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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B237289

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK02172)

Plaintiff and Respondent,

v.

ANNE S.,

Defendant and Appellant.

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

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Anne S. appeals from the order of the juvenile court that selected the permanent plan of guardianship for Kerrie S. (13 years old) and Luis S. (14 years old) (Welf. & Inst. Code, § 366.26, subd. (a)(3))¹ and terminated its jurisdiction over the children. Anne contends the court abused its discretion in ordering that her visits with the children be supervised by a professional monitor. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This dependency has a very long history. It arose “because of the state of Anne’s mental health, which ‘ “affect[ed] her judgment and ability to properly care for and supervise her children.” ’ ” (*In re Kerrie S. et al.* (July 14, 2011, B229459) [nonpub. opn.], at [p. 2].) “As a result of her mental health issues, Anne made inappropriate decisions for the children and false allegations and accusations about people close to the children. Anne was agitated, confrontational, and uncooperative in front of the children. She was argumentative, violated the court’s visitation orders, undermined and demeaned the children’s relationships with their grandmother, and was unable to comply with the conditions of her visits. The juvenile court declared the children dependents under . . . section 300, subdivision (b) and removed them from Anne’s custody. Eventually, the court terminated reunification services because Anne made questionable progress in therapy and her visits ran the gamut from monitored to liberalized and back to supervised. The court found that the children would be at risk if returned to Anne’s care *because of her inability to recognize the fact that her numerous false allegations about the children’s caretakers, her persistent need for therapy, her instability, distortion, and lack of impulse control, all put the children at risk.*” (*Ibid.*, italics added, fn. omitted.)

In 2004, the juvenile court placed the children in a legal guardianship with their paternal grandmother. Since then, Anne has filed numerous petitions under section 388 seeking to modify the guardianship and charging the grandmother and other people in the children’s lives with abuse and neglect. (See, e.g., opns. B198749, B205586, B213822,

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

B215054, B227775 & B229459.) Each time Anne made these allegations, the Department of Children and Family Services (the Department) was required to investigate. It found nearly every allegation to be unfounded. (See, e.g., *In re Kerrie S. et al.*, *supra*, B229459 at [p. 3].)

In September 2010, the children's attorney requested that Anne's visits remain monitored by a professional monitor at Anne's expense. Counsel reasoned that a "professional monitor would be most appropriate because of the problems Anne has had with supervisors in the past, including the Department's monitors." In our opinion filed May 26, 2011, we affirmed the juvenile court's order that Anne's visits with the children be "monitored at the Department's office *or by a professional monitor* at least twice per month." (*In re Kerrie S. et al.* (May 26, 2011, B227775) [nonpub. opn.] at [p. 5], italics added.)

In November 2010, Anne requested that her visits be liberalized. (*In re Kerrie S. et al.*, *supra*, B229459, at [p. 3].) Kerrie's attorney opposed the request. "The juvenile court noted it had been unsuccessful in its efforts to prevent Anne from engaging in inappropriate discussions with the children even during monitored visits." (*Id.* at [p. 4].) The court stated, "As long as I'm able to have DCFS monitor at their office or therapeutic setting, then I at least have a more reasonable option." (*Ibid.*) In affirming the juvenile court's order denying Anne's request for unmonitored visitation, we stated, "this record more than amply supports the juvenile court's implied conclusion it would not be in the children's best interest to grant Anne unmonitored visits with them." (*Id.* at [p. 9].)

The children's guardian, their grandmother, died in January 2011 and the children were placed with the paternal uncle and aunt, Hector and Luz S. The caregivers reported that the children call Anne on a nightly basis but that Anne " 'picks up at her convenience.' " Both Kerrie and the caregiver reported that Anne continued to make inappropriate comments.

At the section 366.26 permanent planning hearing, the juvenile court ordered the children into guardianship with the paternal aunt and uncle. It ordered that Anne's visits be monitored by a professional monitor once per month. At Anne's request, the court

extended visitation to twice monthly. The court rejected Anne's request that the guardians serve as monitors. Anne's counsel then requested, "My client, as the court probably knows, is really strapped for money. Can it be a professional monitor or any other monitor approved by the legal guardians?" The court denied the request and terminated its jurisdiction.

Anne immediately filed a section 388 petition requesting termination of the new guardianship on the basis that the children were suffering physical and emotional abuse by the guardians; the guardians interfered with her relationship with the children; the children were safer with Anne; the judge should remove himself from the case; the court's orders were "inhumane and baseless;" and Anne *could provide for her children*. The juvenile court summarily denied the petition. Anne appealed.

CONTENTIONS

Anne contends the juvenile court abused its discretion by requiring a professional monitor and in failing to award her telephonic contact with the children.

DISCUSSION

"Orders regarding visitation may be reversed only upon a clear showing of an abuse of discretion. [Citation.] ' "[']The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " [Citation.]' [Citations.]" (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095-1096.) We may not disturb an order that is the result of an exercise of discretion unless the court " " " 'exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].' " ' [Citations.]" (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.)

The juvenile court did not abuse its discretion in requiring a professional monitor for Anne's visits. Anne continues to engage in the kind of difficult and inappropriate conduct during visitation that has repeatedly necessitated the imposition of supervision throughout this nine-year dependency. Not only does Anne make inappropriate remarks

to her children, but she makes unfounded allegations about the children's caregivers, the court, as well as the social workers and the Department, who have largely borne the brunt of monitoring Anne's visits.

Anne now aims her disturbing accusations at the paternal uncle, the children's new guardian. She alleged that Hector had anger management and unresolved childhood abuse issues, that he has temper tantrums and throws objects in anger at Kerrie. She alleged that Hector threatened to spank Kerrie, locked her in a dark room overnight, and took Anne's gifts away from the children. She also asserted that Hector medically neglected Luis after a football injury. In view of the disruptions these allegations cause, the court acted well within the bounds of reason in refusing Anne's request to have the very same guardian monitor her visits or choose the supervisor.

Anne's persistent and inappropriate allegations justify the supervision order. Professional monitors are neutrals. (Cal. Stds. Jud. Admin., § 5.20, subd. (g) ["All providers should maintain neutrality by refusing to discuss the merits of the case or agree with or support one party over another"].) Where the juvenile court terminated its jurisdiction along with the Department's oversight, it acted well within its discretion in requiring Anne's visits be supervised by a third-party professional, who could maintain impartiality and who is not employed by the Department.

The requirement that Anne's visits be supervised by a professional monitor is not new. In our opinion filed May 26, 2011, we affirmed the juvenile court's order that Anne's visits with the children be monitored at the Department's office *or by a professional monitor* at least twice per month. (*In re Kerrie S. et al.*, *supra*, B227775, at [p. 5].) That order came at the request of the children's attorney who reasoned that "the professional monitor would be most appropriate because of the problems Anne has had with supervisors in the past, including the Department's monitors." (*Ibid.*) Anne did not challenge that visitation order on the ground she could not afford it. (*Id.* at [p. 7].) Stated otherwise, that order has been in effect for 14 months during which time, Anne did not challenge it on financial grounds.

Moreover, there is no evidence to support her challenge to the order based on her financial situation. The statement that Anne is “strapped for money” was made by her own attorney. However, “It is axiomatic that the unsworn statements of counsel are not evidence. [Citations.]” (*In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 6.) In fact, immediately after the order challenged here, Anne signed and filed a section 388 petition in which she asserted *she was able to support her children*, belying her attorney’s claim of penury. Not only did Anne sit on an identical visitation order for 14 months without challenging it on this ground, but she presented no evidence to the juvenile court to support the contention. Thus, the court did not abuse its discretion in requiring an independent professional monitor.

Finally, we reject Anne’s contention that the juvenile court erred in failing to provide for telephone contact with the children. Anne has pointed us to nothing in the record to indicate she requested the juvenile court order telephone contact for her. Furthermore, the goal of monitoring Anne’s visits is to prevent her from engaging in inappropriate conversations. This goal would be entirely undermined by telephone contact with the children, which by its very nature is unsupervised.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.