Filed 2/3/14 In re L.H. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.H., a Person Coming Under the Juvenile Court Law.	B250176 (Los Angeles County Super. Ct. No. CK81873)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Terry Truong, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

April S. (mother) appeals the juvenile court's visitation orders issued in conjunction with the implementation of a permanent plan of guardianship for four of her five children. She contends the juvenile court erred in limiting visitation to once a month, and in ordering that visitation with the youngest of the four be supervised. We see no error, and affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Michael H. (father) are the parents of Leslie (13), Michael (11), James (10), and Sean (7). Mother and Michael S. are the parents of J.S., born in October 2009.

On April 15, 2010, the Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivisions (a), (b), (g), and (j) regarding the minors. On May 17, 2010, father pled no contest to a count alleging his children were at risk as a result of his inability to provide them with the necessities of life. On August 11, 2010, Mother and Michael S. pled no contest to an amended petition alleging that Michael S. inappropriately physically disciplined J.'s siblings, the parents engaged in physical altercations in the children's presence, mother did not protect the children from Michael S., who abused alcohol in the home, and the parents' conduct put J. and her siblings at risk of harm. The juvenile court sustained the amended petition, declared the children dependents of the court, removed them from their parents' custody, and ordered them suitably placed. All five children were placed with Michael H.'s mother, Loretta C., and her husband Cesar M., with whom they have resided ever since. The court also ordered that mother be provided with a minimum six hours a week visitation with the children and ordered family reunification services.

At the status review hearings conducted during 2010 and 2011, the juvenile court found that mother was in partial compliance with her plan. During this period, mother visited with the children, at some times on a regular basis and at others, sporadically. Visits with Leslie, James and Michael were unmonitored, while those with the two younger children, Sean and J.S., were monitored. Loretta C., the paternal grandmother

with whom the children were placed, reported that during the monitored visits, mother consistently focused most of her attention on J.S., even when Sean actively sought her attention. In a May 2011 letter, the children's therapists indicated that unmonitored visits were causing the children "excessive distress."

The juvenile court conducted a contested section 366.22 hearing on November 22, 2011. After hearing testimony and considering the documentary evidence presented, the court terminated reunification services, stating it did not believe mother or Michael S. had "made any progress in the case. None whatsoever." The court continued its visitation orders and set a hearing pursuant to section 366.26, to select and implement a permanent out-of-home plan for the children.

After a series of continuances, the contested section 366.26 hearing was held on November 5, 2012. Mother and Leslie testified. Mother explained that she visited the children consistently when her work schedule permitted, and that during the visits, she and the children ate, talked about their school activities, and spent time together. Mother believed she and the children had a close bond and said she would feel "really bad" if her parental rights were terminated.

Leslie testified that she enjoyed her visits with mother, that she wished to see her mother more frequently, and that she loved and wanted to live with her mother. Leslie said she would feel sad if she were to continue to live with her grandmother, because she would not be living with her mom; she would feel happy living with her mom. Leslie stated that she wanted to live with her mom and all of her siblings, but also testified that she was happy living in her grandmother's home.

After hearing closing arguments, the court stated "With regards to Leslie, Michael, James, and Sean, I do find that it would be detrimental for this court to terminate parental rights of those children." As to J.S, however, the court concluded there was no evidence of a detriment if the minor were to be adopted. The court therefore continued the hearing to January 17, 2013 so that DCFS could address legal guardianship with Kin-Gap with respect to the four older children, and to solicit the grandparents' views on adopting J. S. while taking legal guardianship of her siblings.

At the continued hearing on January 17, 2013, the court terminated mother and Michael S.'s parental rights to J.S.[1] The court continued the hearing to February 26, 2013 as to the other children in order for DCFS to provide the court with funding documents related to legal guardianship. The court also calendared for February 26, 2013 a mediation to develop a visitation schedule for mother and the four older children.

On February 26, 2013, the section 366.26 hearing was again continued, because certain documents required signatures. However, the mediation on visitation apparently went forward, as a "Mediation Agreement" dated February 26, 2013 was signed by mother and the prospective legal guardian, Loretta C., and approved by counsel for DCFS, the children and mother. The agreement states that mother "is to have unmonitored visits with Leslie, Michael and James on the First Saturday of every month from 10am to noon" and that mother "is to have monitored visits with Sean on the First Tuesday of every month from 3 – 5pm." The agreement further specifies where the visits are to take place, that any scheduled visit which mother does not confirm 24 hours in advance will be cancelled, and that the guardians have discretion to permit additional visits.

After additional continuances, the section 366.26 hearing was concluded on March 19, 2013. Mother did not appear. The court queried whether counsel wished to be heard; all answered in the negative. The court granted Loretta C. and Cesar M. legal guardianship of the children Leslie, Michael, James and Sean. Further, the court ordered, without objection, mother's visits as set forth in the Mediation Agreement.

Mother timely appealed these orders.

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[1] Mother appealed that the court's orders and findings terminating her parental rights to J. We affirmed the juvenile court's orders in an unpublished opinion. (B246727, filed October 3, 2013.)

DISCUSSION

On appeal, mother contends that substantial evidence does not support the juvenile court's order limiting visitation with her children to once a month, nor to the order requiring that her visits with Sean be monitored. DCFS counters that mother is estopped from challenging the juvenile court's visitation orders based on the doctrines of invited error and forfeiture.

The doctrine of invited error provides that "where a party, for tactical reasons, persuades the trial court to follow a particular procedure[, t]he party is estopped from claiming that the procedure was unlawful." (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 772.) Similarly, "A party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do . . . ." (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603; see also *In re Richard H.* (1991) 234 Cal.App.3d 1351, 1362.) It is a fundamental rule of appellate law that a party cannot assert error on appeal when she failed to raise the issue in the trial court. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641; *In re Richard K.* (1994) 25 Cal.App.4th 580, 589-590.)

Here, mother and her counsel signed the Mediation Agreement, specifically agreeing to the visitation schedule ultimately ordered by the court. Although mother later complained to the social worker that she was not in agreement with the document she signed on February 26, 2013, she did not appear in court and ask that it be withdrawn, nor did she request a contested hearing.

In her opening brief, mother refers to the Mediation Agreement which she and her counsel signed as an "alleged" agreement She does not, however, deny that she executed the agreement, or claim that the mediation process which resulted in the agreement was in any way defective. She simply states that mother "clearly indicated that she was not in agreement with the reduced visitation schedule. Rather than the monthly schedule the DCFS intended to implement, [mother] wanted to return to the weekly schedule." However, the record citations which mother provides for this assertion is to the social

worker's report which documents her dissatisfaction with the visitation schedule in the Mediation Agreement. It is not the social worker's responsibility to advocate before the court for mother's position; mother had counsel to do that for her. In the absence of any evidence that either mother or her counsel informed the court that mother disavowed the terms of the Mediation Agreement or objected to the court's visitation orders, she cannot challenge on appeal the court's orders incorporating the terms of the Mediation Agreement. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221 ["A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court"]; *In re Anthony P.*, *supra*, 39 Cal.App.4th at p. 641.)

Even if we were to hold that mother did not forfeit the issue on appeal, we would affirm the subject orders. A juvenile court's visitation order is reviewed for an abuse of discretion. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48-51.) "[D]ependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason." (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558.) A court abuses its discretion when it makes a determination that is "'arbitrary, capricious, or patently absurd.'" (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759, quoting *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 421.)

Here, mother had a long history of inconsistent visitation with her children, which was upsetting to the children. The family was unable to plan other outings, and the children were not able to participate in extra-curricular activities, because they were tied to mother's visitation schedule, which she observed only sporadically. At the time of the subject orders, the children were placed in a legal guardianship, and needed and deserved permanency. In short, the evidence demonstrates that the court acted well within its discretion when it ordered monthly visits with the children.

DISPOSITION

The judgment orders are affirmed.

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MINK, J. *

We concur:

MOSK, ACTING P. J.

KRIEGLER, J.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.