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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re T.M., a Person Coming Under
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

B268846

(Los Angeles County
Super. Ct. No. DK09814)

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and William D. Thetford, Deputy
County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

The mother, C.M., appeals from August 27, 2015 Welfare and Institutions Code¹ section 300, subdivisions (a) and (b) jurisdictional and dispositional orders. The mother is the great paternal aunt and adoptive mother of the child, T.M. The mother contends: the juvenile court erred by refusing to continue the jurisdictional and dispositional hearing, which she did not attend; she is entitled to have the jurisdictional order reversed because her counsel, Vincent Davis, acted ineffectively; Mr. Davis acted ineffectively because he failed to present any evidence at the jurisdictional and dispositional hearing; and it was error for the juvenile court to find that the mother's preferred counsel, Joni Saloman, was not competent to provide representation during dependency proceedings. We affirm the jurisdictional and dispositional orders.

¹ Further statutory references are to the Welfare and Institutions Code.

II. PROCEDURAL HISTORY

On March 6, 2015, the Los Angeles County Department of Children and Family Services (the department) filed a section 300 petition. The department filed the petition on behalf of the then 14-year old child. The department alleges the child was a dependent of the juvenile court under section 300, subdivisions (a) and (b). And, the department alleges counts a-1, for serious harm, and b-1, for failure to protect (b). Further, the department alleged: on February 28, 2015, the mother repeatedly struck the child with a belt; this bruised the child's arm, eye and face; on prior occasions, the child was bruised; this resulted from the mother's use of her hands and a belt; on March 3, 2015, the child was repeatedly kicked on the buttocks, thereby suffering pain. As will be noted, the original petition was replaced by an amended petition on April 20, 2015.

At the March 6, 2015 detention hearing, the juvenile court found the department had made a prima facie showing that the child was described in section 300. The child was detained and placed in shelter care. The juvenile court ordered the department to provide family reunification services including monitored visits with the mother for three hours per week.

On April 20, 2015, the department filed an amended petition on behalf of the child. The department alleges in count b-2 the mother failed to protect the child protect under section 300, subdivision (b). And in count c-1, the department alleges the child suffered serious emotional damage under section 300, subdivision (c). The department alleges the mother manifested inappropriate behavior towards the child. This included: reactively responding to the child's actions with anger; hitting the

child; making disparaging remarks toward the child; and imposing developmentally inappropriate restrictions. The department alleges this conduct contributed to the child: physically harming herself; performing poorly at school; associating with negatively influential peers and social media; engaging in high risk behavior including online sexuality and running away; embellishing reports of parental abuse to mandated reporters; refusing to return home to the mother's care; and refusing to attend school. The department alleges the child had been diagnosed with generalized disorder and mood disorder.

At the April 28, 2015 hearing, the mother requested new counsel. The mother's prior attorney, Kyle Puro, was appointed counsel. Jody Marksamer appeared on behalf of Mr. Puro. Mr. Marksamer stated the mother wanted to substitute in as a new lawyer, Joni Salomon. The juvenile court inquired as to Ms. Salomon's experience in dependency law: "The Court: So Ms. Salomon, what is your experience in dependency law? [¶] Ms. Salomon: Okay. I represented [the mother] in the underlying parental termination matter that was here in 2009. I have had three cases here where I represented de facto parents trying to get placement and subsequent termination of parental rights. I represented a parental termination case and subsequent adoption case here. And I've explained that to [the mother]. That's my extent. [¶] The Court: And are you familiar with the Welfare and Institutions Code? [¶] Ms. Salomon: (A) and (B) to which this case applies, yes. [¶] The Court: Well, the entire Welfare and Institutions Code. [¶] Ms. Salomon: Yes. 300 -- [¶] The Court: Well, actually even more than that, which governs the procedures and hearings in this courtroom. [¶] Ms. Salomon:

Yes. [¶] The Court: And have you gone to any continuing legal or conferences on dependency law? [¶] Ms. Salomon: Not on dependency law in specific. I'm a family law specialist. So when they bridge, I do get that -- [¶] The Court: When was the last time you appeared in dependency court? [¶] Ms. Salomon: That would have been 2013. End of 2013. [¶] The Court: I think perhaps a waiver is appropriate in this case. . . . [¶] And what that means, then . . . is that you [the mother] would waive your right to competent counsel, and that means if you . . . wish to bring an appeal in this case of some decision that I make, you would not have available to you an argument that you had ineffective assistance of counsel." A discussion ensued between the mother and Ms. Salomon. Ms. Salomon then decided to withdraw her request to replace Mr. Marksamer as counsel. The mother proceeded with Mr. Marksamer as her counsel on April, 28, 2015.

On May 12, 2015, following a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, 121-122, the juvenile court relieved Mr. Marksamer and appointed Josefina Frausto as the mother's counsel. On June 3, 2015, the juvenile court relieved Ms. Frausto as the mother's counsel. The juvenile court then appointed Zahra Mohammed as the mother's attorney. The mother then filed a written substitution of attorney that same day. The mother replaced Ms. Frausto with Mr. Davis.

At the August 27, 2015 jurisdiction and disposition hearing, the mother did not appear. The mother, through her counsel, Mr. Davis, requested a continuance, which was denied. The juvenile court found the mother's proffered medical note did not prove the existence of an emergency that merited a continuance. The juvenile court dismissed the March 6, 2015 petition and

proceeded on the April 20, 2015 first amended petition. The juvenile court found by clear and convincing evidence that substantial danger existed to the child's physical health and that she is suffering from severe emotional damage. The juvenile court found no reasonable means to protect the child without removal from the mother's custody.

The juvenile court sustained counts a-1 and b-1 and counts b-2 and c-1 as amended. The juvenile court amended counts b-2 and c-1 to read: "The child[s] . . . mother . . . has manifested a pattern of inappropriate conduct toward the child, and this conduct has negatively affected the child's behavior. Such conduct by the mother has included reactively responding with anger, hitting the child, making disparaging remarks toward the child, and imposing developmentally inappropriate restrictions, and this conduct has contributed to the child's physically harming herself; performing poorly at school Moreover, the child has been diagnosed with Generalized Anxiety Disorder. Such physical and emotional abuse of the child by the mother endangers the child's physical and emotional health and safety and places the child at risk of serious physical and emotional harm, damage, danger, and physical abuse."

The juvenile court ordered custody be taken from the mother and that the child be placed in the department's care for suitable placement. The juvenile court ordered continued family reunification services. The juvenile court also limited the mother's rights to make educational decisions for the child. The juvenile court prohibited corporal punishment or visitation by anyone under the influence of drugs or alcohol. A juvenile court appointed a special advocate for the child.

The mother filed her notice of appeal on October 23, 2015.

III. EVIDENCE

A. March 6, 2015 Detention Report

The department received a referral on March 3, 2015, alleging the mother was unwilling to care for the child. The mother reported the child had run away again. The child was found in a parking lot of a store two blocks away from her home. The person making the referral had spoken to the mother. The March 6, 2015 detention report states, “The . . . [mother said] . . . she can no longer care for the child and would like the child placed in a foster home.” Once in protective custody, the detention report states: “[The child] disclosed that her mother had physically abused her and that the abuse was ongoing. [The child] had a bruise over her right eye, and multiple bruises on her arms. She also reported that her tailbone and buttocks area was sore due to her mother kicking her.” Also, the child stated, “[The mother] has hit me with belts.” While at the “LAC-USC VIP Clinic,” the child stated that on the preceding Saturday, she had been kicked three or four times and struck by a belt around 10 times. During that interview, the child related, “Whenever she gets mad at me, she hits me . . . [I] can’t take it anymore. . . . She has been hitting me for a long time.” The child described the mother’s abuse as screaming, yelling and hitting.

According to the mother, the child was the aggressor. Eventually when the child did not return home, the mother notified the police. The mother told a social worker: “She won’t do any chores. She does not take her medication and she lies. She has to be watched whenever she has access to the Internet, because she is talking to [grown] men, who are potential

pedophiles. . . . She is out of control. I have tried to provide a safe and healthy environment for her. . . . She is too out of control at this time and I do not believe that I am able to care for her any longer.”

B. April 28, 2015 Jurisdiction and Disposition Report

The child described in greater depth the mother’s abusive conduct discussed in the detention report. Also, the child described other abusive conduct by the mother. On July 15, 2014, the mother hit the child. This occurred because the child had accidentally broken an antique item belonging to the mother. On November 18, 2014, the mother cut the child. On November 31, 2014, the mother hit the child with a hangar and pulled the youngster’s hair.

The child stated that the allegations in paragraphs a-1 and b-1 were true. The child said the last time she was struck was on or around March 1, 2015. The child stated that the mother became angry. According to the child, the anger developed because of a disagreement as to how her homework should be completed. The child was ordered to strip off her clothes. The mother then turned the music on really loud. The mother then struck the child’s buttocks with a belt. The belt was white. But once it broke, the mother switched to a brown belt. The child said she was hit once a week. Once when they were jogging the mother kicked the child in the buttocks. The child stated the bruises she received on March 3, 2015, resulted from being hit in the face with a belt and her arm being grabbed. The child revealed the physical abuse to Ms. Peterson, a teacher. The mother and the child discussed possible other placements. The

mother wanted the child placed in a boarding school and residential treatment center in Utah.

C. April 28, 2015 Addendum Report

Dr. Nancy Niparko, M.D., a child neurologist wrote a letter indicating the child engaged in self-mutilation, including picking, twisting, scratching, and digging deep in various areas of her body. Dr. Niparko believed this to be because of the child's over anxieties. This interfered with her attention, thinking and lack of impulse control. Dr. Niparko treats the child for chronic and severe anxiety, migraine headaches, restless leg syndrome and attention deficits.

Dr. Brooke Spanos, a psychiatrist, began seeing the child and the mother on July 13, 2011. According to the Dr. Spanos, the child and the mother had a lot of drama. Dr. Spanos related the relationship between child and the mother had fallen apart and had become toxic.

The social worker, Priscilla Ashburn, concluded the child was at risk of future harm for physical and emotional abuse from the mother. Ms. Ashburn believed the mother exerted authoritarian control in response to the child's acting out behavior. The mother reacted in this manner rather than addressing the child's underlying needs for love.

D. May 12, 2015 Last Minute Report

The last minute information filing consisted of a Multidisciplinary Assessment Team analysis. The 19-page report was authored by Monica Cortella, L.M.F.T., through the St. John's Child and Family Development Center. As noted, the mother adopted the child. There are references in the report to the biological mother. References are also made to the biological father, Trenton M., who is totally disabled. He will be referred to as the biological father. The child experienced trauma since early childhood, including: exposure to domestic violence from the biological mother; exposure to the biological mother's alcohol abuse; separation from the biological father at 12 months old; removal from the biological mother's care at age 7; and cyber bullying at high school. The team report stated, "[The mother] has done everything she knew how to do to provide structure and support to [the child]." However, according to the team: the mother did not understand the child needed a special way of parenting; the child has a long-standing history of maladaptive coping to manage deep sadness, a sense of ineffectiveness, and low self-esteem; and the mother's parenting style was no longer developmentally appropriate.

E. August 27, 2015 Trial Proceedings

The mother's counsel submitted as evidence an August 24, 2015 psychological assessment by Dr. Chuck Leeb. Dr. Leeb answered the following questions and issues: "Relationship between mother and child concerning parenting style. [¶] Mother's parenting style is not conducive to raising a child with a secure sense of self. [¶] Psychological testing of mother and minor to determine the following: mental health diagnosis and treatments needed. [¶] Treatments are discussed below. [T.M.] can be said to suffer from anxiety and depressive disorders. [The mother] suffers from low sense of self esteem manifested in a dysfunctional personality style. [¶] . . . [¶] Recommendations for reunification/concerns. [¶] Minor and mother have too many unresolved personal and interpersonal issues to make reunification feasible at this time. [¶] . . . [¶] [The mother] has done the best job she knows how to do. One cannot provide what one does not know is missing. [The mother] would benefit from both a psychodynamic approach as well as a cognitive behavioral approach (CBT). However, it is probable that she may at first be reluctant and resistant to therapy."

IV. DISCUSSION

A. Arguments on Appeal

The mother raises three arguments on appeal. First, the mother contends she should have been granted a continuance of the jurisdictional and dispositional hearing. Second, she argues Mr. Davis provided ineffective assistance. Third, the mother asserts the trial court erred by finding Ms. Salomon was not competent to provide representation at dependency proceedings. We reject these contentions.

B. Denial of Continuance

The mother argues the juvenile court abused its discretion by denying her a continuance. We review the denial of a continuance for abuse of discretion. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) Section 352, subdivision (a) provides: “Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence

presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. Further, neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause. Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court. [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.”

As noted, the mother through Mr. Davis made an oral motion for a continuance on the scheduled day of the jurisdictional and dispositional hearing. The mother relies on a medical note dated April 30, 2015, which she contends supports her argument. The medical note states the mother has a condition that required accommodations, including for her to have intermittent tardiness, breaks, leaving work early and rest. The juvenile court determined this medical note was generic and not an emergency that warranted a continuance.

The juvenile court did not abuse its discretion when it ruled there was not good cause for a continuance. It is undisputed the mother knew the jurisdictional and dispositional hearing was scheduled for August 27, 2015. The mother attended the prior hearing on August 19, 2015. The mother also attended hearings on April 28, 2015, May 12, 2015, and June 3, 2015. Thus, whatever medical condition the mother had since at least April 30, 2015 was not so serious as to prevent her from attending

juvenile court hearings. The juvenile court did not err by denying the mother's continuance motion. We need not address the parties' remaining continuance-based arguments.

C. Ineffective Assistance of Counsel

The mother argues Mr. Davis provided ineffective assistance. Ineffective assistance of counsel claims are generally raised in a habeas corpus petition. (*In re N.M.* (2008) 161 Cal.App.4th 253, 270; *In re Paul W.* (2007) 151 Cal.App.4th 37, 45.) However, an ineffective assistance of counsel claim may be reviewed on direct appeal when there is no satisfactory explanation for the trial attorney's decisions. (*In re N.M., supra*, 161 Cal.App.4th at p. 270; *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.) The test for ineffective assistance of counsel places the burden on the parent to demonstrate both that the attorney's representation fell below a reasonably objective standard and resulted in prejudice. (*In re N.M., supra*, 161 Cal.App.4th at p. 270; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Prejudicial error is one in which the result would have been more favorable but for the trial counsel's errors. (*In re N.M., supra*, 161 Cal.App.4th at p. 270; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.) We need not address the argument that Mr. Davis's actions were below the reasonably objective standard of representation standard.

We hold there is no basis for concluding the result would have been more favorable to the mother if Mr. Davis presented the additional evidence. This additional evidence included: declarations; testimony from individuals on her witness list; documentary evidence from her exhibits list; and cross-

examination of Dr. Leeb and the social workers. A declaration from Barbara Davis, a school custodian, stated the child associated with a group of high school girls who allegedly discussed falsifying abuse claims against their caretakers. Other individuals submitted declarations which praised the mother's caretaking abilities.

To begin with, all the declarations are hearsay. (Evid. Code, § 1200.) Further, none of the declarants offered any evidence concerning the abuse testified to by the child. These declarations do not refute the child's statements regarding abuse. There is no evidence any of the declarants were present at the time of the physical abuse. The declaration of Ms. Davis is full of speculation and hearsay. Ms. Davis has no knowledge of the extensive analysis by medical doctors and child care professionals who know both the mother and child agree they can no longer live together. The mother has failed to demonstrate Mr. Davis unreasonably concluded the proffered evidence would not have contradicted the uncontroverted evidence of abuse. In fact, as is often the case on direct appeal, the mother has offered no direct evidence of Mr. Davis's decision making process.

In any event, the mother has not demonstrated how cross-examination of Dr. Leeb or the social workers would have resulted in a more favorable outcome for her. In a similar vein, none of the proffered evidence contradicted the undisputed evidence of abuse and the need to remove the child from the mother's custody in the immediate near term. Accordingly, Mr. Davis's trial conduct does not rise to the level of reversible error.

D. Juvenile Court Finding Ms. Salomon Not Competent

The mother argues that the juvenile court erred by finding Ms. Salomon was not competent for purposes of dependency proceedings. To begin with, Ms. Saloman withdrew the request to represent the mother. This occurred after discussing the issue with the mother. The issue is therefore forfeited. (*People v. Williams* (2008) 43 Cal.4th 584, 629; *People v. Ramirez* (2006) 39 Cal.4th 398, 473-474; see *In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

In any event, every party in a dependency proceeding who is represented by counsel is entitled to a competent attorney. (§ 317.5, subd. (a); *In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1659.) Rule 5.660(d) of the California Rules of Court² provides the following definition of competent counsel. “Competent counsel’ means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.” Rule 5.660(d) provides the following requirements for experience and education for competent counsel: “ (A) Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Attorney training must include:

² Future references to a rule are to the California Rules of Court.

[¶] (i) An overview of dependency law and related statutes and cases; [¶] (ii) Information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and [¶] (iii) For any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placement. [¶] (B) Within every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings.”

Substantial evidence supports the juvenile court’s determination that Ms. Salomon was not competent for purposes of dependency proceedings. Ms. Salomon stated that she had not participated in education conferences concerning dependency proceedings. Ms. Salomon also stated she had not participated in mandatory legal education concerning dependency proceedings. Ms. Salomon had not appeared in a dependency proceeding since 2013. Ms. Salomon had not demonstrated she had “participated in training in the law of juvenile dependency” as defined for competent counsel in rule 5.660(d)(1). Given this level of training, the juvenile court did not err by finding Ms. Salomon was not competent counsel within the meaning of section 317.5. The juvenile court asked the mother to waive this issue. Rather than waive the issue, Ms. Saloman withdrew the request to represent the mother. We need not address the parties other contentions including any mootness issues raised by modifications of the reunification plan.

V. DISPOSITION

The orders under review are affirmed.

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TURNER, P.J.

We concur:

KRIEGLER, J.

BAKER, J.