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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.O. et al.,

Persons Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

B297409

(Los Angeles County  
Super. Ct. No. CK4719E-F)

APPEAL from an order of the Superior Court of Los Angeles County, Veronica S. McBeth, Judge. Affirmed in part, reversed in part and remanded with directions.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

## SUMMARY

Appellant, M.G. (father), appeals from a juvenile court order establishing legal guardianships over his children D.O. and M.G. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> The sole issue on appeal is whether the court erred in failing to specify the frequency and duration of father’s visits with the children.<sup>2</sup> Respondent Department of Children and Family Services (DCFS) acknowledges that the juvenile court’s “visitation order was an improper delegation of judicial authority” and the matter must be remanded for entry of a new visitation order specifying “the frequency and duration” of father’s visits with his children. We agree and will remand the matter for the juvenile court to enter a new visitation order.

## BACKGROUND

Most of the facts and proceedings in this matter are not relevant to this appeal. Suffice it to say that, after family reunification efforts failed, a section 366.26 hearing—initially scheduled for March 2018, and continued several times—was conducted on January 23, 2019. Legal guardianships with separate relatives were identified as the permanent plan for minors D.O. and M.G., and the children and their

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Although the notices of appeal state only that father appeals from the January 23, 2019 order, it is undisputed that only visitation is at issue.

guardians, who share close bonds, were committed to that plan. Father also shares a strong bond with his children, and the court did not question their love for one another. By the time of the section 366.26 hearing, father<sup>3</sup>—for whom the juvenile court previously had ordered monitored visitation—consistently maintained in-person and telephonic visitation with his children.

In reports prepared in advance of the section 366.26 hearing, DCFS recommended that father’s visitation “be at the discretion of the respective Legal Guardians.” That recommendation, which was not discussed on the record, was at odds with the juvenile court’s existing visitation order and its order that “[a]ll prior orders . . . shall remain in full force and effect.”

At the conclusion of the section 366.26 hearing, the court found “it would be detrimental to the child[ren] to be returned to” parental custody, and it was in the children’s best interest that legal guardianship be granted with their respective caretakers. The court ordered that father was to receive monitored visitation, “as arranged [and agreed upon] by the legal guardian[s] and father.”<sup>4</sup> The minute

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<sup>3</sup> The children’s mother is not a party to this appeal.

<sup>4</sup> Father did not attend the proceeding at which this order was made, and his counsel did not object. Nevertheless, as the parties appropriately agree—the court’s vague visitation order, which indisputably contradicts the then-extant visitation order—raises a legal issue that we have discretion to address. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313–1314 (*Rebecca S.*)).

order from that hearing is similarly vague, providing for “[m]onitored visits . . . as can be arranged with the legal guardian.” In contrast with these orders, formal legal guardianship forms also signed and filed by the juvenile court on January 23, 2019, specifically provide for “monitored visitation for . . . father one time a week for 3 hours.”<sup>5</sup> Father filed this timely appeal.

## DISCUSSION

Once it implements a permanent plan of legal guardianship, the juvenile court must also issue an order for parental visitation unless it finds by a preponderance of the evidence that such visitation would be detrimental to the child’s physical or emotional well-being. (§ 366.26, subd. (c)(4)(C).) The visitation order must be made, and the court may not delegate to a third party the discretion to determine whether or when visits will occur. (See *In re S.H.* (2003) 111 Cal.App.4th 310, 317-318 [juvenile court may not abdicate its discretion to permit a third party to decide how much visitation, if any, will occur]; *In re M.R.* (2005) 132 Cal.App.4th 269, 274 (*M.R.*) [juvenile court improperly delegated to legal guardian the authority to decide whether visitation would occur]; *Rebecca S., supra*, 181 Cal.App.4th at pp. 1313–1314 [the juvenile court improperly delegated authority by permitting legal

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<sup>5</sup> We grant DCFS’ July 26, 2019 Request for Judicial Notice as to the January 23, 2019 orders of legal guardianship. (Evid. Code, §§ 452, subd. (d), 459.)

guardian to determine frequency, duration and location of visits]; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1477-1478 [finding that juvenile court unlawfully delegated to child's therapist the sole discretion to decide if visitation would occur].)

DCFS concedes that the juvenile court erred in granting the children's guardians control to determine the frequency and duration of father's visitation. (*M.R., supra*, 132 Cal.App.4th at p. 274.) By doing so, the juvenile court left open the possibility that the guardians could deny or curtail the children's in-person and/or telephonic visits with father.<sup>6</sup> Accordingly, we must reverse the January 23, 2019 order, in part, and remand the matter to the juvenile court with directions to enter a new visitation order specifying the frequency and duration of father's visits, including phone contact. (*Id.* at p. 272; *Rebecca S., supra*, at p. 1314.)

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<sup>6</sup> Father's concerns are not hypothetical. The record reflects that ensuring that visits took place was a recurring issue frequently addressed by the court. There is no reason to believe the struggle between father and the children's guardians over visitation would not continue.

## **DISPOSITION**

The January 23, 2019 order is reversed with respect to visitation, and the matter is remanded to the juvenile court with directions to enter a new visitation order specifying the frequency and duration of father's visitation. In all other respects, the order is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.