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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B234167

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK87320)

Plaintiff and Respondent,

v.

MELISSA S.,

Defendant and Appellant.

APPEAL from orders of the Los Angeles County Superior Court.

Elizabeth Kim, Referee. Affirmed.

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

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County  
Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

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The juvenile dependency court sustained a petition under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> alleging that illicit drug use by Melissa S. (Mother) rendered her unable to care for her children. On appeal, Mother contends the court's findings must be reversed because the court abused its discretion in denying a mid-adjudication request for a short continuance. We affirm the dependency court's findings.

### **FACTS**

Mother is the parent of four children: T.S. (born in 2005); J.S. (born in 2006); O.B. (born in 2007); and M.S. (born in 2011). The children's father is not involved in this appeal. When M.S. was born, Mother tested positive for methamphetamine. M.S. did not. The hospital made a report regarding Mother's test result to the Los Angeles County Department of Children and Family Services (DCFS), which initiated an investigation. When interviewed, Mother denied using drugs; she said must have been a "doping victim." Alternatively, she posited that the test may have been the result of her unintentional ingestion of the drug when she smoked a cigarette that may have been laced with the drug without her knowledge.

In April 2011, DCFS filed a petition (§ 300) on behalf of all four children. The original petition was dismissed; an amended petition was filed and dismissed. On May 10, 2011, a second amended petition (SAP) was filed. The SAP alleged as to Mother that she "is a current user of methamphetamine which renders [her] incapable of providing the children with regular care and supervision. On 04/01/2011, [Mother] had a positive toxicology screen for methamphetamine [at the time M.S. was born]. Such illicit drug use by [Mother] endangers the children's physical health and safety and places the children at risk of physical harm, damage and failure to protect."

The adjudication hearing began on May 25, 2011. At the outset of the hearing, Mother's counsel argued that the drug test from the hospital should be excluded because the hospital could not show a continuous chain of custody over the specimens, and thus

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<sup>1</sup> All section references are to the Welfare and Institutions Code unless otherwise stated.

results from the facility should not be used for legal purposes. Counsel for DCFS argued that the evidence should be admitted as it was relevant to the weight or credibility of the testimony of witnesses and would corroborate other evidence. The court allowed the drug-test evidence.

Mother's counsel next argued that any evidence (in DCFS's reports) concerning information provided by the hospital social worker, Colleen Cassidy, who initiated the referral to DCFS should be excluded because Cassidy did not respond to a subpoena and refused to testify.<sup>2</sup> The court ruled that the evidence could be admitted.

Following the court's evidentiary rulings, DCFS called Mother to testify pursuant to Evidence Code section 776. Mother denied being a methamphetamine user, and denied that she ever told hospital staff or social workers that she was a methamphetamine user. In a follow-up question, Mother acknowledged that she had stated at a meeting with DCFS that she ingested methamphetamine.

After Mother's testimony, DCFS's counsel announced that DCFS had a rebuttal witness, Eddie Adams, but that he was unavailable to testify that day. DCFS's counsel asked for a short continuance. DCFS's counsel proffered that Adams would testify that he was present at a meeting, along with other witnesses, when Mother admitted using methamphetamine. Mother's counsel objected to any continuance, asking "that [the] matter be taken care of [that day]." Minors' counsel stated he was open to moving forward that day or to a continuance. He added that he found Mother's testimony "not very believable." The court granted a continuance to June 1, 2011, over the continuing objection of Mother's counsel.

The resumption of the hearing on June 1, 2011, began with a moment's worth of what we deem housekeeping issues regarding the filing of the SAP and the children's placements. Immediately thereafter, Mother's counsel asked for a continuance of the hearing because Mother had the flu and did not "feel she ha[d] the energy to get out of bed, let alone to come to court . . . ." The court denied the request for a continuance.

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<sup>2</sup> Cassidy had told DCFS that Mother admitted to using methamphetamine.

Counsel for DCFS then called rebuttal witness Adams. Adams testified on the subject of a meeting on April 21, 2011. In attendance at the meeting were Mother, the children's father, Adams, the "ER CSW", a facilitator, a paternal aunt and uncle, and a representative from the Department of Mental Health. During the meeting, the facilitator noted that the condition of Mother's teeth suggested she was a methamphetamine user, and Mother said that she had used drugs during her pregnancy for three or four months.

At the conclusion of the hearing on June 1, 2011, the dependency court amended the SAP by interlineations to read as stated earlier in this opinion. The court sustained the drug-use allegation. Further, the court found by clear and convincing evidence that there was a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being if they were returned home, and that there were no reasonable means by which the children's physical health could be protected without removing them from the parents' physical custody.

Mother appeals.

## **DISCUSSION**

Mother contends the dependency court's jurisdictional findings must be reversed because the court abused its discretion in denying her counsel's request for a continuance at the hearing on June 1, 2011. We disagree.

Section 352, subdivision (a), authorizes the dependency court to grant a request for a continuance upon a showing of good cause, but granting a continuance is not favored. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.) The decision to grant or deny a request for a continuance is a matter within the court's discretion, and its decision will not be disturbed on appeal in the absence of a showing of abuse of discretion. (*Ibid.*) The court abuses its discretion when its decision is arbitrary, capricious, or patently absurd. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.)

The dependency court did not abuse its discretion. The dependency court ordered the children detained on April 6, 2011. By June 1, 2011, the expiration of the ordinary 60-day period in which to hold the dispositional hearing (see § 352, subd. (b)) was approaching. The court did not act arbitrarily or absurdly.

Mother's argument that a continuance should have been granted to assure her due process rights were not violated is unpersuasive. Mother testified on May 25, 2011. The remaining witness who was to testify on June 1, 2011, was rebuttal witness Adams, who, according to proffer at the earlier hearing on May 25, 2011, would testify that Mother had admitted using drugs when she was pregnant with M.S. Thus, well prior to the resumed hearing on June 1, 2011, Mother and her counsel were on notice of Adams's anticipated testimony, and had a reasonable opportunity to prepare for cross-examination or to present any other evidence tending to impeach his testimony. There is no showing in the record that Mother's presence would have added anything to assist counsel in confronting Adams.

Mother's arguments regarding the lack of reliability of her hospital drug test does not change our view of the propriety of the dependency court's denial of a continuance.<sup>3</sup> There is nothing in the record to support Mother's implicit proposition that her presence was needed on June 1, 2011, to attack the reliability of the test.

Mother's reliance on *In re Julian L.* (1998) 67 Cal.App.4th 204 for a different conclusion is not persuasive. In *Julian L.*, mother faced termination of parental rights. The dependency court relieved mother's attorney and appointed new counsel one week before the termination hearing. Mother's new counsel requested a continuance to allow him to review the file and talk to mother. The dependency court denied the request for a continuance. (*Id.* at pp. 207-208.) The facts in the case before us today are not like the facts in *Julian L.* First, the present case involves the adjudication hearing, and Mother had already testified; we do not have a termination of parental rights case. Second, there is no evidence in the record tending to show that the ability of Mother's counsel to

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<sup>3</sup> The hospital's printed, drug-screen report document includes the following admonishment: "This drug screen is for medical use only. The results are presumptive, based on screening methods, and they have not been confirmed by a second independent chemical method. These results should be used only by physicians to render diagnosis or treatment, or to monitor progress of medical conditions. These results should not be used for any legal purpose . . . ." Mother argues that, because her drug test self-evidences its unreliability, all matters related to her alleged admission to drug use became all the more critical.

represent her at the second day of the adjudication hearing was compromised by the denial of a continuance.<sup>4</sup>

**DISPOSITION**

The dependency court's orders are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.

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<sup>4</sup> This case is also unlike *In re Hunter W.* (2011) 200 Cal.App.4th 1454, raised for the first time in Mother's reply brief even though decided months before the filing of her opening brief. *Hunter W.* involved only a two-hour continuance and the court's denial of that request resulted in the parents being prevented from providing their position in a meaningful manner. And, again, *Hunter W.* involved the termination of parental rights, which was not an issue in the current case.