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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Daisy D., a Person Coming
Under the Juvenile Court Law.

B288708
(Los Angeles County
Super. Ct. No. DK07938)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Lucero V. and Fabian D.,

Defendants and Appellants.

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

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant Lucero V.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant Fabian D.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent, Los Angeles County Department of Children and Family Services.

* * * * *

The juvenile court terminated a father's and mother's parental rights over their now-four-year-old daughter. In this appeal, the parents do not challenge the sufficiency of the evidence underlying the court's finding that their daughter was adoptable or that the beneficial parent-child exception was inapplicable. Instead, they argue that they were wrongly deprived of their right to establish that exception because (1) the court denied them a contested hearing, and (2) their daughter's refusal to attend several visitation sessions in the last few months prior to the termination of their rights deprived them of the right to establish the exception. We conclude that the parents' arguments lack merit and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. The Family

Fabian D. (father) and Lucero V. (mother) are the parents of Daisy D. Daisy was born in February 2014. At the time of Daisy's birth, mother tested positive for methamphetamines and amphetamines and freely admitted she had ingested those drugs as recently as two weeks prior; fortunately, Daisy herself did not test positive for those drugs.

II. Dependency Proceedings

A. *Initial exertion of dependency jurisdiction*

Soon after Daisy's birth, the Los Angeles Department of

Children and Family Services (Department) offered mother and father a voluntary family maintenance program under which the parents agreed to participate in counseling and drug abuse programs.

When mother thereafter tested positive for drugs and the parents engaged in domestic violence, the Department in October 2014 filed a petition asking the juvenile court to exert dependency jurisdiction over Daisy. Pursuant to each parent's plea of no contest, the juvenile court in December 2014 exerted dependency jurisdiction over Daisy on three grounds: (1) mother and father had a "history of domestic violence" because father, in July 2014, had "grabbed . . . mother, resulting in [her] falling down to the ground," which placed Daisy at substantial risk of serious physical injury (rendering dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1)),¹ (2) mother had a history of "substance abuse" and was a current user of methamphetamine and amphetamines, which placed Daisy at substantial risk of serious physical injury (rendering dependency jurisdiction appropriate under section 300, subdivision (b)(1)), and (3) mother's diagnosis as bipolar and her refusal to take her prescribed medication constituted a "history of mental and emotional problems," which placed Daisy at substantial risk of serious physical harm (rendering dependency jurisdiction appropriate under section 300, subdivision (b)(1)). The court ordered that Daisy, who had been detained from father and mother since October 2014, be removed from their custody and

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

placed with a foster family.

B. *Progress during reunification*

1. *Initial reunification period*

When the juvenile court initially asserted jurisdiction over Daisy in December 2014, it ordered the parents, among other things, to drug test and to have regular, monitored visitation with Daisy. For several months thereafter, mother and father had regular visits with Daisy, three times a week, where they had “very positive” interactions with her. The parents progressed so well that the Department recommended that Daisy be returned to her parents.

2. *Successful reunification*

In August 2015, the juvenile court returned Daisy to her parents, but retained dependency jurisdiction and ordered the Department to provide the parents with family maintenance services.

3. *Removal within weeks*

Within weeks of Daisy’s return to her parents’ custody, mother stopped attending her drug counseling sessions and refused to drug test. Mother admitted using methamphetamine, and father admitted leaving Daisy alone in mother’s care. The Department filed a supplemental petition asking the court to again remove Daisy from her parents’ custody due to mother’s drug use and father’s failure to protect Daisy. Both parents admitted the allegation, and the juvenile court in October 2015 removed Daisy, placed her in foster care, and ordered the Department to resume reunification services for mother and father.

4. *Further reunification progress*

Between October 2015 and October 2016, the Department

offered drug testing and visitation to the parents. Mother and father encountered substantial difficulty staying off of drugs. Mother tested positive for methamphetamines in October 2015, November 2015, January 2016, March 2016; refused to drug test on several other occasions; and stopped attending drug counseling sessions. Father tested positive for methamphetamines in November 2015 and January 2016, tested negative a few times, and refused to drug test on 11 other occasions. During this same period, the parents had varying degrees of success visiting with Daisy. In the early part of this period, mother would show up for monitored visits three times a week, but eventually became “very inconsistent” with her visits—either showing up “late all the time” or not showing up at all. The quality of the visits tracked their regularity: At first, mother’s visits went “well”; later on, they began to “lack quality” and Daisy, then nearly two-and-a-half, started to become “annoyed” by mother. Due to his work schedule, father visited Daisy only once a week and later twice a week, but his visits were consistent, and Daisy was “happy” during his visits. The Department eventually allowed father to have unmonitored visits three times a week.

5. *Termination of reunification services*

At the 12-month status review hearing held in September 2016, the juvenile court found that father *was* in compliance with the case plan, but that mother *was not*. The court terminated reunification services as to both parents and set the matter for a permanency planning hearing. Pending the permanency planning hearing, the parents were to have monitored visitation with Daisy.

During this period, mother and father’s visitation was

patchy: Sometimes they would arrive late; other times, they would not arrive at all. Daisy's caretaker observed that father would sometimes show up looking like he was under the influence and with "markings on [his] face similar to when he used drugs in the past." In February 2017, father started arriving on time, while mother continued to be late or a "no show." Mother indicated that she was continuing to use drugs.

6. *Resumption of reunification services for father*

In March 2017, father filed a petition asking the juvenile court to modify its orders terminating reunification services and removing Daisy from his custody; he cited his positive visitation with Daisy, his completed case plan and his stable housing. In mid-April 2017, the juvenile court granted father's petition in part by (1) ordering the Department to offer six more months of reunification services to father (but not mother), including housing assistance, and, if father was able to secure housing, (2) ordering Daisy back to father's custody.

Father refused any further housing assistance.

The parents' visitation with Daisy also became spottier. Between April 2017 and July 2017, the Department put father on a three-visits-a-week schedule, but he was a "no show" four times and arrived late 13 more times. On those occasions when he *did* show up, he and Daisy did not "interact," and the monitor would have to coax her; Daisy would sometimes cry. Between late July 2017 and mid-October 2017, father did not visit Daisy at all. During the April 2017 to September 2017 timeframe, mother was either a "no show" or arrived late the majority of the time, which upset Daisy. Two of Daisy's November 2017 visits with father were canceled because Daisy became upset and refused to see him.

7. *Second termination of father's reunification*

In December 2017, the juvenile court terminated father's reunification services and placed the previously canceled permanency planning hearing back on calendar.

In early 2018, the parents' sporadic visits started to take a greater toll on Daisy. In January and February 2018, the social worker would arrive to pick up Daisy to bring her to the visitation location, but Daisy would "cry uncontrollably" and refuse to attend. Concerned about Daisy's distress related to visitation, the Department referred her for a mental health assessment. The therapist concluded that Daisy's outbursts did not stem from any mental illness but instead from her fear that she would have to go home with mother and father rather than her foster parents with whom she had bonded.

C. *Termination of Parental Rights*

In March 2018, the juvenile court convened the permanency planning hearing. Father and mother each requested a contested hearing to establish that the beneficial parent-child exception to termination applied. In response to the juvenile court's inquiry as to why a contested hearing would be helpful, father responded that (1) he would testify that he and Daisy (1) had weekly visits, and (2) had "bonded [as] child and father," and (2) Daisy would testify that the reason she was upset about visiting him was because *mother* had been sporadic in her visits. The juvenile court ruled that this offer of proof did not warrant a contested hearing because, even if true, the court did not "think [the parents] could meet" the requirements of the beneficial parent-child relationship exception. The court further explained that the parents could not show the requisite parent-child bond because Daisy had lived with her parents mere

months out of her four-year life; that Daisy was “adamant[ly]” against visiting them; and that Daisy had bonded closely with her adoptive parents. The court accordingly terminated the parents’ parental rights.

D. Appeal

The parents each filed timely notices of appeal.

DISCUSSION

A parent’s parental rights may be terminated only upon a finding that the child is adoptable and that no statutory exception to adoptability applies. (§ 366.26, subds. (b) & (c)(1).) Mother and father do not attack the sufficiency of the evidence underlying the juvenile court’s findings that Daisy is adoptable or that the beneficial parent-child relationship exception does not apply. Instead, they argue that the juvenile court erred in (1) denying them a contested hearing, and (2) allowing Daisy to dictate whether visitation would occur, which constituted an impermissible delegation of the juvenile court’s power to fix visitation.

I. Contested Hearing

Although a parent has a due process right to present evidence at a permanency planning hearing where his or her parental rights are at stake, that right does not require a juvenile court to hold a contested hearing unless the parent first convinces the court that the evidence to be adduced at the contested hearing “is relevant . . . on the issue [the parent] seeks to contest.” (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612 (*Grace P.*), quoting *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1124.) A contested hearing is not necessary if the proffered evidence will have no effect on that issue. (*Grace P.*, at p. 614.) We review a juvenile court’s decision whether to grant a contested hearing for

an abuse of discretion. (*Id.*, at p. 611.)

The juvenile court did not abuse its discretion in refusing to conduct a contested hearing. The parents proffered the testimony of father and Daisy to prove that the beneficial parent-child exception applied. That exception applies—and precludes a juvenile court from terminating parental rights—if (1) “the parents have maintained regular visitation and contact with the child,” and (2) “the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) Because “[i]nteraction between natural parent[s] and [a] child will always confer some incidental benefit to the child,” the second element of the exception requires a parent to “show that [(1)] he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment between child and parent” and (2) “the child would suffer detriment if . . . her relationship with the parent were terminated.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) In assessing whether termination of parental rights would be detrimental to a child, courts look to “(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.)

The three-plus years of interaction between the parents and Daisy overwhelmingly establishes that the parents could not carry their burden of meeting the requirements of the beneficial parent-child relationship. As an initial matter, it is unclear whether the parents could establish “regular visitation and contact” given their unreliability and the intermittency of their visits, including several periods of complete non-visitation. (*In re*

I.R. (2014) 226 Cal.App.4th 201, 212 [“[S]ignificant lapses in visits” preclude a finding of regular visitation].) More to the point, father and mother cannot establish that Daisy would benefit from continuing her relationship with them because father and mother cannot show that they occupied a parental role and because Daisy was traumatized by the prospect of going home with them rather than her foster parents. Daisy had spent 75 percent of her life in the care of others, and the last time her parents cared for her—and thus the last time they occupied a parental role—was more than three years prior to the permanency planning hearing [(during the brief period of reunification)]. The rest of the time, father and mother were occasional visitors. It is also uncontroverted that Daisy’s anxiety about being with mother and father was growing while her bond with her foster parents was deepening; on these facts, terminating Daisy’s relationship with her parents was less of a detriment to Daisy and more of a relief to her. Nothing Daisy or father could have offered in testimony at a contested hearing would have undermined these conclusions.

Father and mother offer two arguments in response. First, the parents argue that Daisy could have testified that her trauma about visiting father stemmed solely from being upset about mother’s sporadic visits (and not anything father did) and that father could have testified that he and Daisy had a close bond. Even if we accept this proffered testimony as true, however, it cannot cure the absence of proof that father and mother never occupied a “parental role.” Second and relatedly, the parents posit that they occupied as much of a parental role as the juvenile court’s orders allowed, but the orders allowed only visitation. But this is not the applicable test. The relevant test looks to the role

the parents occupied and whether it was parental, not whether the parents occupied as much of a parental role as the juvenile court's orders would allow. Indeed, the parents' proffered "parental role" test would be met in nearly every case. Further, parents' argument ignores that the juvenile court's orders offered the parents the opportunity to regain custody of Daisy (and thus to occupy a parental role), and it was *the parents* who never successfully availed themselves of that opportunity.

II. Improper Delegation of Visitation

When a child is removed from her parents, the juvenile court in most instances must order the Department to provide reunification services to the parents (§ 361.5, subd. (a)), and those services must include "visitation between the parent . . . and the child" (§ 362.1, subd. (a)(1)(A)). "Visitation is a necessary and integral component of any reunification plan." (*In re S.H.* (2003) 111 Cal.App.4th 310, 317.) A juvenile court has a responsibility "to ensure [that] regular parent-child visitation occurs" (*ibid.*), and the court may not delegate "the power to decide whether *any* visitation occurs" to social workers, to therapists or to the child herself (*id.*, at pp. 317-318; *In re Julie M.* (1999) 69 Cal.App.4th 41, 46, 51 (*Julie M.*); *In re Korbin Z.* (2016) 3 Cal.App.5th 511, 516-517; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504-1508). As long as a juvenile court's visitation order does not expressly or implicitly grant a child a "veto power" over visits, the fact that a child refuses to attend certain visits does not constitute an impermissible delegation, at least without proof that the court failed to act when the child's refusals were brought to its attention. (*In re Sofia M.* (2018) 24 Cal.App.5th 1038, 1046 (*Sofia M.*)). 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.* (2011) 191 Cal.App.4th 1343, 1356).

The juvenile court did not impermissibly delegate to Daisy a veto power over visitation. To the contrary, the court's initial visitation orders required a minimum of three visits a week for a minimum of three hours each. The court's post-reunification orders did not expressly set the same minimum visitation schedule, but the Department nevertheless stuck with that schedule by arranging three visits a week for a minimum of two hours each except when father requested otherwise due to his work schedule. Thus, the juvenile court's order did not impermissibly delegate the power to control visitation to Daisy. (*Sofia M.*, *supra*, 24 Cal.App.5th at p. 1044-1046 [order requiring minimum visitations valid].) Daisy's trauma about visiting her parents did not start until June 2017, and she did not regularly refuse visits until 2018, yet father never raised the issue with the juvenile court. Even without any objection from father, the Department proactively took several steps to overcome Daisy's distress over visitation: Social workers tried to coax her to continue with the visits and succeeded several times, and the Department ultimately referred Daisy to a therapist to assess whether her anxiety stemmed from a mental illness. Father's claim that the Department should have acted sooner gives short shrift to the Department's efforts. In sum, there was no impermissible delegation.

DISPOSITION

The order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ