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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ELIJAH G., a Person
Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
Plaintiff and Respondent,

v.

L.B.,
Defendant and Appellant.

B293111

Los Angeles County
Super. Ct.
No. 18CCJP01150A

APPEAL from orders and judgment of the Superior Court
of Los Angeles County, Steff R. Padilla, Juvenile Court Referee.
Affirmed.

L.B., in pro. per., for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Tracey Dodds, Principal Deputy
County Counsel, Navid Nakhjavani, Deputy County Counsel
for Plaintiff and Respondent.

L.B. (mother) represents herself in this appeal from juvenile court orders and judgment removing her son Elijah G., placing him with S.G. (father), and terminating jurisdiction. We affirm.

BACKGROUND

On February 21, 2018, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging that six-year-old Elijah had been sexually abused by his 15-year-old half-brother Henry. In December 2017, mother left Elijah home alone with Henry, and Henry sodomized Elijah, forced Elijah to orally copulate him, and urinated in Elijah's mouth. Although mother knew that Henry had sodomized Elijah before and had placed his penis on Elijah's penis, she had allowed Henry to frequent the home with unlimited access to Elijah. Mother failed to protect Elijah, who was at serious risk of harm. (Welf. & Inst. Code,¹ § 300, subd. (d).) The petition also alleged mother had "mental and emotional problems including depression, paranoia, aggressive and bizarre behavior, which render the mother unable to provide regular care of the child." She failed to get treatment for her mental illness, and on February 16, 2018, she "displayed bizarre and aggressive behavior" and was hospitalized for evaluation and treatment. Her mental condition endangered Elijah, and put him at risk of serious harm. (§ 300, subd. (b).)

The petition followed a November 28, 2017 referral reporting that Elijah told a classmate he wanted to suck his penis, and Elijah said he had seen an explicit video at home.

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

An earlier referral in July 2017 had reported that Elijah said Henry had touched Elijah's penis, and " 'mommy told me not to say anything,' " but DCFS had determined the allegation was unsubstantiated.

When a social worker visited mother's home on December 8, 2017, mother wanted to talk outside on the balcony because she believed the police had wiretapped the home and listened to everything. Mother said Elijah was struggling because everyone knew that Henry had molested Elijah. She claimed she had never left Elijah alone with Henry, who now lived with his own father and had no contact with Elijah. Mother said father had abused her and Elijah had witnessed some abuse, but she could not describe a specific incident or give a date. She had a restraining order against father, but did not remember why she had obtained it.

That same day, Elijah told a sheriff's deputy that Henry had molested him four different times when they were alone together at home. Elijah described what happened when Henry came over a week earlier. After mother left, Henry took Elijah into the bathroom, made him lie on the floor, and penetrated Elijah's anus with his penis. Henry then pulled Elijah up, put his penis in Elijah's mouth, and urinated while he moved his penis in and out. Mother told the deputy she knew nothing about the incident, and denied that Henry had been in the home the week before.

Mother married father in 2009 and Elijah was born in 2011. Father and mother divorced in 2014, remarried in 2015, and divorced for the second time in 2017. A family law order gave full legal custody of Elijah to mother. Father had joint physical custody, with visitation every other weekend. Father

told DCFS he now wanted full custody of Elijah, with monitored visitation for mother. He believed Henry had been removed from mother's home for touching Elijah inappropriately, and now Elijah was "trying to touch other children because he was touched." Elijah told father about Henry's abuse and said mother told him not to talk about it. Mother continued to sneak Henry back into her home so he could attend Palos Verdes schools, and she kept contacting father although she had a restraining order against him. When father met mother, she was taking Xanax, and she took Xanax and drank alcohol throughout their marriage. Mother's family told father she had been hospitalized for a mental breakdown, and mother was hospitalized again when she and father separated.

Mother's aunt reported that mother had mental health issues and was very paranoid.

On February 16, 2018, DCFS went to mother's home to serve the order removing Elijah. Mother pulled out her cell phone and began to record the social worker. Mother said father was a violent man who "beat up his old girlfriend who was a white woman," and showed the social worker restraining order documents. When the social worker explained that Elijah was being released to father until the court date, mother ran outside to father's car, grabbed Elijah by the arm, and dragged him out of the car and into the home, telling him not to go with father. Elijah asked: "[W]hy do I always have to get hurt[?]"

The sheriff's deputy who arrived to assist DCFS found the social worker and father standing outside, and mother lying on the floor of the living room with Elijah sitting next to her. Staring at the deputy without seeming to focus and without answering his questions, mother cried and yelled that the deputy

had tried to attack her, and then that father had punched her in the head, and then that her chest hurt. The social worker did not see anyone attack mother. The deputy called paramedics, but mother continued to ignore his questions and called 911 on her cell phone.

The paramedics arrived to transport mother for her heart rate and her complaint of chest pain. Insisting “ ‘me and my baby are going to the hospital my baby isn’t going with anyone but me,’ ” mother got on the gurney and the paramedics buckled her in. When mother saw Elijah leaving with the social worker, she unbuckled the straps to kick at the paramedics. Based on her bizarre and disconnected behavior, her inability to understand his directions or explanations, her mental health diagnoses, and her aggression toward the paramedics, the deputy held mother so she could be buckled to the gurney, and informed her she would be placed on a hospital hold under section 5150. The ambulance transported mother to the hospital.

Mother appeared at a February 22, 2018 hearing and stated she wanted to represent herself, filing a waiver of her right to counsel. The court told her the hearing was continued to the next day so that Elijah could be present, and gave her an opportunity to discuss self-representation with appointed counsel. When the court reconvened the hearing, mother did not return. Father filed a statement regarding parentage identifying himself as Elijah’s father, and describing his financial support of Elijah and Elijah’s substantial contact with father’s mother and aunt. Father also filed parental notification of Indian status, stating Elijah might be eligible for membership in the Wichita tribe of Indians. The court detained Elijah.

Mother did not appear at the continued hearing the next day, although she filed a parental notification of Indian status claiming possible membership in the Cherokee tribe. The court found father was Elijah's presumed father, released Elijah to father, and ordered visits for mother monitored by DCFS.

The jurisdiction/disposition report, filed May 3, 2018, reported that father confirmed he was Elijah's father on April 26, 2018, and mother said he was the father on May 2, 2018.

Mother appeared at the jurisdiction hearing on May 31, 2018, and reaffirmed she wanted to represent herself. Mother argued that father's temporary custody should have been terminated because notice under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1912) was incomplete. She also argued, "He's not the father. . . . There is someone who I was living with at the time that could potentially be the father." She admitted she never gave the other man's name to the social workers, but promised to provide it later. Over mother's objection, the court granted a continuance so the Indian tribes could be properly notified. Mother objected that her educational rights over Elijah were violated when he changed schools, and DCFS had not made adequate inquiry before father was deemed Elijah's presumed father.

Mother again represented herself at the continued adjudication hearing on July 2, 2018. The court denied mother's motions to transfer the case to tribal courts, as the tribes had notified the court they did not consider Elijah to be an Indian child. Mother continued to argue that Elijah was an Indian child. The court marked and admitted into evidence the detention report, the jurisdiction report, and two last-minute information reports. After mother claimed she was missing "[p]retty much

all” of the record, the court took a recess for mother to receive copies of all the reports. Mother then stated that she wanted to proceed, but needed to subpoena several witnesses, including a sheriff’s deputy and two social workers. The court offered a continuance to July 26. Mother then said, “I would like to proceed without these witnesses.” She planned to dispute their reports, complaining she had been treated unfairly and her computer files had been stolen. Counsel for DCFS, Elijah, and father all rested. Mother introduced into evidence a restraining order against father² and a petition for writ of mandamus she had filed.

Counsel for DCFS argued that Elijah consistently said that mother told him not to tell anyone about Henry’s sexual abuse, and mother had continued to leave Henry and Elijah alone together, resulting in more abuse. Mother’s paranoid behavior, the sheriff’s report describing her behavior as bizarre, disconnected, and aggressive toward the paramedics, and her hospitalization hold following the February 2018 removal, all supported a finding that her mental and emotional problems put Elijah at further risk of harm.

² The temporary restraining order, filed in Torrance Superior Court on February 2, 2018, was set for hearing on February 23, 2018 (the day mother failed to appear at the continued detention hearing). After the hearing, the court issued a three-year order restraining father from contacting mother, or being within 100 yards of her or her home, with the exception of brief and peaceful contact required for court-ordered visitation. An attached order gave mother legal and physical custody, with no visitation for father.

Mother responded that Elijah's health was not in danger because he had medical and dental insurance and his immunizations were up to date. She was aware of the July 2017 referral regarding Henry's sexual abuse of Elijah, but the current allegations were entirely untrue. She never left Henry alone with Elijah, and Henry had not been in her home since June of 2017. Father had a violent history, relatives living in his home had not been subject to criminal record checks, and mother had a current restraining order against father. She asked the court to set aside all its orders and to order no visitation for father. Mother also argued that father was not Elijah's biological father and asked the court to order a paternity test, while admitting that in family court and dependency court, and on the restraining order, she had listed him as Elijah's father. She claimed Elijah was neglected in father's home and there was a risk of abduction. After stalking her and harassing her, father had assaulted her on the day Elijah was detained, which is why she called 911 and went to the hospital, where she was put on a section 5150 hold against her will.

The trial court found true under section 300, subdivision (b) that mother's mental and emotional problems rendered her unable to care for Elijah, and under subdivision (d) that in December 2017 mother left Elijah alone with Henry, and Henry sodomized Elijah and forced Elijah to orally copulate him. Mother knew Henry had done this before and still allowed him to be alone with Elijah, failing to protect Elijah and placing him at risk of serious harm.³ The court denied mother's request for

³ As sustained, the allegations read:
"b-2 The child Elijah[s] mother, [L.B.], has displayed mental and emotional problems

including depression, paranoia, aggressive and bizarre behavior, which render the mother unable to provide regular care of the child. On prior occasions, the mother failed to obtain mental health treatment for the mother's mental and emotional problems. On 02/16/2018, the mother displayed bizarre and aggressive behavior, and was found to be a danger to herself and others. On 02/16/2018, the mother was hospitalized for the evaluation and treatment of the mother's psychiatric condition. Such mental and emotional condition on the part of the mother endangers the child's physical health and safety, creates a detrimental home environment and places the child at risk of serious physical harm, damage and danger."

"d-1 On a prior occasion in December of 2017, the child Elijah[^s mother L.B.] left the child and the child's sibling, Henry . . . , home alone, without appropriate adult supervision. Further while the child was alone with the sibling, the sibling sexually abused the child by sodomizing the child, by forcibly placing the sibling's penis in the child's anus, causing severe pain to the child. The sibling forced the child to orally copulate the sibling's penis. The sibling urinated in the child's mouth. On prior occasions, the sibling sodomized the child and placed the sibling's penis on the child's penis. The child's mother, [L.B.], failed to protect the child. The mother knew of the sexual abuse of the child Elijah by the child's sibling, and the mother allowed the sibling to frequent the child's home and have unlimited access to the

a blood test to establish paternity, ordered an investigation into her allegations that Elijah had been neglected in father's care, and ordered unannounced home visits. The court continued disposition until it heard from one tribe whether ICWA applied to Elijah.

At the continued hearing on July 26, mother protested the denial of her request for a blood test, saying she had information about another possible father. Counsel for father pointed out father and mother were married when Elijah was born, and father was present at the birth and signed the birth certificate. Over mother's continued protests, the court found father was a "conclusively presumed father." After mother brought up more information about Elijah's possible Creek Nation ancestry, the court ordered DCFS to notify the Creek Nation. Mother then claimed she had video of Elijah telling her the social worker told him to grab her laptop during a monitored visit. The court admonished mother not to videotape Elijah. Mother continued to complain of inappropriate behavior by the social workers and stated she had a lawsuit against DCFS for "placing [Elijah] with this violent man," who continued to violate the restraining order by showing up at her home. The court ordered DCFS to provide

child, resulting in the ongoing sexual abuse of the child Elijah by the sibling. Such sexual abuse of the child Elijah by the child's sibling, and the mother's failure to protect the child and provide appropriate adult supervision for the child, endanger the child's physical health and safety, create a detrimental home environment and place the child at risk of serious physical harm, damage, danger, sexual abuse and failure to protect."

last-minute information about the laptop and whether Elijah was being bullied in school. The court continued the hearing and ordered father not to contact mother or go to her home; father's counsel answered that mother continually tried to contact father. The court then ordered mother not to contact father, because "if I make a finding that you are no longer in fear, I can terminate that restraining order."

A last-minute information on July 26 reported that DCFS made two unannounced home visits and found Elijah happy and healthy in father's clean and well-organized home. Mother had violated the visitation agreement by asking Elijah inappropriate questions and had cancelled a visit. During uninterrupted visits, however, mother engaged lovingly with Elijah and they appeared to have an appropriate bond. An August 30, 2018 last-minute information reported that various Creek tribes indicated that Elijah was not an Indian child. A second last-minute information stated that Elijah's school had no record that he had been bullied. Father had seen mother's car driving slowly past his home, and mother had left him voice messages. DCFS reported that mother would bring a laptop to the monitored visits so Elijah could play video games. Assuming the laptop belonged to Elijah, DCFS had encouraged Elijah to leave it in the office so the visit would be more productive. When DCFS learned the laptop belonged to mother, DCFS returned it to her.

At the August 30, 2018 hearing, mother argued the second last-minute information contained false information. The court reminded mother not to contact father. (She denied the court had ordered her not to.) DCFS recommended that the court terminate jurisdiction with a juvenile custody order giving father sole legal and physical custody, with a note that there is a

request she seek mental health counseling. Counsel for Elijah joined and requested monitored visitation for mother. Counsel for father submitted. Mother objected. Asked if she wanted to say anything, she responded: “Everything I say in this court you always favor the father, and so I have a lawsuit. I believe there’s conspiracy also along with this court. That’s it.”

The court found Elijah was not an Indian child, and placed Elijah in father’s home “over the strenuous objections of the mother.” Father’s counsel stated father would continue with individual and joint counseling for Elijah, and urged the court to terminate jurisdiction. The court found that placement with father would not be detrimental and terminated jurisdiction. The court concluded returning to mother would be detrimental to Elijah, and entered a custody order granting father sole legal and physical custody, with monitored visitation for mother. “The court is also making a finding that mother has repeatedly refused to follow the orders of the court and has indicated yet again today that she is going to do whatever she wants to do regardless of a court order.” The court terminated dependency jurisdiction, and filed a custody order awarding full legal and physical custody of Elijah to father, with supervised visitation to mother at least once a week for a minimum of two hours, specifying no contact with Henry. On September 11, 2018, the trial court entered final judgment.

Mother filed a petition for writ of mandate in pro. per. on October 9, 2018, after she filed two appeals that we dismissed as taken from nonappealable orders. We construed the petition for writ of mandate as a notice of appeal from the disposition order entered on August 30, 2018 and the custody order and final judgment entered on September 11, 2018.

DISCUSSION

Mother's rambling and often incoherent appellate brief requests reversal of the orders and "a new decision for sole legal and physical custody to me." In her statement of facts, she states that she believes pages and exhibits were removed from her filings in juvenile court; counsel for DCFS lied; she never left Elijah and Henry home alone; father is homeless; DCFS conspired to have Henry steal her business documents and files; father was a very violent man who repeatedly violated the restraining order against him and was a danger to Elijah; father punched mother in the nose the day Elijah was removed; the section 5150 hold was illegal; her life was now in danger and she had been poisoned in a resort bar; DCFS stole files from her laptop computer; and father has violated the visitation order. Mother also states she has filed a lawsuit against Los Angeles County, Elijah's elementary school, the hospital, the school district, the sheriff's department, and DCFS.

DCFS argues that mother's inadequate briefing justifies our dismissal of her appeal. While we agree much of the brief does not raise appealable issues, we briefly address the recognizable arguments mother makes.

Mother argues that the court erred in declaring father Elijah's presumed father without adequate investigation. A person is presumed to be a natural parent of the child if "[t]he presumed parent and the child's natural mother are or have been married to each other [when] the child is born." (Fam. Code, § 7611, subd. (a)). Father, who was married to mother when Elijah was born in 2011 and signed Elijah's birth certificate, was properly declared his presumed father. Mother had identified father as Elijah's father in family court, in the

dependency court proceedings, and in the restraining order, and then attempted to “rebut[] the presumption” that father was Elijah’s presumed father by suggesting that another man might be Elijah’s biological father. This misunderstands presumed father status. Even if mother had identified a different man as Elijah’s biological father, that would not result in the loss of father’s presumed father status. “Statutory presumed fatherhood is based not on a biological connection but rather on a man’s relationship with the child or the child’s mother, and therefore, genetic testing has limited applicability in determining presumed father status.” (*In re Emma B.* (2015) 240 Cal.App.4th 998, 1003.) “[A] ‘man does not lose his status as a presumed father’ by an admission or proof that he is ‘not the biological father.’” (*Id.* at p. 1004, quoting *In re Nicholas H.* (2002) 28 Cal.4th 56, 63.) “[C]ourts are not required to examine biological evidence in determining such presumed paternity status.” (*Emma B.*, at p. 1004.)

Mother also argues that the court did not comply with ICWA, but “the statute applies only in an ‘Indian child custody proceeding,’ the definition of which expressly includes various proceedings, but not a proceeding for placement with a parent.” (*In re K.L.* (2018) 27 Cal.App.5th 332, 336.) The juvenile court placed Elijah with father, so full ICWA compliance was unnecessary. (*Ibid.*) Father is “a presumed parent [who] has legal status as a ‘parent’ and enjoys the full panoply of rights attendant to parenthood, including custody of his or her child.” (*Id.* at p. 337.) “The plain meaning of the statutory language in both the ICWA and the California statutes” excludes “a proceeding wherein [DCFS] seeks, and the juvenile court orders, placement of the minor with a presumed parent.” (*Id.* at p. 338.)

Mother contends that the restraining order prohibited the juvenile court from taking Elijah from her care and placing him with father. But “[w]hile the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents . . . regarding custody of a child who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing that matter.” (§ 304.) The juvenile court was not bound by the custody order attached to the restraining order, introduced into evidence by mother at the July 2, 2018 hearing at which the juvenile court sustained the allegations in the petition. “Once a petition has been filed under section 300, the juvenile court has exclusive jurisdiction of all issues regarding custody and visitation of the child.” (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 102.)

DISPOSITION

The orders and judgment are affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.