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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re P.S. et al., Persons Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.S. et al.,

Defendants and Appellants.

B245593

(Los Angeles County  
Super. Ct. No. CK76163)

APPEAL from an order of the Superior Court of Los Angeles County.  
Jacqueline H. Lewis, Commissioner. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Appellant,  
Donna S.

Kate M. Chandler, under appointment by the Court of Appeal, for Appellant,  
Devin S.

John F. Krattli, County Counsel, James M. Owen, Assistant County Counsel,  
Navid Nakhjavani, Deputy County Counsel, for Respondent.

Janette Freeman Cochran, under appointment by the Court of Appeal, for minors  
P.S. et al.

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Mother Donna S. (mother) appeals from the dependency court's order that she be given monitored visitation with her three children, contending that she should have been allowed unmonitored visits instead. Based on her recent brushes with the law involving prostitution and drunken driving, we conclude that the trial court did not abuse its discretion. Father Devin S. (father) has also appealed from that order, but his appointed counsel filed a brief under *In re Phoenix H.* (2009) 47 Cal.4th 835 (*Phoenix H.*) that raised no issues. We affirm as to him as well.

### **FACTS AND PROCEDURAL HISTORY**

In April 2012 mother and father pleaded no contest to an amended petition filed by the Los Angeles County Department of Children and Family Services (DCFS) which alleged that their children – P.S., age four, H.S., age three, and J.S., age two months – were dependent wards of the court because they were at risk of harm from the parents' ongoing history of domestic violence. (Welf. & Inst. Code, § 300, subd. (a).)<sup>1</sup> The plea was the result of a mediation between the parents and the department.

The family had a previous history with DCFS that led to an appeal with this court. (*In re P.S.* (Oct. 14, 2010, B222995) [nonpub. opn.].) In that decision, we affirmed the dependency court order denying mother's request to terminate its jurisdiction over P.S. and H.S. We noted that a police investigation into mother's claims that father beat her determined that she was lying and that father had in fact been the victim of violence she had initiated. She also had a history of violence, including convictions in 2002 and 2008 for misdemeanor battery and inflicting corporal injury on a cohabitant. (*Id.*, at p. 1.)

According to the 2012 petition, the parents began living together again in May 2011 despite their past troubles and in October 2011 had another altercation in front of the children. The petition also alleged that mother had a history of criminal convictions for inflicting corporal injury on a cohabitant, and on other occasions had exposed the children to acts of domestic violence involving another man. As a result of the parents'

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<sup>1</sup> All further undesignated section references are to the Welfare and Institutions Code.

no contest plea at the April 2012 jurisdictional hearing, the trial court ordered the parents to attend domestic violence, parenting, and individual counseling. The court also ordered reunification services, including monitored visitations for each parent, with DCFS given discretion to liberalize the visits if warranted.

An interim progress hearing was held July 24, 2012. A DCFS report prepared for that hearing stated that DCFS had granted the parents unmonitored visitation because they were in partial compliance with the court's orders and they had appropriate interactions with the children during their visits. Although father was making satisfactory progress in his various counseling programs, mother had not provided documentation showing she had actually started any programs. Furthermore, mother was combative and argumentative with the social workers and continued to question why DCFS intervention was required. In addition, mother had been arrested in May 2012 on an unknown charge, and a sheriff's department inmate information sheet was provided to support that contention.

At the July progress hearing counsel for DCFS said she was concerned that the department had violated the court's order by allowing unmonitored visits "because clearly there wasn't any progress on mother's behalf, . . ." Although father appeared to be participating, "mother appears to be in the same position she was at at *[sic]* detention." The court said, "I've read it, and mother's visits remain monitored," adding that DCFS had no discretion to liberalize the visits "at this point." Because father was doing well, however, his visits could remain unmonitored.

Mother then filed a petition under section 388 asking the court to modify its July 24, 2012, order and restore her unmonitored visitations with the children. Mother contended this change was warranted because: (1) she had been subpoenaed as a witness at a civil service hearing for July 24, 2012, and had therefore been unable to attend the hearing; and (2) the social worker who prepared the report was new and did not know her. The dependency court summarily denied the petition due to a lack of changed circumstances because "DCFS never had discretion to liberalize mother's visitations."

A six-month status review hearing was set for October 2012. A DCFS report prepared for that hearing said that mother was in full compliance with the court's orders and was making good progress. The report noted, however, that mother was arrested for drunken driving in May 2012 and for prostitution in August 2012. Mother pleaded no contest to a misdemeanor prostitution charge. (Pen. Code, § 647, subd. (b).) The police report detailing the circumstances surrounding her arrest for prostitution was attached to the report, as was a sheriff's department inmate information sheet for a separate, unspecified charge, presumably for drunken driving. Mother told the social worker she was no longer committing prostitution because she had made enough money from it to furnish her home. The social worker believed mother's lapses did not place the children at risk of harm and did not detract from mother's commitment to, and progress toward, reunifying with her children. DCFS therefore recommended that mother be granted unmonitored visitation.

At the start of the October 2012 hearing counsel for DCFS sought clarification from the court about the visitation issue and whether the department had violated the court's order because DCFS mistakenly believed the court had initially given it discretion to liberalize visitation. The DCFS lawyer referred to the parties' mediation agreement, which did grant such discretion. The court replied, "The problem is, the Court doesn't sign the mediation agreement." The department's lawyer assured the court that she had made clear to DCFS that it had no discretion to liberalize visitation at that point. The lawyer also said that a new social worker had been assigned to the case because the original social worker had been taken off the case due to concerns that she had inappropriately liberalized the parents' visitation.

The DCFS lawyer also noted mother's prostitution and DUI arrests, adding that mother was "struggling with some issues here." The lawyer added that she had no further explanation for why the department liberalized visitation when it should not have. The court set the matter for a contested hearing. (§ 366.21, subd. (e).) Mother's counsel asked for unmonitored visits. The court replied, "Not on your life. [¶] . . . Not if

anything in these reports are true.” Mother’s counsel did not challenge the department’s factual assertions concerning mother’s recent prostitution and DUI charges.

After various continuances, the six-month review hearing resumed over two days in February and March 2013. Father and his therapist testified at the hearings concerning the great progress he had made in understanding and dealing with the issues that led to the detention of his children. The department had allowed father to have unmonitored overnight visits with the children for the past several months, and those visits had gone well. Counsel for DCFS recommended that the children be placed with father.

Mother appeared at the February hearing but did not testify. Mother did not appear at the March hearing, and no evidence was introduced to challenge the department’s assertion that mother had been convicted of prostitution and arrested for DUI. Her lawyer asked the court to follow the recommendation in the October 2012 DCFS report and award her unmonitored visitation. Counsel for the minors opposed that request, based on mother’s past history and her recent arrests.

The trial court said that DCFS had appropriately liberalized visitation for father, who had made “considerable progress” dealing with the issues that brought the children into dependency court. Accordingly, the court found that returning the children to his home posed no risk of harm to them, placed the children with father with an order for family maintenance services, and set the matter for a permanent planning hearing to terminate jurisdiction. Mother’s visitation was to remain monitored, however.

Mother and father separately appealed. Mother filed three separate notices of appeal, two from hearings in October and November 2012, and the third from the March 11, 2013 order. Father filed two notices of appeal from the October 16, 2012, hearing. All these appeals have been consolidated for all purposes under case No. B245993. Mother contends the dependency court erred by continuing its order for monitored visitation. Father’s appointed counsel submitted a brief that raised no issues, pursuant to *Phoenix H.*, *supra*, 47 Cal.4th 835.

## DISCUSSION

### 1. *The Order For Monitored Visitation Was Not an Abuse of Discretion*

In order to maintain the ties between parent and child, the court shall provide for visitation whenever reunification services are ordered, “consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).) This requires the trial court to balance the rights of the parents with the best interests of the child. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) We review the trial court’s order under the abuse of discretion standard. (*Ibid.*)

Mother contends the trial court abused its discretion by disregarding the social worker’s opinion that mother’s recent brushes with the law posed no risk of harm to the children, warranting unmonitored visitation due to mother’s recent great progress. She also contends that the trial court’s March 11, 2013, order was tainted by the court’s misunderstanding concerning whether it had in fact given DCFS discretion to liberalize visitation as part of the April 2012 jurisdictional order. Finally, although mother concedes the fact of her prostitution conviction, she contends that there was insufficient evidence that she picked up a DUI in May 2012. As she sees it, the claim was supported by only the social worker’s bare assertion and a sheriff’s inmate information sheet from May 2012 that did not identify why she was in custody. We reject these contentions.

The social worker’s report, combined with sheriff’s May 2012 inmate information statement bearing a different case number than mother’s prostitution charge, was sufficient evidence to support a finding that mother in fact committed DUI. At the October 2012 hearing the court rejected mother’s request for unmonitored visitation, declaring, “Not on your life . . . if anything in these reports are true.” Mother had six months to challenge that assertion but never did. She did not testify and offered no evidence that the DUI never occurred. Instead, during the March 2013 hearing, her lawyer addressed the issue of her recent problems in passing, stating that “. . . mother’s criminal activity occurred over six months ago, and the children were not present.” No attempt was made to differentiate between the prostitution conviction, which mother concedes, and the supposed DUI charge. Based on this record, we conclude the

dependency court could find that mother had recently committed both prostitution and DUI.

Given this, we see no abuse of discretion in continuing the requirement of monitored visitation. The dependency court was not required to accept the social worker's opinion that mother's criminal conduct posed no risk to the children's well-being. A parent who drives while inebriated is certainly a risk to her children should she carry them as passengers. Neither was the court required to believe mother's statement to the social worker that she had stopped engaging in prostitution because she had earned enough money to furnish her house. The court was well within its discretion in finding mother's prostitution also posed a risk to the children's well-being.

Finally, we reject mother's contention that the court was somehow misled and confused in March 2013 by the July through October 2012 dispute over whether the court had given DCFS discretion to liberalize mother's visits to unmonitored at the April 2012 jurisdictional hearing. As we read the record, the court never intended to give the department discretion to liberalize visitation; any confusion may have been caused by the terms of the parties' mediated settlement.<sup>2</sup> Mother never appealed from any of the interim rulings or the denial of her section 388 petition, and she concedes that the propriety of the March 2013 order is the only issue before us. As just discussed, the court did not abuse its discretion in ordering monitored visitation at that time.

## 2. *There Are No Arguable Issues Regarding Father*

Father filed a notice of appeal in November 2012, and an amended notice in December 2012, purporting to appeal from the order and findings made on October 16, 2012. Attached to the latter was a statement asserting that father had been pressured by the court and his own lawyer into the mediated settlement that led to the April 2012 agreement by father to plead no contest to the allegations of the section 300 petition. His appointed counsel filed a brief in which no issues were raised, pursuant to *Phoenix H.*,

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<sup>2</sup> As a result, mother received the benefit of unmonitored visitation until the court clarified its order.

*supra*, 47 Cal.4th 835. We offered father the chance to file a supplemental brief, but he chose not to do so.

After reviewing the record, we find no arguable issues concerning father. First, his appeals were untimely because it concerns the April 2012 jurisdictional hearing, but the notices were not filed until November and December 2012, beyond the jurisdictional date for appeal. Second, construing the notice of appeal as relating to the March 11, 2013 order, is not helpful to father. As a result of that order, the children were placed with father and the case was set for a permanent plan hearing where termination of jurisdiction was to be the long-range plan. Accordingly, father prevailed at that hearing and we therefore affirm the March 11, 2013 order, as to him.

#### **DISPOSITION**

The dependency court's March 11, 2013, six-month status review order is affirmed as to both parents.

RUBIN, ACTING P.J.

WE CONCUR:

FLIER, J.

GRIMES, J.