pornography. The child began looking at

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

pornography, including violent pornography, on the Internet when the stepfather was starting to move in with the family. The child believed she was addicted to pornography. She watched it daily. The mother learned the child was looking at pornography. The mother found out when advised by the maternal aunt. The mother took the child's electronics away on three occasions. Each time they were returned to her, she resumed watching. The mother and the child jointly participated in six family counseling sessions at their church to deal with issues in their relationship. The counseling did not focus on the child's addiction to pornography.

On June 21, 2013, the child reported the sexual abuse when she was in the hospital emergency room complaining of abdominal pain. The Department of Children and Family Services (the department) detained the child with the maternal grandmother. The child was released to the mother. On June 26, 2013, the juvenile court granted the mother monitored visitation and gave the department discretion to liberalize the visits. The department was ordered to provide the mother with reunification services. The mother was ordered to participate in individual counseling forthwith, to address the allegations of sex abuse.

The mother did not believe the child's molestation allegations. The mother was unemployed and the child was very fearful that stepfather would get into trouble and stop providing for the family. On July 8, 2013, the child recanted her allegations, stating she inflicted the damage to her anus herself.

On September 13, 2013, the juvenile court ordered the parties not to talk to any of the children about the case. On September 23 the juvenile court noted that mother was having unmonitored conduct with the child in the courthouse. The mother was admonished to comply with the order requiring that all contact be monitored. On October 18, 2013, the juvenile court found mother had violated its order to not discuss the case with the child or have unmonitored contact with the youngster. The mother was ordered to comply with the prior order.

On November 8, 2013, the juvenile court sustained allegations under section 300, subdivisions (b) and (d). The juvenile court found the child has suffered serious physical

harm as a result of the parents' failure or inability to protect her. Further, the juvenile court found that on June 16, 2013, and on numerous prior occasions, the stepfather had sexually abused the child by: sodomizing her or digitally penetrating her anus; fondling her; forcing her to masturbate him; and rubbing his head against her vagina and laying on top of her. Further, the juvenile court found the mother refused to believe the stepfather's sexual abuse of the child. The juvenile court found the mother's testimony "very troubling" and she was in complete denial of what was occurring in her home for three to four years. This occurred while the child admitted regularly viewing pornography and engaging in "self-inflicted trauma to her anus" during the same period of time. The juvenile court stated: "[The physician called by the stepfather testified] . . . [the child] suffered permanent injury to her anal canal which may require reconstructive surgery to repair [The mother] never appropriately had [the child] interviewed for [ongoing] conduct to address and treat the underlying issues that led . . . an 11 year old to view pornography for possibly and sometimes on a daily basis for at least three years. Your feeble attempts to address the issues I also find irresponsible [The m]other did not seek appropriate and timely treatment for [the child] when she first learned of [the child's] pornography addiction."

A half-sibling was declared a dependent of the court and placed in home of the mother. The mother was ordered to enroll in individual sex abuse counseling and a parenting for teenagers class. The mother was also ordered to participate in conjoint counseling with the child, as recommended by the youngster's therapist. The stepfather was ordered to have no contact with the child. The juvenile court denied the mother's requests for unmonitored visits for the reasons stated when sustaining the petition. But the juvenile court ordered the department to assess whether such visits should occur. The mother was granted monitored visits in her home, but not overnight, with maternal grandmother as the monitor. N.P. was declared a dependent of the court and placed in home of parent-mother.

Likewise, H.P. was declared a dependent of the court. H.P. was removed from mother's custody and the juvenile court ordered reunification services. The mother had

not enrolled in individual counseling or a parenting for teenagers program. The mother was ordered: to enroll in individual counseling with a licensed therapist experienced in child sexual abuse; participate in conjoint counseling with H.P. as recommended by the therapist; and enroll in a parenting for teenagers class. The court ordered mother to have visits monitored by any department approved monitor. The juvenile court granted the department discretion to liberalize mother's visitation to increase or be unmonitored. The prior order that the stepfather have no contact with H.P. was to remain in full force and effect.

III. DISCUSSION

A. The Mother is Estopped to Challenge Commissioner Castro's Authority to Make Findings on the Petition.

The mother contends the jurisdictional findings are void because Commissioner Castro was not appointed as a referee or stipulated to as a temporary judge and therefore did not have authority make them. To begin with, the issue has been forfeited on appeal. Even if the issue were not forfeited on appeal, the mother is estopped to contest Commissioner Castro's jurisdiction because the issue was being raised in the juvenile court.

This issue has been forfeited on appeal. The mother's contention that Commissioner Castro did not have jurisdiction to issue the adjudication and dispositional orders was first made in the reply brief. Therefore, the entire jurisdictional issue has been forfeited. (*People v. Bryant* (2014) 60 Cal.4th 335, 408; *People v. Tully* (2012) 54 Cal.4th 952, 1075.)

In any event, Commissioner Castro's jurisdiction to issue the adjudication and dispositional orders was never raised in the juvenile court. The controlling authority is that discussed by our Supreme Court: "When, as here, the court has jurisdiction of the subject, a party who seeks or consents to action beyond the court's power as defined by

statute or decisional rule may be estopped to complain of the ensuing action in excess of jurisdiction. ([E. g.,] *City of Los Angeles v. Cole* (1946) 28 Cal.2d 509, 515[, overruled on a different point in *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680]) Whether [the party] shall be estopped depends on the importance of the irregularity not only to the parties but to the functioning of the courts and in some instances on other considerations of public policy. A litigant who has stipulated to a procedure in excess of jurisdiction may be estopped to question it when ‘To hold otherwise would permit the parties to trifle with the courts.’ (*City of Los Angeles v. Cole*[, *supra*,] 28 Cal.2d [at p.] 515.)” (*In re Griffin* (1967) 67 Cal.2d 343, 347-348; accord, *Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 584.)

This is an appropriate case in which to apply the doctrine of estoppel. The mother does not claim the court lacked subject matter jurisdiction. Commissioner Castro conducted all 19 days of proceedings in the case from the detention hearing on June 26, 2013, through the jurisdictional hearing on November 8, 2013. The mother never contested Commissioner Castro’s jurisdiction to issue any orders. No other litigant challenged Commissioner Castro’s jurisdiction to issue any orders. The reporter’s transcript consists of 674 pages, virtually all of it of testimony presented to Commissioner Castro. The alleged irregularity in this case involves a failure of the juvenile court presiding judge to expressly appoint Commissioner Castro as a juvenile court referee. This failure did not impair the juvenile court’s functioning or contravene the purposes of the juvenile court law. (See §202, subd. (a) [“The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible”]; see *In re M.V.* (2014) 225 Cal.App.4th 1495, 1514.) Under these circumstances, it is appropriate to apply the law of estoppel. The mother is estopped to challenge Commissioner Castro’s jurisdiction to make any findings in this case.

B. The Custody Issue is Now Moot

The mother contends the requirement that visits be monitored is not supported by substantial evidence. However, subsequent to the filing of the notice of appeal, the child was returned to the mother's custody. The department argues the custody issue is now moot. We agree and hence need not address the custody issue. (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1364; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1221, fn. 8.)

IV. DISPOSITION

The judgment and orders under review are affirmed.

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TURNER, P. J.

We concur:

KRIEGLER, J.

GOODMAN, J.*

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