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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re VICTORIA S., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

APRIL S.,

Defendant and Appellant.

B239989

(Los Angeles County
Super. Ct. No. CK78476)

APPEAL from an order of the Superior Court of Los Angeles County,
Robert L. Stevenson, Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

April S. (Mother) appeals from an order terminating parental rights to her child, Victoria S. In the February 15, 2012, termination of parental rights hearing, Mother failed to object that she did not receive a December 19, 2011, status report, and therefore forfeited any claim of error on appeal. We also conclude that notice to Mother of the termination of parental rights hearing was proper, and that no error arose from Mother's waiver of alleged defects of notice. We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

Detention and Petition: On August 9, 2009, Mother arrived at the Union Rescue Mission with seven-month-old Victoria S., having left the home of her maternal grandmother and uncle in Arizona without specific plans regarding a new life in California. Mother was diagnosed with bipolar and manic depression and was taking Lithium, Risperdal, and Depakote. Due to observed emotional instability, Mother was referred to the Department of Mental Health, where she exhibited childlike behavior and mental instability and made unrealistic statements regarding her plan to live in Los Angeles. Mother had been admitted to psychiatric institutions in 1999, 2001, and 2003, and was hospitalized in Phoenix in 2006 for suicide attempts. Her unstable mental health, manifested by negligible judgment, insight and impulse control, could be harmful to Victoria, and her psychiatric medications could make Mother temporarily incapable of caring for Victoria. Mother was living at Midnight Mission and had no support in Los Angeles. She did not know the whereabouts of Victoria's father, Peter H. (Father).

Victoria was detained on August 11, 2009.

On August 14, 2009, the DCFS filed a Welfare and Institutions Code section 300¹ petition alleging that Victoria was described by section 300, subdivisions (b) [failure to protect] and (g) [no provision for support]. The petition alleged that Mother had mental and emotional problems (including bipolar disorder, manic depression and suicidal ideation without proper medication) that rendered her unable to provide regular care for

¹ Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

Victoria, and on prior occasions was involuntarily hospitalized for evaluation and treatment of her psychiatric condition. The petition also alleged that Father failed to provide Victoria with the necessities of life, and his current whereabouts were unknown. Mother's condition and Father's failure to provide Victoria with food, clothing, shelter and medical care endangered her physical and emotional health, safety, and well being.

At an August 14, 2009, detention hearing, the juvenile court found Peter H. to be Victoria's alleged father. The juvenile court further found that a prima facie case was established to detain Victoria as a person described by section 300, subdivisions (b) and (g), ordered Victoria detained and placed with the DCFS, and ordered the DCFS to provide family reunification services to Victoria and Mother and to assist Mother in obtaining psychiatric services and medication.

Adjudication and Disposition: Mother was assessed as having cognitive delays and a childlike, impulsive manner. She had a history of hospitalizations, most often for threatening the safety of others, having been hospitalized for trying to kill her sisters with scissors, trying to kill a roommate with scissors, and placing staples in the cereal of a fellow group home resident. In an interview with a CSW, she struggled to control her anger about Father and her brother. Cognitive delays, mental illness, impulsivity, and her inability to control her anger compromised Mother's decision-making abilities. Combined with her inability to provide a stable home for Victoria, these limitations and her mental health history created a substantial risk to Victoria.

On September 17, 2009, the juvenile court found Victoria was a person described by section 300, subdivisions (b) and (g), sustained the petition, and declared Victoria a dependent child of the juvenile court. The juvenile court ordered Mother to have monitored, one-hour visits three times per week, ordered the DCFS to provide family reunification services for Mother, and ordered Mother to participate in parent education and individual counseling to address anger management and mental health issues, to take prescribed psychotropic medications, and to submit to three on-demand drug tests.

Six-Month Review Hearing: Victoria was placed with a foster parent, with whom she bonded and in whose home she developed well. Victoria recognized Mother and appeared receptive to her visits, but did not cry when Mother left the room. At times Mother was inappropriate with Victoria in visits, speaking to her loudly when frustrated or upset with Victoria. Based on her behavior, a social worker said Mother was capable of hurting Victoria because of her mood swings, outbursts of rage, and lack of parenting skills. Mother was also described as not mentally capable of comprehending her situation or what was expected of her. Mother lacked the parenting skills or emotional stability to care for Victoria without being monitored. Mother had weekly visits with a therapist beginning on November 20, 2010. Her therapist stated that Mother was working on her depression and mood disorder, but became easily upset and frustrated. Mother visited consistently but continued to lack parenting skills.

On March 18, 2010, the juvenile court found Mother in compliance with the case plan, ordered the DCFS to provide family reunification services, and found that return of Victoria to Mother's custody would create a substantial risk of detriment to Victoria's physical and emotional well being.

Twelve-Month Review Hearing: Victoria remained in foster care. Mother's therapist recommended that Mother continue to receive individual therapy, parenting education, and anger management classes, and observed that Mother displayed poor coping skills, was childlike, easily agitated and irritable, and had poor impulse control which impaired her ability to control her emotions. As of April 29, 2010, Mother continued to participate in therapy, anger management, and parenting education, but the CSW had not observed a change in her behavior.

On May 28, 2010, Mother expressed concern about placing Victoria with her maternal aunt Marie S., who according to Mother shared the same address as maternal uncle Noel S., his wife, and their four children. Mother said Noel S. was an alcoholic who smoked pot, and that she felt Victoria was better off in her current placement and did not want Victoria to grow up around someone who was drunk all the time.

As of August 11, 2010, Victoria was thriving in the home of potential adoptive parents. She showed a lack of bonding with Mother and instead of interacting with Mother stayed close to her foster mother, whom she called “mama.” Mother lived with a roommate in a two-bedroom apartment, attended massage therapy classes, and had an expected graduation date of December 2010. Mother decreased her visitation with Victoria to an average of 30 minutes per week. During visits Mother was preoccupied with her cell phone, interacted minimally with Victoria, did not try to meet Victoria’s needs, and did not hold Victoria or show signs of affection. Mother cancelled numerous visits because of other appointments or engagements. Mother was observed to love Victoria but still had issues with frustration, irritation, and poor coping skills. Concerns remained about her mental health and stability. During visits Mother became easily agitated and in Victoria’s presence yelled at cars driving by in the parking lot. Mother’s parenting skills had not improved, and she lacked the emotional stability needed to care for Victoria without being monitored. Mother participated in court-ordered services sporadically and did not follow court orders.

In the September 28, 2010, hearing, the juvenile court found Mother in partial compliance with the case plan and ordered the DCFS to provide family reunification services to Mother and Victoria.

During a monitored visit on November 14, 2010, Mother screamed at Victoria, frightening the child, who began to cry. Mother did not want to allow Victoria to play in the playground and held her against her will. Mother also allowed Victoria to run toward an ice cream truck without regard to traffic. The foster mother stated that Mother was not capable of being left alone to care for the child, and would “lose it” and “explode” within an hour.

In February 2011, Victoria continued to show a lack of bonding with Mother. During visitation Victoria tended to stay close to her foster mother rather than interacting with Mother. Mother had attended individual therapy, but was often agitated and inconsistent in her coping skills. Mother did not know how to de-escalate when things did not go her way and needed prompting to stabilize her mood. Mother had not yet

completed parenting education. In the previous seven months, Mother visited Victoria but cancelled or failed to show up for 10 visits. A visit on December 19, 2010, was cut short because of Mother's abusive behavior toward Victoria and loud outburst. Victoria did not appear very attached to Mother and preferred to stay close to her foster mother. Mother's parenting skills had not improved. She had issues with frustration, was easily irritated, and had low coping skills. Mother continued to show she was unable to provide appropriate parenting and care for Victoria. Mother's visitation was inconsistent and she did not demonstrate a commitment to bond or reunify with Victoria.

On June 27, 2011, the juvenile court found Mother in partial compliance with the case plan, ordered family reunification services terminated for Mother, and set the matter for a section 366.26 permanent plan hearing on October 24, 2011.

Section 366.26 Hearing: Mother appeared at the October 24, 2011, hearing. The juvenile court continued the matter to February 15, 2012, for publication of notice to Father. A review of permanent plan hearing was set for December 19, 2011.

The DCFS filed a status review report for a section 366.3 post-permanent plan review on December 19, 2011. In the December 19, 2011, hearing, the juvenile court found that notice of proceedings was given to all parties as required by law. The juvenile court proceeded on the basis of a submitted case form signed by all counsel, including Mother's counsel. The submitted case form identified the December 19, 2011, status review report.

Notice of the section February 15, 2012, hearing was personally served on Mother on January 10, 2012, but the social worker's assessment report was not attached. Also on January 10, 2012, Mother filed a declaration stating that she received notice of the February 25, 2012, hearing, and waived "any defect in the timeliness or form of the notice provided to me."

On January 25, 2012, Mother was served by mail with notice of the February 15, 2012, hearing. The notice stated that a copy of the social worker's assessment report of February 15, 2012, was attached. The DCFS filed a section 366.26 report on February 15, 2012.

In the February 15, 2012, hearing, Mother's counsel objected to notice, based on proofs of service, that the section 366.26 assessment report was not sent. Mother's counsel also objected to Mother's January 10, 2012, declaration stating that she received notice of the February 25, 2012, hearing and waived any defect in the timeliness or form of notice provided to her. The juvenile court found that notice of the termination of parental rights hearing was sent to Mother's last-known address, and that there was a notice stating that the section 366.26 report was sent in a timely fashion.

Mother offered no evidence at the section 366.26 hearing. Mother's counsel argued that Victoria went into foster care when she was seven and one-half months old, but still called April S. "mother." Mother's counsel argued that Mother loved Victoria very much and did her best, did her best to attend anger management class, understood what the law was and stated that this was a very difficult time in her life.

The juvenile court found it would be detrimental to Victoria to be returned to the parents' home, it would not be detrimental to Victoria to terminate parental rights, and there had been no showing of any exception. The juvenile court found by clear and convincing evidence that Victoria would be adopted, ordered parental rights to Victoria terminated, and ordered care, custody, and control of Victoria transferred to the DCFS for purposes of adoption planning and placement.

Mother filed a timely notice of appeal.

ISSUES

Mother claims that the DCFS provided defective notice to her, asked Mother to waive any defects in notice, and the juvenile court found notice to be proper, which violated Mother's statutory and constitutional rights to due process.

DISCUSSION

1. Notice of the Section 366.26 Hearing Was Proper

Mother claims that notice was defective because she did not receive the status report of December 19, 2011.

a. *Mother's Failure to Object That She Did Not Receive the December 19, 2011, Status Report Forfeits the Claim of Error on Appeal*

The status of a dependent child who is removed from the parent's custody must be reviewed no less frequently than once every six months until completion of the section 366.26 hearing. (Cal. Rules of Court, rule 5.708(a).) Notice of a review hearing must be given to the dependent child's mother. (*Id.*, rule 5.708(b); § 293 subd. (a)(1).) Although the status review report must be provided to the parent before a status review hearing (Cal. Rules of Court, 5.708(c)(2), there does not appear to be a requirement that the dependent child's parent receive the status review report for a section 366.26 hearing. (See Cal. Rules of Court, rule 5.725(c).) In the February 15, 2012, termination of parental rights, hearing, Mother objected that she had not received the section 366.26 report, but did not object that she had not received the December 19, 2011, status report. The failure to object to the lack of receipt of the December 19, 2011, status report forfeits the claim of error on appeal. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)

b. *Notice of the February 15, 2012, Hearing Was Proper*

In the February 15, 2012, termination of parental rights, hearing, Mother objected that she had not received proper notice, and specifically that the section 366.26 assessment report was not sent. We conclude that the trial court correctly found that notice to Mother was proper and that she timely received the section 366.26 assessment report.

Section 294, subdivision (a)(1) requires notice of a selection and implementation hearing held pursuant to section 366.26 be given to the mother. Service of the notice is to be completed at least 45 days before the hearing date, and is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail. (§ 294, subd. (c)(1).) Once the juvenile court has initially found that notice was properly given to the parent, subsequent notice for any continuation of a section 366.26 hearing may be by first-class mail to any last known address. (*Id.*, subd. (d).)

Mother appeared at the section 366.26 hearing on October 24, 2011. The juvenile court continued the hearing to February 15, 2012, because service by publication of Father was not complete. As the hearing concluded, the record reflects:

“THE COURT: “Mother is present. You are ordered back for that next date [February 15, 2012]. And if you would please wait outside, they’ll give you another copy, a personal notice for that date.

“Mr. PURO [Counsel for Mother]: Your Honor, just to be clear, I’m reserving my right to set this for a contest. This would be the first .26 hearing.

“THE COURT: Why don’t we set it now. I don’t want to waste time. We’ll set two units on February 15th, [2012].”

Section 294, subdivision (f)(1) provides that notice to a parent may be given in the following manner: “If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent’s usual place of residence or business only.”

In addition to personal notice to Mother on October 24, 2011, the DCFS served Mother with notice of the February 15, 2012, section 366.26 hearing (1) by first-class mail on November 4, 2011; (2) by personal service on January 10, 2012; and (3) by first-class mail on January 25, 2012. Thus in the February 15, 2012, hearing, the juvenile court correctly found that notice of proceedings was given to Mother as required by law.

California Rules of Court, rule 5.725(c) requires the DCFS to prepare an assessment under section 366.21(i), and at least 10 calendar days before the section 366.26 hearing to file the assessment and to provide copies to each parent. The record reflects that the proof of service on Mother of the notice of hearing of the section 366.26 hearing on January 25, 2012, shows that the assessment report was attached to the notice.

Thus the DCFS complied with rule 5.725(c) and the juvenile court properly found that Mother was served with the assessment report.

2. No Error Arises From Mother's Waiver of Defects of Notice

Mother also claims that it was legal error to ask a parent to waive her right to proper notice, in form and time, of a section 366.26 hearing without an attorney or judicial oversight of a knowing and intelligent waiver.

Mother, however, did receive proper notice, and was sent a copy of the assessment report for the February 15, 2012, section 366.26 hearing, albeit after the January 10, 2012 waiver. Moreover, that waiver concerns “any defect in the timeliness or form of the notice provided” to Mother of the February 15, 2012, hearing. It does not waive defects in any purported failure to provide the December 19, 2011, status report. It also appears that Mother’s counsel received that December 19, 2011, status report, as reflected in the submitted case form signed by Mother’s counsel. Mother’s execution of the declaration of waiver of notice was not a denial of due process of law.

Mother refers to a DCFS practice of asking parents to waive defects in notice for section 366.26 hearings. Mother provides no evidence in the record to support this contention.

DISPOSITION

The order is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.