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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.M., et al., a Person Coming
Under the Juvenile Court Law.

B279293
(Los Angeles County
Super. Ct. No. DK17547)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County
of Los Angeles, Kristen Byrdsong, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

At a contested jurisdiction/disposition hearing, A.M. was declared a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b)(1) ¹ and placed in foster care. Lucille C., the child's maternal great grandmother and legal guardian (great grandmother or legal guardian), appeals. We affirm.

FACTS AND PROCEDURAL BACKGROUND

A.M. was born in February 2014. Her mother, Destiny S. (mother) was 18 years of age and still on probation after being recently released from juvenile hall in a neighboring county. In her young life before the initiation of dependency proceedings, A.M. lived with mother; mother and alleged father;² mother, alleged father, and alleged father's extended family; great grandmother; and great grandmother and one or more of great grandmother's friends. The adults and child traversed Riverside, San Bernardino, and Los Angeles counties. Stable housing proved elusive; at various times mother and great grandmother

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

² Mother and alleged father are not married, and the juvenile court has not made a paternity finding. Alleged father is not involved in this appeal.

were transient or homeless. The adult relationships were fraught with violence, allegations of violence, various police contacts, and several restraining orders.

At times, when A.M. was in her great grandmother's care, mother's and/or alleged father's whereabouts were unknown. On these occasions, great grandmother reported mother and alleged father to a child protection agency for general neglect of A.M. Great grandmother has accused mother repeatedly of physically abusing A.M. and consistently reported that mother has mental and emotional problems. Numerous complaints by great grandmother were investigated, but no agency ever removed A.M. from mother's care based on abuse or neglect.

By mutual consent between mother and great grandmother, A.M. lived with great grandmother for much of 2015. Great grandmother initiated temporary legal guardianship of A.M. through the probate court in San Bernardino County.³ Hearings were scheduled in July and November 2015. At that time, mother was apparently amenable to the legal guardianship. The alleged father could not be located and served, however, so the matter was continued to January 2016.

After the November 2015 hearing, great grandmother sought mother's arrest for taking the child without permission. The police mistakenly believed great grandmother was already the legal guardian and returned the child to her. Mother and great grandmother appeared for the January 2016 hearing. Mother no longer consented to the legal guardianship, and the

³ The record on appeal does not contain copies of any San Bernardino court documents.

San Bernardino County probate court returned the child to mother.

As of April 29, 2016, the date of the guardianship hearing, great grandmother had not seen A.M. “in almost five months.” For some period of time before this hearing, great grandmother was residing in Riverside County, so the San Bernardino County probate court referred the matter to the Riverside County Department of Public Protective Services for evaluation. Great grandmother refused to cooperate with the Riverside case worker, insisting instead that mother should be investigated. The case worker recommended denial of great grandmother’s petition for temporary legal guardianship of A.M. Great grandmother did not have the child in her care and stable housing remained an issue. At one point, great grandmother was living in a motel in Victorville, but would not agree to a home evaluation or a LiveScan. The investigator reported “[t]here is no evidence [A.M.] has been abused or neglected by her mother.” Great grandmother also refused to cooperate with the San Bernardino County probate case worker.

Neither A.M. nor mother was present for the April 29, 2016 hearing. Great grandmother’s petition was granted and she became A.M.’s legal guardian. She did not attempt to take custody of, or see, A.M. after the hearing.

Legal guardian explained she was residing in Santa Monica with her longtime companion, Charles B., and had taken the train to San Bernardino for the hearing. She had the address for A.M. and mother in Riverside County; but it was late in the day, she was tied to the train schedule and, in any event, she somehow misplaced the legal guardianship paperwork after the hearing.

Legal guardian remained in Santa Monica for several days until her financial situation permitted her to travel to the home where mother was renting a room. Instead of assuming custody and care of A.M. then, she rented a room in the home as well and permitted the child to remain in mother's care for approximately two and one-half weeks. During this time legal guardian reported to other residents of the house that mother was physically abusing A.M.; according to legal guardian, the other residents never heard or saw any abuse. (Once these dependency proceedings were initiated, legal guardian consistently repeated the allegations that she heard mother physically and verbally abuse A.M. while she was in a room next door.)

Legal guardian did not intervene until May 17, 2016. The details are not clear in the reports; but police were called to the home and legal guardian took A.M. and returned to the residence in Santa Monica she shared with Charles B.

Legal guardian took A.M. to a hospital in Santa Monica on May 19, 2016, later telling the social worker "she decided to take the child to the ER to make sure that the child did not have any internal injuries and because she wanted to clear her name in case anything did happen to the child." Then two-year-old A.M. had healed scratch or gouge marks on her neck and a chipped front tooth. Otherwise, her examination results, including skeletal x-rays, were normal.

Legal guardian recounted to hospital personnel that she recently obtained a court-ordered guardianship in San Bernardino and "left the child in the care of mother . . . to see if mother was able to handle the child. During this time, the legal guardian heard mother hitting, slapping, scratching, and screaming at the child. The legal guardian did not intervene

during this time.” Legal guardian would not provide a home address to hospital personnel. A.M. was immediately removed from legal guardian’s care.

Section 300 Petition and Detention Hearing

The Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on May 24, 2016, alleging “there is a substantial risk [of] . . . serious physical harm . . . as a result of the failure or inability of . . . her . . . guardian to adequately supervise or protect” her. (§ 300, subd. (b)(1).) Reiterating the legal guardian’s complaints concerning mother’s mental and emotional problems and physical abuse of the child, the petition alleged legal guardian knowingly left A.M. in mother’s care instead of asserting her guardianship right.

DCFS reports provided the following family information: Legal guardian was 79 years of age when these proceedings began. She is mother’s paternal grandmother. Mother’s parents lost custody of mother when she was very young, and mother primarily resided with legal guardian most of her life. Legal guardian adopted mother when they were living in San Diego. Mother was removed from legal guardian’s custody during the adoption process and the adoption was delayed almost two years because legal guardian refused to cooperate with case workers or leave Charles B.’s home.

During mother’s childhood, legal guardian was also caring for mother’s paternal half-sibling, but child protective services removed that child from legal guardian’s care. Legal guardian faulted mother and the half-sibling’s maternal relatives for the child’s removal; mother stated legal guardian abused her half-sibling.

Charles B. was a grandfather figure during mother's childhood, and legal guardian was residing in his apartment when A.M.'s guardianship petition was granted. The record contains several suggestions that Charles B. has been accused of child molestation. Nothing, including Charles B.'s legal name, had yet been confirmed or refuted. He declined a LiveScan, and the legal guardian stated she had no information concerning his true legal name or the abuse allegations.

Mother had a juvenile delinquency arrest record that includes allegations of violence against the half-sibling and legal guardian. The record is not clear as to the dispositions for most of the offenses, but, as previously mentioned, mother was released from juvenile hall shortly before A.M.'s birth.

The detention hearing concluded with the juvenile court ordering A.M. to remain in foster care. At legal guardian's request, the juvenile court issued a restraining order to protect legal guardian from mother.

Jurisdiction/Disposition Hearing

The matter was set for hearing on August 3, 2016. The court denied legal guardian's request to extend the restraining order against mother. The matter was continued until October 11, 2016, for a contested hearing.

Documents were received into evidence. A.M. has been assessed with developmental delays, including a speech impairment that may be related to enlarged adenoids. One assessment report indicated A.M.'s "trauma exposure is pronounced." She engaged in stress-related behaviors, such as biting her arm and lower lip and pulling her hair.

Legal guardian testified at the contested hearing. The juvenile court amended the petition at the hearing by striking the allegation that legal guardian witnessed mother physically strike A.M. on one occasion. The juvenile court sustained the petition as amended. The juvenile court further found by clear and convincing evidence that A.M. could not safely be returned to legal guardian's care and ordered family reunification services and monitored visits for legal guardian. Over the objection by counsel for legal guardian, the juvenile court also ordered an Evidence Code section 730 evaluation for legal guardian "based on what the court saw during testimony."

Legal guardian timely appealed. (§ 395, subd. (a)(1).)

DISCUSSION

Jurisdictional Findings

Legal guardian first challenges the sufficiency of the evidence to support the jurisdictional findings. *In re Noe F.* (2013) 213 Cal.App.4th 358 explains the standard of review: "At the jurisdictional hearing, the dependency court's finding that a child is a person described in section 300 must be supported by a preponderance of the evidence. [Citations.] On appeal, in reviewing a challenge to the sufficiency of the dependency court's jurisdictional findings, our power begins and ends with a determination as to whether substantial evidence exists, contradicted or uncontradicted, supporting the dependency court's determinations. We review the evidence in the light most favorable to the dependency court's findings and draw all reasonable inferences in support of those findings. [Citations.] Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but

whether there is substantial evidence to support the conclusion that the court did draw. [Citations.]” (*Id.* at p. 366.) The substantial evidence standard has been met here.

Legal guardian consistently maintained that mother threatened and physically injured her and verbally and physically abused A.M. Yet legal guardian never offered a plausible explanation for permitting A.M. to stay with mother after the legal guardianship was granted or for her failure to intervene when she said she heard A.M. being abused. At legal guardian’s behest, the juvenile court issued a restraining order against mother at the detention hearing. Despite the order, legal guardian initiated frequent contact with mother.

Serious accusations have been leveled against Charles B., but legal guardian did nothing to resolve them. Legal guardian had yet to address the discrepancies in her living arrangements. When A.M. was in her care before the guardianship was granted, her lifestyle was transient. She and Charles B. resided in a one-bedroom apartment, and the lease was in his name. The record does not reflect that legal guardian had a plan for A.M.’s return to her care.

Legal guardian has a documented history of being uncooperative and less than candid with social workers. This is of concern, particularly in light of the many unanswered questions concerning mother’s childhood and Charles B., as well as legal guardian’s evasiveness concerning her health and the programs and therapy she was undertaking.

More recently, legal guardian began accusing the foster parents of abuse and neglect. She had exhibited anger issues and been referred for anger management classes. As the social worker reported, “Instead of focusing on how she can work with

DCFS to possibly reunify with [A.M.], she has opted to repeatedly complain about the foster parents, DCFS and the Court system.”

A.M. was in legal guardian’s care for significant period of time during her first two years. Those two years were punctuated with instability in terms of housing, caretakers, and exposure to domestic violence. She has been assessed as developmentally delayed and exhibits stress behaviors. This evidence is sufficient to affirm the jurisdictional finding.

Dispositional Findings

The dispositional findings are reviewed under an abuse of discretion standard. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) The evidence is sufficient to affirm the dispositional orders under this more tolerant standard.

Legal guardian had no plan for A.M.’s return to her care. She resided with Charles B. in a one-bedroom apartment. Neither of them would cooperate with DCFS or even provide his full identity to DCFS. Charles B. is elderly and DCFS case workers had seen him in a wheelchair. Legal guardian assisted with his medications. Legal guardian prevented DCFS from conducting an investigation into the suitability of the home for the child’s placement.

Monitored Visitation

Monitored visitation for legal guardian was also appropriate. At the time of the dispositional hearing, she exhibited anger in monitored visitation settings. She was observed being unable to control A.M. She was not forthcoming with DCFS on a variety of topics, from her housing situation, her progress in reunification efforts, and Charles B. In any event, at

the six-month review hearing held April 10, 2017, DCFS was authorized to liberalize legal guardian's visits, which may now be unmonitored.⁴

Evidence Code section 730 Evaluation

Legal guardian also challenges the order that she participate in an Evidence Code section 730 evaluation. The juvenile court made the order after witnessing legal guardian testify. The order was well within the court's discretion. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) Legal guardian is an octogenarian whose history of involvement with child protective services spans 20 years, since mother was removed from her own parents' care. Legal guardian's relationship with Charles B. was a reported factor in delaying her adoption of mother and is a factor in A.M.s dependency. Legal guardian had not yet demonstrated an awareness that her actions jeopardized A.M.'s safety and well-being.

⁴ The six-month review has been continued to May 25, 2017, for a contested hearing at legal guardian's request.

DISPOSITION

The order is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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