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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B284409
(Super. Ct. No. J-1487657)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

M.R.,

Respondent and Appellant.

M.R. (Mother) appeals orders of the juvenile court awarding sole legal and physical custody of her son S.H. to his father, ordering visitation to Mother “[a]s arranged by the

parents,” and terminating dependency jurisdiction. (Welf. & Inst. Code, § 362.4)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 22, 2016, Santa Barbara County Child Welfare Services (CWS) detained Mother’s two minor sons, 11-year-old S.H. and 17-year-old D.R., when Mother was involuntarily hospitalized for untreated mental illness. Mother suffered from longtime mental illness that included auditory hallucinations – “voices that torture and rape her while the children are present.” At the time of the detention, the identities and whereabouts of the children’s fathers were unknown to CWS.

On April 26, 2016, CWS filed a juvenile dependency petition alleging that Mother failed to protect and support her minor children due to her involuntary hospitalization. CWS also alleged that S.H. suffers from autism and Mother failed to supply his prescribed medication. (§ 300, subds. (b) [failure to protect] & (g) [failure to support].)

On April 27, 2016, CWS filed a detention report that described a long history of referrals regarding the family, in part regarding Mother’s untreated mental illness. CWS had investigated the complaints but closed them as inconclusive or by referring Mother to services.

The detention report also noted that S.H. and D.R. stated that Mother heard voices that “keep bothering her.” D.R. informed the CWS social worker that Mother was not “a responsible parent.” He explained that Mother once left home and lived homeless behind the public library. An older half-sibling then cared for D.R. When Mother returned to the family

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

home, she “acted as if she had never left.” D.R. also stated that Mother often used marijuana in the presence of her children.

On April 27, 2016, the juvenile court held a detention hearing and appointed separate counsel for Mother and the children. At the hearing, Mother provided CWS and the court with the address and telephone number of S.H.’s father, R.H. (Father). The court ordered that the children remain detained and it set the matter for a jurisdiction hearing. In the interim, CWS contacted Father.

CWS then filed a jurisdiction report with the juvenile court recommending that it sustain the allegations of the dependency petition and continue the children in out-of-home care. The report stated that Mother admitted that she has a diagnosis of schizophrenia and that S.H. has an attention-deficit disorder and a learning disability. At the jurisdiction hearing, Mother and Father submitted to jurisdiction. The court then sustained the allegations of the dependency petition and ordered that the children remain in out-of-home care.

On June 15, 2016, CWS filed a disposition report with the juvenile court, recommending that S.H. be returned to Mother’s care and custody with family maintenance services. CWS also recommended that D.R. remain out of Mother’s care and custody because he would soon be 18 years old. The report stated that S.H. and D.R. declared that they did not want visitation with Mother. D.H. described Mother as an unfit parent who could not care for herself or others.

Mother and Father personally attended the disposition hearing with counsel. Father addressed the juvenile court judge and stated that S.H. “should be with his mother” with whom he (S.H.) has “a good bond.” The court declared S.H. a dependent of

the court and ordered his return to Mother's care and custody with family maintenance services. The court also set a review hearing for December 14, 2016.

Shortly before the scheduled review hearing, CWS learned that S.H. was not receiving his prescribed medication and that Mother was involuntarily hospitalized again. On December 16, 2016, CWS filed a supplemental dependency petition and received a protective custody warrant to remove S.H. from Mother's home. (§ 300, subds. (b) & (g).)

CWS filed a detention report with the juvenile court stating that Mother was experiencing auditory hallucinations and believed that cameras were recording her behavior. S.H. had not received his medication, was disheveled and unclean, and behaved aggressively at school. He also reported that Mother attempted to choke him with a cane. Mother also threatened S.H.'s teacher and the school principal. When CWS social workers visited Mother's home, a registered sex offender answered the door. Mother lay on the bed with a glass pipe in her hand, shouting profanities. As a result, Mother's mental health treatment team concluded that she should be involuntarily hospitalized. Hospital authorities later obtained an involuntary medication order because Mother refused psychotropic medication.

During Mother's hospitalization, Father informed CWS that he was interested in the care and custody of S.H. Father lived with his mother and sister in his childhood home. S.H. stated to the CWS social worker that he preferred his Father's custody.

On February 1, 2017, CWS filed a jurisdiction and disposition report requesting that the court order S.H. placed

with Father with family maintenance services. The report stated that Mother was released from the hospital in early January 2017. Thereafter, she placed angry and incoherent telephone calls to CWS social workers and the principal of S.H.'s school.

The juvenile court sustained the allegations of the supplemental dependency petition and ordered S.H. returned to Father's custody. The court ordered that Father receive family maintenance services and Mother receive family reunification services. Mother did not appear at the hearing but was represented by counsel. The CWS case plan recommended that Mother receive a minimum of four hours supervised visitation weekly, but a visitation attachment (JV-400) was not attached to the court's written findings and orders.

On July 26, and August 2, 2017, the juvenile court held a status review hearing. CWS submitted a report recommending that the court grant Father sole legal and physical custody of S.H. and terminate dependency jurisdiction; the report did not mention visitation. Mother addressed the court at the continued hearing. She requested a different attorney and transfer of the matter to the family court. Her attorney then submitted the matter on her behalf. Neither Mother nor her attorney raised the issue of visitation.

The juvenile court then granted Father sole legal and physical custody of S.H. and terminated dependency jurisdiction. The written child custody exit orders ordered visitation for Mother "as arranged by the parents." The orders were then filed and the case was assigned a family court number.

Mother appeals and contends that the juvenile court abused its discretion by delegating her visitation with S.H. "to be arranged by the parents."

DISCUSSION

Mother argues that the juvenile court abused its discretion by not setting forth the frequency and hours of her visitation with S.H. in the final review hearing orders. She asserts that the provision “as arranged by the parents” unlawfully delegates to Father the authority to determine whether visitation occurs at all. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123 [juvenile court may not delegate power to determine the right and extent of visitation to nonjudicial officials or private persons].) Mother speculates that Father or the paternal grandmother may not allow her visitation with S.H., pointing out that S.H. fears her and has requested not to visit her.

Section 362.4, subdivision (a) provides: “If the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court . . . , the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” The power to determine the right and extent of visitation by a noncustodial parent in a dependency proceeding resides only with the court. (*In re T.H.*, *supra*, 190 Cal.App.4th 1119, 1122 [visitation “to be determined by the parents” an unlawful delegation of judicial power].) To be distinguished is the delegation of the authority to establish the details of time, place, or manner of the visitation. (*Id.* at p. 1123.)

Mother has forfeited this contention because she did not object to or disagree with the final visitation order. Although she and her attorney were present during the final review hearing and she addressed the juvenile court, neither she nor her attorney raised the issue of visitation. Mother and her attorney also did not object to the language of the visitation order.

A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to object in the trial court. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.)

Principles of forfeiture apply in dependency litigation and preclude a party from “standing by silently” until the conclusion of the proceedings. (*Id.* at p. 222.) “[An] appellate court’s discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962.) That discretion must be exercised “with special care” in dependency proceedings because the proceedings involve considerations of permanency and stability of children, issues of “paramount importance.” (*Ibid.*)

Issues regarding visitation in dependency proceedings are forfeited on appeal by failure to raise the issue or to object in the juvenile court. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 685-686 [parent forfeited challenge to unlawful delegation of visitation authority to parole officer by not raising issue at trial]; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1001 [parent forfeited challenge to frequency of visitation by not objecting to visitation schedule]; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 641-642 [parent forfeited challenge to failure to provide for sibling visitation by not raising issue].)

Forfeiture aside, the visitation order did not improperly delegate the power to determine whether Mother could visit S.H. at all. The frequency and length of Mother’s visits are aspects of the time, place, and manner of visitation to be arranged by the parents. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373 [juvenile court may delegate ministerial details of visitation].) Moreover, the appellate record reflects that Mother and Father

had a longstanding relationship of 40 years and that Father recognized that Mother had “a good bond” with S.H. Mother likewise recognized that it was Father’s “turn” to care for S.H. Unlike the circumstances in *In re T.H.*, *supra*, 190 Cal.App.4th 1119, 1123, Father did not object to Mother’s visits with S.H. and we do not presume that he will do so.

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jean Dandona, Judge

Superior Court County of Santa Barbara

Marissa Coffey, under appointment by the Court of
Appeal, for Defendant and Appellant.

Michael C. Ghizzoni, County Counsel, Ashley E.
Flood, Deputy, for Plaintiff and Respondent.