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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MAKAYLA L., a Person Coming
Under the Juvenile Court Law.

B239413
(Los Angeles County
Super. Ct. No. CK82176)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Anthony Trendacosta, Juvenile Court Referee. Motion to dismiss appeal denied. Order affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

S.L., mother of Makayla L., appeals from the juvenile court's order terminating dependency jurisdiction over her daughter and granting monitored visitation for mother two times per month. Mother contends the process outlined by the court for selecting a monitor for her visitation is improper. We disagree and thus affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2010, the juvenile court declared Makayla, then almost 13 years old, a dependent child after sustaining allegations against mother under Welfare and Institutions Code section 300, subdivision (a)¹, based on physical discipline of the child and section 300, subdivision (b), based on mother's alcohol use and against mother and father under section 300, subdivision (b), based on a history of domestic disputes in the child's presence. The court continued Makayla's placement with a maternal aunt. At disposition, on August 11, 2010, the court ordered, along with family reunification services, unmonitored visitation, including overnight visits, for father, and monitored visitation in a therapeutic setting for mother. In June 2011, Makayla began living with father. Makayla refused to visit with mother. On December 7, 2011, the court terminated its jurisdiction and granted sole legal and physical custody to father. Although mother and father, together with the Department of Children and Family Services (DCFS), were unable to agree on a visitation plan for mother, the court directed that mother receive two visits per month to be monitored by the child's therapist, a monitor mutually agreed upon by mother and father or a professional monitor paid for by mother.

DISCUSSION

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make “exit orders” regarding custody and visitation. [Citation.] Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court. [Citation.]’ [Citation.]” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799; see § 362.4.) “The power to

¹ Statutory references are to the Welfare and Institutions Code.

determine the right and extent of visitation by a noncustodial parent in a dependency case resides with the court and may not be delegated to nonjudicial officials or private parties. [Citation.] This rule of nondelegation applies to exit orders issued when dependency jurisdiction is terminated. [Citations.]” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.) “We review an order setting visitation terms for abuse of discretion . . . [and] will not disturb the order unless the [juvenile] court made an arbitrary, capricious, or patently absurd determination. [Citation.]” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

Mother contends the juvenile court abused its discretion in fashioning the visitation order because its provisions for selection of a monitor render her visitation illusory. We disagree.

The juvenile court ordered monitored visitation for mother twice per month. The provisions in the order for a monitor, either the child’s therapist, a monitor mutually agreed upon by the parents or a professional monitor, do not render the order illusory. Although mother contends selection of a monitor will be difficult, if not impossible, given the child’s desire not to visit with mother, the parents’ acrimonious history and mother’s purported inability to afford a professional monitor, such potential issues may not arise, and the order contains three options for selection of a monitor if some issues do arise. Under these circumstances, the court’s visitation order is not an abuse of discretion. (*In re A.C.*, *supra*, 197 Cal.App.4th at pp. 799-800 [termination order providing that parents agree on a monitor to supervise mother’s visitation or, if they were unable to do so, father would choose the monitor was within power of juvenile court to determine when visitation would occur].) Should father refuse to cooperate with selecting a monitor under the court-ordered visitation, mother can seek enforcement or modification of the order in the family law court.

Contrary to mother’s contention, this case is not akin to *In re T.H.*, *supra*, 190 Cal.App.4th 1119. In that case, as the appellate court concluded, the juvenile court improperly delegated to mother the discretion to allow, or not allow, visitation by fashioning an exit order giving father supervised visitation “to be determined by the

parents” upon agreement. (*Id.* at pp. 1121, 1123.) According to the appellate court, the visitation order was “more than simply a delegation of the authority to set the ‘time, place and manner’ of the visitation—it effectively delegate[d] to mother the power to determine whether visitation will occur at all[,]” particularly given the parents’ inability to “get along.” (*Id.* at p. 1123.) The appellate court remanded the matter for the juvenile court to “exercise its discretion in formulating an order that establishes, at the very least, the amount of visitation to which father is entitled.” (*Id.* at p. 1124.) In this case, in contrast, the juvenile court ordered monitored visits for mother two times per month. It, therefore, did not delegate, as in *In re T.H.*, the allowance of visitation to the custodial parent. Given the specification for visits two times per month, the court’s outlining three provisions for selecting the monitor, even considering the parent’s acrimonious history, is not tantamount to an improper delegation of the order of visitation.²

DISPOSITION

The order is affirmed.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.

² Although we reject mother’s contention that the visitation order constitutes an abuse of the juvenile court’s discretion, we disagree with DCFS that mother waived her right to raise the issue on appeal. Accordingly, we deny DCFS’s motion to dismiss the appeal.