

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re LAUREN W., a Person Coming
Under the Juvenile Court Law.

B280084

(Los Angeles County
Super. Ct. No. CK78557)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROLYN N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Juvenile Court Referee. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Valerie N. Lankford, under appointment by the Court of Appeal, for Respondent Lauren W.

Patricia K. Saucier, under appointment by the Court of Appeal, for Respondent Matthew W.

Carolyn N. (Mother) appeals from the order of the juvenile court terminating dependency jurisdiction over her child, Lauren W., and awarding sole physical and legal custody of Lauren to the child's father, Matthew W. (Father), and monitored visitation to Mother (Welf. & Inst. Code¹ §§ 361.2, 362.4). On appeal, Mother contends that the visitation order issued by the juvenile court improperly delegated to the paternal grandmother the discretion to decide whether any visitation would occur. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Section 300 Petition

Mother and Father are the parents of Lauren, a girl born in January 2004. At various times, Lauren has resided with each parent. As of 2013, Mother had sole legal and physical custody of the child pursuant to a family law order. Prior to the initiation of the current proceedings, Lauren had been the subject of one other dependency case as well as numerous child welfare referrals that alleged general neglect against Mother.

On July 27, 2016, the Department of Children and Family Services (DCFS) filed the current dependency petition on behalf of then 12-year-old Lauren pursuant to section 300, subdivisions (a) and (b). The petition alleged that Mother had physically abused Lauren by choking the child, pushing her, and striking her leg. It also alleged that Mother had a history of substance

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

abuse and was a current abuser of marijuana when the child was in her care. Additionally, the petition alleged that Mother would leave Lauren home alone at night without providing appropriate adult supervision. A first amended petition later filed by the DCFS added allegations under section 300, subdivisions (b) and (c) that Mother had medically neglected Lauren by failing to provide her with recommended health care, and had emotionally abused the child by verbally insulting her and calling her derogatory names.

At a detention hearing held on July 27, 2016, the juvenile court found that there was prima facie evidence that Lauren was a person described by section 300, and ordered that she be detained from Mother and placed with her paternal grandmother pending further hearing. Counsel for Lauren advised the court that the child did not feel safe being around Mother at that time, and that she only wanted to visit with Mother on a limited basis in a structured setting. In accordance with Lauren's request, the court ordered monitored visitation for Mother once a week for two hours per visit at the DCFS's office. The matter was set for a jurisdiction hearing.

II. Jurisdiction and Disposition Hearing

For the jurisdiction and disposition hearing, the DCFS conducted interviews with the family about the allegations in the petition. In her interview, Lauren reported that Mother would physically abuse her by hitting her face, grabbing her arm, and striking her leg. Lauren also recounted that, during a July 2016 argument, Mother grabbed her by the neck with both hands and choked her. Lauren stated that Mother smoked marijuana on a daily basis, including at times when the child was in her care,

and that Mother stored the drug in the bedroom that she and Lauren shared. Lauren also reported that Mother would leave her home alone at night while Mother visited her boyfriend, and that she would not return home until the following morning. In addition, Lauren indicated that Mother would call her derogatory names and would make insulting comments about Father and his family. When asked what it was like to live with Mother, Lauren stated: “Bad. It’s like being tortured. She’d always hit me and talk about me and hurt me.”

In her interview with the DCFS, Mother generally denied the allegations in the petition. Mother reported that Lauren was defiant and aggressive and that there were times when she had to physically restrain the child due to her violent behavior, but she denied that she ever choked Lauren, struck her in the leg, or subjected her to inappropriate discipline. Mother admitted that she had a prescription for medical marijuana that she used to treat menstrual cramps, but denied that she used the drug on a daily basis or in Lauren’s presence. Mother acknowledged that she would leave Lauren at home during the night while she visited her boyfriend, but she claimed the child was never alone because they shared an apartment with adult roommates who were always home at night. Mother reported that Lauren had chronic medical issues that were difficult to treat and that she took the child to the doctor whenever she was sick. Mother also believed, however, that Lauren was using her medical issues to seek attention. While Mother denied being verbally abusive, she admitted that she would call Lauren derogatory names due to her frustration with the child’s behavior.

The DCFS also spoke with Lauren’s doctor about the allegation of medical neglect by Mother. According to the doctor,

Lauren had chronic gastrointestinal issues, but also suffered from depression and anxiety as well as poor dental hygiene. Mother was uncooperative with the doctor, had missed multiple scheduled appointments, and often spent the appointments she did attend talking about her own problems. Mother also ignored Lauren's mental health and dental care needs because she was fixated on the child's gastrointestinal issues. The doctor believed that Mother lacked compassion for Lauren and was incapable of putting her daughter's needs above her own.

With respect to visitation, the case social worker reported that she had been monitoring Mother's visits with Lauren at the DCFS's office and that the visits were not going well. The social worker observed that Lauren would try to antagonize Mother by criticizing her while praising the paternal grandmother, and that Mother would respond by blaming the paternal grandmother, the DCFS, and others for the open dependency case. The social worker often had to act as a referee during the visits because both Mother and Lauren were verbally combative. Lauren had stated that she did not want to attend any more visits because they "were too much for her to handle." Lauren's doctor also recommended that there be no visitation at that time because she believed that Lauren was suffering from post-traumatic stress disorder due to Mother's abuse and neglect, and that seeing Mother might worsen the child's symptoms.

On December 14, 2016, the juvenile court held the jurisdiction and disposition hearing. The court sustained the first amended petition as pled and declared Lauren a dependent of the court pursuant to section 300, subdivisions (a), (b), and (c). With respect to disposition, Father's counsel asked the court to terminate its jurisdiction and to grant Father sole physical and

legal custody of the child. Mother's counsel asked the court to transfer the case to San Bernardino County where Father resided and to issue a visitation order that would allow Mother to visit Lauren "in a therapeutic setting in San Bernardino and be advised by a therapist as to when and how [M]other should be able to contact her." Alternatively, Mother's counsel requested that the court issue a family law custody order that included visitation for Mother if the court decided to terminate jurisdiction. Lauren's counsel did not take a position on whether jurisdiction should be terminated, but requested that any visitation with Mother occur in a therapeutic setting and only when deemed appropriate by the child's therapist.

At the conclusion of the hearing, the court terminated its jurisdiction over Lauren and issued an order granting sole physical and legal custody of the child to Father and monitored visitation to Mother. As requested by Lauren's counsel, the court ordered that Mother's visitation occur "in a therapeutic setting once deemed appropriate by Lauren's therapist." The court then stayed its order terminating jurisdiction pending the receipt of a family law custody and visitation order to be prepared by Father's counsel. The court continued the matter for a non-appearance progress hearing to be held on December 21, 2016.

At the December 21, 2016 hearing, the juvenile court received the family law custody and visitation order filed by Father's counsel. The court then terminated its jurisdiction over Lauren and signed the order granting sole physical and legal custody of the child to Father and monitored visitation to Mother. The order stated that Mother was granted "[m]onitored visits in a therapeutic setting only," and that "Mother may contact [the paternal grandmother] at [a designated telephone number] to set

up visits.” Mother thereafter filed a notice of appeal from the juvenile court’s custody and visitation order.

DISCUSSION

On appeal, Mother contends that the juvenile court erred in issuing the custody and visitation order because it improperly delegated to the paternal grandmother the discretion to allow visitation with Lauren. In their respective respondent’s briefs, Father and Lauren argue that Mother has forfeited her right to challenge the terms of the custody and visitation order on appeal by failing to raise a timely objection to the order in the juvenile court. Both Father and Lauren also assert that Mother has failed to demonstrate that the order constituted an improper delegation of judicial authority over visitation by the juvenile court.

Section 361.2 states, in pertinent part, that when a juvenile court orders the removal of a child from a parent, the court shall first determine whether there is a non-custodial parent who desires to assume custody. (§ 361.2, subd. (a).) If so, the court shall place the child with that parent absent a finding that the placement would be detrimental to the child’s physical or emotional well-being. (*Ibid.*) Once the court places the child with the previously non-custodial parent, it may order that the parent become the legal and physical custodian of the child and terminate its dependency jurisdiction. (§ 361.2, subd. (b)(1).)

Section 362.4 describes the authority of the juvenile court to determine issues of custody and visitation when it terminates its jurisdiction. It provides, in relevant part, that “[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, . . . the juvenile court

on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (§ 362.4.) Section 362.4 accordingly vests the juvenile court with broad discretionary authority to make a custody and visitation order in conjunction with terminating its jurisdiction. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203-204; *In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455-1456.) Such an order commonly is referred to as an “exit order” and remains in effect until modified or terminated by the family court. (*In re Armando L.* (2016) 1 Cal.App.5th 606, 616.)

It is well-established that “a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.]” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) Although “application of the forfeiture rule is not automatic[,] . . . the appellate court’s discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue. [Citations.]” (*Ibid.*) Such “discretion must be exercised with special care” in juvenile dependency cases because they constitute “special proceedings with their own set of rules, governed, in general, by the Welfare and Institutions Code.” [Citation.] Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance. [Citation.]” (*Ibid.*; see also *In re Dakota H.* (2005) 132 Cal.App.4th 212, 222 [the doctrine of “[f]orfeiture, also referred to as ‘waiver,’ applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings”].)

In this case, the sole issue that Mother raises on appeal is whether the juvenile court's exit order improperly delegated to the paternal grandmother the authority to decide whether any visitation between Mother and Lauren would occur. In response to the forfeiture argument raised by Father and Lauren, Mother does not dispute that she had an opportunity to object to the terms of the order in the juvenile court and failed to do so. Indeed, the record reflects that, at the December 14, 2016 jurisdiction and disposition hearing, Mother was represented by counsel, who specifically asked the juvenile court to issue a custody and visitation order that granted Mother monitored visitation with Lauren in a therapeutic setting to be arranged through the child's therapist. That was the order made by the juvenile court at the jurisdiction and disposition hearing, with the added restriction that such visits would occur "once deemed appropriate by Lauren's therapist." Mother's counsel did not object to the terms of the visitation order at that time, nor did she object to the juvenile court's order continuing the matter for one week to allow for the receipt of a family law exit order.

The family law exit order, which was prepared by Father's counsel, was received and signed by the juvenile court the following week at the December 21, 2016 hearing. That exit order stated that Mother's monitored visits would take place "in a therapeutic setting," and also added a sentence that Mother "may contact" the paternal grandmother "to set up visits." While Mother did not appear at the December 21, 2016 hearing, it is undisputed that she had notice of the hearing and that she never objected to the terms of the exit order or sought clarification from the court about the paternal grandmother's role in arranging the monitored visits. Because Mother failed to make a timely

objection to the exit order or to seek clarification of its terms in the juvenile court, she has forfeited her right to challenge that order on appeal.

Mother nevertheless asserts that this court should exercise its discretion to consider her claim on appeal because it raises an important question of law about the proper delegation of judicial authority in a child visitation order and can be decided based on undisputed facts. (See *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314 “[w]here . . . ‘the facts are not disputed, the effect or legal significance of those facts is a question of law,’ which ‘is not automatically subject to the doctrine of forfeiture’”].) We decline, however, to exercise our discretion in this case. The claim raised by Mother is not a significant issue of first impression or one that has divided the appellate courts. To the contrary, there is a wealth of case law regarding the permissible scope of delegation of authority over matters of visitation. (See, e.g., *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686-687 [juvenile court “may not delegate its authority to determine whether any parent-child visitation will occur to another person or an entity that has *no legal authority* to determine visitation between a parent and child”]; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123, “[t]he power to determine the right and extent of visitation by a noncustodial parent in a dependency case resides with the court and may not be delegated to nonjudicial officials or private parties”]; *In re S.H.* (2003) 111 Cal.App.4th 310, 318 “[t]he discretion to determine whether any visitation occurs at all ‘must remain with the court, not social workers and therapists’”]; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1478 [although juvenile court “may base its determination of the appropriateness of visitation on input from therapists, it is the court’s duty to make

the actual determination”]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 [“juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation to” a third party].)

While Mother contends that appellate determination of the validity of the challenged order would add certainty and stability to Lauren’s visitation, a juvenile court’s exit order is not equivalent to a permanent family law custody and visitation order. (*In re John W.* (1996) 41 Cal.App.4th 961, 973 [“[j]uvenile court exit orders . . . are in the nature of pendente lite orders in family law”].) Accordingly, if in the future, Mother believes that there has been a change in circumstances or that the terms of the existing order are precluding her from having visitation with Lauren, she is free to seek modification of the custody and visitation order in the family court. (*In re Chantal S., supra*, 13 Cal.4th at p. 214; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 271; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 714.)

DISPOSITION

The juvenile court’s order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.