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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re D.L., et al., Persons Coming Under
the Juvenile Court Law.

B235481
(Los Angeles County
Super. Ct. No. CK61420)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.J.,

Defendant and Appellant.

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

Lori Siegel, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant
County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and
Respondent.

A.J., the mother of minors D.L, A.R.L. and A.L. appeals from an order granting Mary C. guardianship of the children. Mother asserts that rather than appoint Mary C. guardian of the children, the court should have required an additional investigation of Mary C. and the conditions of her home. As we shall explain, the evidence the lower court had before it at the Welfare and Institutions Code¹ section 366.26 hearing does not support Mother's contentions on appeal. The court had sufficient evidence to find that Mary C. was an appropriate guardian for the minors, and thus we conclude the court did not abuse its discretion in making the appointment and ordering that letters of guardianship issue. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Circumstances Leading to the Minor's Initial Detention in 2005.

A.J.,² ("Mother") is the mother³ of D. L., born in December 2003, A.R.L., born in April 2005, and A.L., born in October 2006.⁴

In November 2005, the Los Angeles County Department of Children and Family Services (the "Department") filed a section 300 petition alleging the children, D.L. and A.R.L., were subject to risk because of the parents' drug possession, drug use, and drug

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

² Mother was a prior dependent of the juvenile court.

³ Mother had a fourth child during the pendency of these proceedings in 2009 (hereinafter referred to as "Baby Girl A.L."). Baby Girl A.L. is also the subject of dependency proceedings, but she is not a party to this appeal.

⁴ The children have the same presumed father, L.L. ("Father"). He is not a party to this appeal.

manufacturing in the home while the children were present.⁵ The Department detained the children and placed them in foster care.

In December 2005, after a pre-release investigation, D.L. and A.R.L. were placed in the home of family friend⁶ Mary C., at Mother's request. The Department assessed Mary C.'s home and found it suitable.⁷

In February 2006, the juvenile court sustained the section 300 petition. The court ordered the children removed from Mother and Father's custody. Mother and Father were both offered family reunification services and monitored visitation, in the home of Mary C. The July 2006 Department report indicated that the children did well in Mary C.'s home and had adjusted to the placement.

Mother and Father's third child A.L., a girl born in October 2006, became the subject of a voluntary family maintenance contract between Department and the parents.

Mother and Father were allowed unmonitored visits with their older children in September 2006, and were in compliance with the court-ordered case plan. By January 2007, the Department reports indicated that the boys were still doing well in Mary C.'s home and appeared attached to Mary C.

⁵ As sustained the section 300 petition alleged: "(b-1) On or about 11/4/05, the home where the children were found was inappropriate in that marijuana, drug paraphernalia and equipment used to manufacture cocaine was found in the home, within access of the children, and an attempted drug sale occurred in the home while police were present. Father was convicted only of possession of less than one ounce of marijuana. (b-2) Mother has used marijuana which periodically interferes with her ability to care for the children."

⁶ At various places in the record and the briefs, Mary C. is characterized as the children's "paternal great aunt." However, the record discloses that at a team decision meeting in 2011, Mary C. conceded that she was not actually a relative, but instead is a close family friend.

⁷ The investigation revealed that Mary C. had a 2005 misdemeanor arrest for "obstructing a police officer." Approval of the home was pending to allow the Department to obtain the disposition of the arrest. Her arrest resulted in a fine.

Although the Department reports indicate that in early 2007, the CSW had some difficulty maintaining regular contact with Mother, the Department nonetheless recommended that the boys be placed in Mother's home upon commencement of Family Preservation Services. The parents were allowed an extended visit with D.L. and A.R.L. In April 2007, the court terminated the suitable placement order for the boys and returned them to Mother and Father with Family Preservation Services in place.

After the children were placed with both Mother and Father, the family failed to maintain contact with the Department. The parents did not comply with family preservation services, and did not make themselves available for unannounced home visits by the Department social workers. By late 2007, the Department could not locate the family; the Department requested that the court issue a protective custody warrant for the children. In January 2008, custody warrants were issued for the D.L. and A.R.L. and an arrest warrant was issued for Mother.

Detention and Dependency Proceedings in 2008

The Mother and the children – D.L., A.R.L. and A.L. – were located in the late spring of 2008, when the Department received a referral alleging physical abuse of her son A.R.L. and general neglect of the two other children.

On May 27, 2008, the Department filed a new section 300 petition seeking detention of A.L. from Mother and Father's custody, and a section 342 petition seeking detention of the boys D.L. and A.R.L. The petitions alleged that the children were at risk of harm due to physical abuse, dangerous and filthy conditions of the location where they were found,⁸ and that Mother had absconded with the children for a five month period.⁹

⁸ At the time of detention, the home where Mother and the children were found, smelled of marijuana though Mother denied using drugs. The children also reported that Mother "whooped" them; the home was in deplorable condition; and the children were dirty and had multiple bruises in various stages of healing.

⁹ Specifically the petitions alleged: "(a-1) On prior occasions, the [toddler A.L.] mother, A.J., physically abused the child's siblings. . . Such physical abuse consisted of

At the detention hearing the court was informed that Mother and Father had separated, and that Father no longer resided with Mother. Mother stated that she lived with the maternal grandmother during her time of absence, believing the dependency case had been closed after the children had been placed with her. The court ordered the children detained, finding they were minors described by sections 300 and 342.

Both Mother and Father requested all three children be placed with the prior caregiver, Mary C. In 2008, the Department assessed Mary C. as a potential placement for the three children. The Department reported that Mary C. was a childcare provider who ran her own business; she watched two children as part of her daycare. Her home was described in the 2008 report as “child friendly,” having appropriate safety devices in the home and no visible hazards. The home was described as clean, sanitary and safe. The children had beds in the home and an area for them to play and keep their toys. Mary C. had two adult children who also resided in the family home. Both adult children submitted to criminal background checks that revealed that neither had a criminal history. The children were approved for placement in Mary C.’s home in July 2008, after all criminal background checks for the adults in the home had “cleared.”

After the children were placed with Mary C. in 2008, Mother visited the children only twice and failed to show up for other visits.

the mother striking the siblings about the siblings’ bodies. Such physical abuse of the siblings by the mother endangers the child’s physical and emotional health, safety and well being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage and physical abuse. (300 (b-2): On 05/21/2008, and ongoing, the parents have been unable or unwilling to provide a safe and stable home for the children, placing the children at risk.”

In July 2008, the Department filed a section 387 petition alleging: “In December 2007, . . . [Mother] secreted the children from DCFS and the juvenile court for a period of five months. The mother and father’s abduction of the children endangers the children’s physical and emotional health, safety and well being and places the children at risk of physical harm, damage and danger.”

In October 2008, the court sustained the petitions. Family reunification services were offered to the parents; Mother was to be referred to Regional Center¹⁰ to assist with parenting and support. Father was ordered to complete parenting education and individual counseling. The court allowed Mother to have monitored visitation, and Father was permitted reasonable day visits. Mother indicated that she was pleased that the children were placed with Mary C. and hoped Mary C. would be the permanent caregiver for them. The children had adjusted well to the home of Mary C.; she was attending to all of their needs in school, activities and healthcare.

In January of 2009, however, the Department reported that Mother no longer desired the children to remain in the care of Mary C. She wanted the children to be placed with maternal family members. According to Mary C., Mother and Father stopped calling the children regularly, and their visitation was infrequent. Mary C. did not believe the children were either parent's priority. It was reported that Mother was selling and abusing drugs, and was pregnant.

Mother had a fourth child in July 2009, Baby Girl A.L. Mother lived with her newborn in the home of Mother's relatives. Mother completed a parenting program and Regional Center assisted with in-home care and training.

Mother's older three children continued to reside with Mary C., who expressed an interest in adoption. The children were doing well in their placement; Mary C. was complying with the case plan.

The court set the section 366.21, subdivision (f) hearing for a contest in August 2009. The Department reported that Mother was living with a cousin and that Father had not remained in contact with the Department or demonstrated compliance with the case plan. The Department recommended that reunification services be terminated for both parents and that adoption would be the best plan for the three children. At the hearing, the court terminated Father's family reunification services but granted Mother additional time for reunification.

¹⁰ Mother suffered brain damage as a child and is developmentally immature.

A December 2009 Department report indicated that Mary C. was still interested in adopting the children, that she was in compliance with the case plan and was completing the adoption home study. Mary C. reported that Mother rarely visited the children. Mary C. said that she put no requirements on visitation other than that Mother call before coming over. The court set the matter for a February 2010 section 366.22 hearing.

On February 4, 2010, the court terminated Mother's family reunification services with her oldest three children, finding that Mother had not visited with the children regularly.¹¹

The June 2010 section 366.26 report indicated that the children were likely to be adopted by Mary C., but the home study had been delayed because Mary C. was apparently still married to an estranged spouse and could not obtain a spousal waiver. Mary C. filed for divorce; the adoptions social worker stated that upon issuance of a divorce decree, Mary C.'s home study would proceed. Nonetheless, Mary C. continued to provide care for all four children, and the children were reportedly thriving in her home. Mary C. reported that Mother failed to maintain consistent contact with the children. Mother through counsel informed the court that she had great difficulty reaching Mary C. to arrange visits with the children. Mother asked the court to order the Department to assist in facilitating visitation with her children. County Counsel informed the court that the relationship between Mary C. and Mother was "strained."

¹¹ In March 2010, the Department detained Baby Girl A.L. because Mother had left the baby with unknown caregivers and had gone to Las Vegas. The Department placed Baby Girl A.L. with her siblings in Mary C.'s home. The court sustained a section 387 petition as to Baby Girl A.L. which read "The child's [Baby Girl A.L.] mother's developmental delays limit her ability to provide for the child's ongoing care and supervision, and mother has failed to comply with the orders of the court." Baby Girl A.L. was referred for a Regional Center evaluation, Mother was allowed monitored visitation three times each week, and Mother was given family reunification services with the baby.

The court continued the matter for approval of the home study and notice to Father. As of October 2010, the home study had not yet been approved because Mary C. had not yet provided proof that she was divorced.

In December 2010, a new social worker was assigned to the case. According to this social worker, she had only one face-to-face meeting with Mary C. in late December 2010, and that all efforts to contact Mary C. or visit the home from the end of December 2010 through late January 2011, were unsuccessful. Mary C. was not reachable by either the social worker or adoptions worker.

Mother said she felt uncomfortable visiting her children at Mary C.'s home because she knew Mary C. did not like her. Mother claimed that she attempted to arrange a visit with the children, but Mary C. did not return her phone calls. Mother was living with the maternal grandmother; Mother expressed a desire to have the children returned to her or a family member. The Department acknowledged that Mother was not able to visit with her children because Mary C. was uncooperative in facilitating Mother's visitation. The social worker also questioned whether Mary C. would be an appropriate adoptive parent given her reluctance to make the children available to the Department for visitation and contact.

At the hearing on February 4, 2011, the court had before it the report containing the Department's new concerns about Mary C.'s lack of contact with the Department as well as other matters concerning the condition of her home. The report disclosed that Mary C. had apparently told the social worker she did not want the CSW making unannounced visits. The Department also disclosed that two referrals for abuse or neglect were generated against Mary C.'s household in December 2010. One resulted in a voluntary case for Mary's daughter-in-law who tested positive for marijuana in December 2010 and January 2011. Further, the social worker expressed concerns that the home where the children resided did not seem appropriately equipped for active children in that there were no visible toys or play areas. Mary C. also had a pit bull dog tethered to a pole in the backyard. Mary C. told the social worker she should not be concerned

about the children's safety, and became argumentative. The Department did not believe an adoptive home study with Mary C. would be approved.

The court ordered the section 366.26 hearing to be continued for 120 days to give the Department time to continue "to look into the various aspects" of the case. The court also ordered the Department to arrange for a specific written visitation plan for the Mother with the children. The plan was to include the dates and times for her monitored visits, and the visits were not to occur in the caretaker's home. The court indicated that Mary C. was not to monitor Mother's visits with her children and 24 hour notice was to be provided prior to canceling a visit.

Mother had only one visit with the children between February and May 2011 because she did not show up to scheduled visits, cancelled them without providing sufficient notice or arrived too late. Thereafter, the Department temporarily suspended the visits in mid-March 2011.

The Department also conducted a Team Decision Meeting (TDM) with Mary C. on March 3, 2011. During the meeting, Mary C. apologized to the Department for her behavior. She stated that she had intentionally prolonged the adoptions process in order to give Mother additional time to reunify. The Department admonished Mary C. that ignoring Department telephone calls and making herself unavailable to the social worker put the children at risk. Mary C. assured the Department that she would adhere to the Department's plan and maintain communication and contact. At the meeting, it was agreed that legal guardianship would be in the children's best interest.

The Department's May 2011 report indicated that the outcome of the TDM was positive – that Mary C. had used open and honest communication and that since the meeting she had allowed the Department access to her home and made the children available for visits. The Department stated that Mary C. continued to demonstrate her ability to care for the children and provide a stable home for them. The older children told the Department that they wanted to remain with Mary C.

On June 16, 2011, the court conducted the section 366.26 hearing for D.L., A.R.L. and A.L.¹² The court received the Department's reports into evidence. Mother testified that she recently resumed visits with the children in the Department office, and had one visit with the children at the beginning of June 2011. Mother was not agreeable to the proposed plan of legal guardianship. She did not believe Mary C. created a safe environment for her children. In addition, although her last visit to Mary C.'s home had occurred in December 2010, Mother nonetheless believed Mary C.'s boyfriend (who was Father's brother) resided in the home. Mother claimed that Mary C. was out of the house all day, and her older children "whoop" Mother's children. When Mother took her daughter to the bathroom during a visit, she said she noticed her daughter's underwear "was really nasty . . . and had an odor . . . she got rashes on her body." She believed that the other children had rashes and marks. Mother also feared Mary C. would terminate Mother's visitation if made the children's legal guardian; Mother was concerned Mary C. would hinder her visitation and hinder Mother's relationship with her children.

The Department addressed the outcome of the TDM with Mary C. and the reasons that she had not maintained contact with the Department in late December and early January 2011. The Department also noted that the guardianship paperwork provided for visitation. The Department, joined by the children's counsel, argued that there was no basis to deny legal guardianship.

The court advised Mary C. (who was present at the hearing) that the court would make a visitation schedule for Mother and her children, and Mary C. would have to comply or face having the children removed from her custody. The court further warned Mary C. that no one was to reside in her home who was not approved by the Department. Moreover, the court also stated that the Department would make unannounced home visits, and she was expected to cooperate with the Department and remain in contact with them.

¹² A section 21, subdivision (f) hearing was held regarding the Baby Girl A.L. concurrently with the section 366.26 hearing for the older children.

The court then terminated Mother's reunification services as to Baby Girl A.L., and appointed Mary C. the legal guardian of the three older children. Pursuant to the schedule established by the court, Mother was allowed monitored visits, facilitated by the Department, once a week on Tuesdays, from 3:30 p.m. to 6:30 p.m., and Mary C. was not to be the monitor of the visits. The juvenile court retained dependency jurisdiction.

Mother filed a timely appeal seeking to challenge the juvenile court's guardianship order.

DISCUSSION

On appeal Mother contends the juvenile court abused its discretion when it granted guardianship over the minors to Mary C. As we shall explain, we disagree.

"[A]lthough the preservation of a minor's family ties is one of the goals of the dependency laws, it is of critical importance only at the point in the proceeding when the court removes a dependent child from parental custody. [Citation and fn. omitted.] Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to parental custody and the juvenile court terminates reunification services. Then, the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability. [Citation.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339-1340.)

Having terminated Mother's reunification services in early 2010, at the June 2011 section 266.26 hearing the court was required to make an order that would provide a stable and permanent home for these children. The court's obligations and options in that regard are described in section 366.26. As relevant here, section 366.26, subdivision (b) provides in pertinent part:

"At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders [¶¶]

“(5) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.” (Welf. & Inst. Code, § 366.26, subd. (b)(5).)

A juvenile court may order guardianship as a permanent placement plan for a dependent child at a hearing to terminate parental rights, if the court does not find by clear and convincing evidence that the child is likely to be adopted. (See *In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 803-804.) Legal guardianship may be an appropriate permanent plan for a child in a dependency proceeding where that continuation of a parental relationship with the children would be beneficial. (See *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1537 [finding mother’s regular weekly visits to sons for more than two years and close bond between the mother and her sons, supported selection of guardianship, rather than termination of parental rights and adoption, for sons’ permanent plan].)

An order appointing a guardian is addressed to the sound discretion of the juvenile court, which will not be disturbed unless a clear abuse of discretion is established. (*In re Tamneisha S.*, *supra*, 58 Cal.App.4th at pp. 803-807.) “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason’ “ by making a determination that is arbitrary, capricious, or patently absurd. (*In re Stephanie M.*, (1994) 7 Cal.4th 295, 318–319, quoting *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) Therefore, when two or more inferences can be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the juvenile court. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 319.) With these principles in mind, we examine Mother’s arguments.

Here Mother argues that the dependency court should not have granted guardianship in view of the evidence in the record: (1) that Mary C. had failed to keep in touch with the Department and or make the children available for interviews and face-to-face contact during late 2010 and early 2011, failed to facilitate visitation and “thwarted” the children’s contact with Mother; (2) that there were prior recent referrals alleging drug

use by Mary's adult children, who were caregivers for the children in Mary C.'s home; and (3) the Mother's testimony at the section 366.26 hearing that she observed the children had "marks and bruises," and were living in filthy conditions. Mother argues that Mary C. should not have been approved for legal guardianship without further investigation of these complaints and circumstances.

In our view, Mother has not demonstrated that the juvenile court abused its discretion. First, with respect to Mother's claims regarding Mary C.'s contact with the Department, the visitation issues, the lack of contact with Mother and the conditions of Mary C.'s home, Mother's argument ignores crucial evidence in the record. From 2005 through the fall of 2010, the evidence in the record demonstrates Mary C.'s fitness as a caretaker, the appropriate conditions in her home, and that the children were thriving in their placement with her. Concerns about Mary C. first arose in late December 2010. The Department's January 2010 report, describing those concerns was presented to the court at the initial section 366.26 hearing set for February 4, 2011. The section 366.26 hearing was continued for 120 days for the Department "to look into the various aspects" of the case. On March 3, 2011, TDM with Mary C. was held at which the Department's concerns about the home, visitation and contact were addressed, and Mary C. apologized for her conduct. Thereafter all of the evidence in the record indicates that the concerns raised by the Department in January 2011 had been addressed and resolved. The Department's May 2011 report indicated that the outcome of the TDM was positive – that Mary C. had used open and honest communication and that since the meeting she had allowed the Department access to her home and made the children available for visits. The Department stated that Mary C. continued to demonstrate her ability to care for the children and provide a stable home for them. The older children told the Department that they wanted to remain with Mary C. The court had this evidence before it when it granted the guardianship order, and given this evidence, the court did not abuse its discretion in failing to require that the Department conduct a follow-up investigation.

Likewise with respect to the allegations Mother made in her testimony during the section 366.26 hearing, the lower court was in the best position to put those in the proper

context of the entire case and also to assess credibility. Nonetheless, the record offers some reason to question her believability. Mother had few interactions with the children from December 2010 until the June 16 hearing. Mother conceded that she had not been in Mary C.'s home since December 2010. Also it appears that Mother had only two visits with the children during this time period – one on February 19, 2011, and a second on June 3, 2011. In view of the limited personal knowledge of the children's general well being that such minimal contact could provide, and given the Mother's history and circumstances, of which the court was clearly familiar, we cannot say the dependency court abused its discretion in discounting Mother's allegations.

Furthermore, the risks and harms Mother suggested that might occur were diminished by the specific visitation orders, the admonishments the court gave to Mary C. concerning visitation, cooperation and maintaining contact with the Department, and the court's on-going jurisdiction in the matter.

Finally, we are not persuaded that the order should be reversed because it puts "Mother in the unfair and unduly burdensome position of having to file a Welfare and Institutions Code section 388 petition in juvenile court to seek modification and or termination of the legal guardianship order." Assuming that Mary C. failed to comply with the conditions placed on the guardianship or that the children suffered some detriment in her care, Mother would not likely have a difficult time of proving the merits of a section 388 petition. Moreover, given the post-reunification stage of the proceedings, any perceived "burden" imposed upon Mother to file a section 388 petition does not outweigh the measure of permanency and stability that the guardianship order provides these children.

DISPOSITION

The order is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

JACKSON, J.