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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L. M.,

Defendant and Appellant.

B232976

(Los Angeles County
Super. Ct. No. CK03587)

APPEAL from an order of the Superior Court of Los Angeles County,
Rudolph Diaz, Judge. Affirmed.

Joseph D. MacKenzie, under appointment by the Court of Appeal, for Defendant
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In this juvenile dependency case, L. M. (mother) appeals an order terminating her right to visit her daughter S. T. Mother does not challenge the order on its merits. Rather, mother contends the order must be reversed because the juvenile court failed to sua sponte appoint a guardian ad litem for her, and thereby deprived her of due process. We reject this argument and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *S.'s Initial Removal from Mother's Custody*

S. was born in May 1999. Before her first birthday, the Los Angeles County Department of Children and Family Services (Department) filed a juvenile dependency petition requesting the juvenile court to assert jurisdiction over the child. In June 2000, the petition was sustained on, among other grounds, that S.'s physical and emotional health and safety were endangered because mother left S. with her maternal grandmother without making a plan for the child's care and support, mother had a history of drug abuse and was a current user of cocaine, and mother had serious mental and emotional problems and was currently hospitalized in a psychiatric facility.

S. was removed from mother's custody and placed with her maternal grandmother who eventually became her legal guardian.¹ Unfortunately, S.'s grandmother died in November 2004. S. was then placed with another relative, Cheryl M., who became her legal guardian in July 2005. This arrangement also did not last. In November 2007, S. was detained from Cheryl M. and placed in foster care.

¹ The identity of Samira's father is unknown. Mother claimed for most of Samira's life that Jonathan T. was Samira's biological father. Paternity tests conducted during the course of these proceedings, however, disproved this claim. There is nothing in the record indicating any man, including Jonathan T., ever lived with mother.

2. *Mother's Drug Abuse, Mental Health Problems, Criminal History and Previous Dependency Proceedings*

Mother has a long-term drug abuse problem, particularly with cocaine. She also has been diagnosed with bi-polar disorder, dyslexia and diabetes. For her various illnesses, she has been prescribed Zoloft, Abilify, Trasodone and insulin.

Mother has a long criminal record spanning from 1981 to 2003. She has been convicted of several felonies and many misdemeanors, including assault with a deadly weapon, prostitution, and vandalism.

At least two of mother's other children, Samantha M. (born 1993) and Sierra B. (born 1994), have been declared dependents of the juvenile court and were removed from mother's custody. At one of the hearings in this action, the Department's attorney mentioned three other children allegedly taken away from mother's custody, but there is no evidence of this allegation in the record.

3. *Mother Regains Custody Over S.*

In October 2009, the juvenile court ordered that S. be placed back in mother's custody. The record does not clearly indicate why this occurred.

4. *Department Investigates Mother's Alleged Emotional Abuse and General Neglect*

On June 14, 2010, the Department received a referral on its "hotline" regarding S. The caller alleged that S. was subject to emotional abuse and general neglect by mother.

Department social workers were assigned to investigate. The social workers interviewed mother, S., S.'s teacher and school principal, and S.'s cousin Michelle Humphrey, who frequently took care of S. This investigation revealed that S. had fallen, chipped her front teeth and was in pain as a result, but mother did not arrange for any dental care. The Department also learned that S. had severe visual impairment—some described her as "blind"—and needed a pair of specialized eyeglasses, which mother had not purchased.

S.'s teacher reported that "S. seems concerned about being molested and speaks of the neighbors being loud and experimenting with crack cocaine." According to the

school principal, Nancy Cohen, Samaria was developmentally delayed, emotionally unstable and “very frightened” of mother. Cohen further stated that S. used too much adult terminology, was constantly crying at school, and was worried about cocaine and being raped.

The social workers interviewed mother several times. After discussing her long-term mental disorders and drug prescriptions, mother stated that she sometimes felt overwhelmed taking care of S. She further stated that her only concern was to have the “case closed.” The social workers did not indicate mother had difficulty understanding their questions or the nature and purpose of their investigation.

S.’s cousin Humphrey expressed strong concerns about mother’s care for S. Humphrey stated that mother often “yells and screams” at S. Additionally, Humphrey stated that she frequently received telephone calls from school officials regarding their concerns about S. She also indicated she believed mother was using illicit drugs. According to Humphrey, when she recently spent a night at mother’s residence, mother was in and out of the home all night. Humphrey further stated she heard people knocking on the window at 2:00 a.m. and 3:00 a.m.

On August 6, 2010, mother took a random drug test. A few days later the laboratory results were positive for cocaine. When asked by a social worker about the drug test, mother denied using cocaine. She claimed that the test was positive because she helped a friend manufacture crack cocaine. Mother expressed concern that the court would take S. away from her due to this “one mistake.”

On August 26, 2010, the Department detained S. from mother.

5. *Juvenile Dependency Petition*

On August 31, 2010, the Department filed a juvenile dependency petition requesting the court to assert jurisdiction over S. The petition set forth two counts against mother under Welfare and Institutions Code section 300, subdivision (b).² The first was based on mother’s past and current use of illicit drugs. The second was based on

² All future statutory references are to the Welfare and Institutions Code.

mother's failure to take care of S.'s visual impairment and dental problems. The petition alleged that there was a substantial risk S. would suffer serious physical harm or illness as a result of mother's failure or inability to supervise or protect the child adequately, and as a result of mother's inability to provide S. with regular care.

6. *August 31, 2010, Initial Hearing: Mother Walks Out of the Courtroom*

On August 31, 2010—the same day the petition was filed—the juvenile court held a hearing, which mother and her counsel attended. We shall describe the hearing in some detail because mother bases many of her arguments on the events that took place at that time.

In the beginning of the hearing, mother indicated that she could not hear what the court was stating. After the court spoke more directly into a microphone, mother acknowledged that she could hear the court speak.

The court then advised mother it was very important for her to keep the court updated on her address. Mother responded, "I'm going to be moving in a couple of months, hopefully within the next six to eight weeks; and when I do move, I will be updating everything with my attorney, social worker, everybody."

Later, the court stated to mother: "[I]f you have trouble hearing me, be sure to let me know because otherwise if you don't say anything I figure you're hearing it all." Mother and the court then had the following dialogue: "[Mother]: Excuse me. My mind went completely somewhere else. I heard you, but I didn't understand you. [¶] The Court: All right. It will be important that you let me know if you cannot hear what I say. [¶] [Mother]: Okay." Mother then coherently answered a number of questions about S.'s alleged father and whether she had Indian ancestry.

Subsequently, the court, attorneys for various parties, and mother had a discussion about a Court Appointed Special Advocate (CASA) for S. Mother stated she knew what a CASA was but objected to the appointment of Trudy Armer, who had been S.'s CASA from 2001 to 2006. The following discussion then took place:

"The Court: Well, I'm sorry, but the Court is appointing Trudy Armer to serve as the CASA.

“[Mother]: I need a recess, and I need it now, please. I need a recess now.

“The Court: Anything additional before Court makes detention findings?

“[Mother]: Why I am even here?”

The court did not respond to mother’s rhetorical question. Instead, the court addressed issues raised by attorneys for other parties. At one point, counsel for the Department requested “that the Court order monitored visitation, there be no discussion of the case.” The court and mother then had the following dialogue:

“The Court: Yes, that is an important rule to know about, [Miss M.]

“[Miss M., i.e., Mother]: I can’t understand anything –

“The Court: Here’s what you need to know. It’s about visiting with S. When you visit with S., you are not allowed to discuss the case with her.

“[Mother]: Discuss what?

“The Court: To talk about the case or to talk –

“[Mother]: I’m her mother; I wouldn’t do that.”

Then, after the hearing continued, mother asked several times if she could address the court, but the court denied these requests, stating that it was the job of mother’s attorney to speak on her behalf. Shortly thereafter mother interrupted the court by stating “Keep her.” Mother then told S. that she loved her but that she “can’t do this no more,” that she was “tired,” and “Bye, baby, I’m sorry, bye.” S. responded, “Goodbye.” Mother then got out of her chair, hugged S., repeated that the court should “keep” the child, and walked out of the courtroom. The court then heard mother screaming outside of the courtroom.

After mother left, the court ruled that the Department established a prima facie case for detaining S. and ordered the Department to provide services to S. The court also approved twice weekly monitored visits by mother.

7. September 24, 2010 Hearing: Mother Apologizes to the Court

On September 24, 2010, the juvenile court held another hearing on the matter. At the beginning of the hearing, mother made the following statement: “Good morning, your Honor, I truly apologize to the Court, to all the other employees, for my behavior

the last time. It was just a little bit more than I could bear, and I apologize for my behavior. I hope the Court will forgive me, please.”

8. *October 13, 2010, Jurisdiction Hearing and Order*

On October 13, 2010, the court held a hearing regarding whether it should assert jurisdiction over S. pursuant to the Department’s petition. Mother did not attend. After argument by counsel for the Department and mother, the court granted the petition with respect to both counts against mother.

9. *Post-Petition Department Reports*

After the Department filed its petition it provided numerous services to S., monitored her progress in foster care and mother’s visits, and in September, October and November 2010 wrote reports to the juvenile court regarding its findings. These reports indicated that S. was traumatized by living with mother. In particular, S. was upset about mother’s friends’ use of cocaine and mother’s frequent questions about whether S. had been molested. S. repeatedly denied that she had been molested. The questions made S. “upset and scared.”

The reports further indicated that after S. was detained, mother maintained contact with her by telephone, though the contact was inconsistent. S. stated that mother upset her by frequently asking her if she was being molested and whether she had been molested in the past.

10. *November 22, 2010, Hearing and Order: Mother Ordered Not to Talk to S. About Sex and to Come Back for a Disposition Hearing*

On November 22, 2010, the juvenile court held a hearing, which mother attended. At the hearing the court stated: “And mother is reminded not to talk to S. about topics relating to sex. S.’s not ready for that. She’s uncomfortable with that.” The court ordered mother to come back for a disposition hearing on December 13, 2010.

11. *December 13, 2010, Disposition Hearing and Order*

The juvenile court held a disposition hearing on December 13, 2010. Mother’s attorney asked for a continuance because mother did not appear. The court denied this

request on the ground that mother had been ordered to appear when she was last in court on November 22, 2010.

After argument by counsel for the interested parties, the court declared S. a dependent child of the court, denied mother reunification services, ordered S. removed from mother's physical custody, and scheduled a permanent placement hearing pursuant to section 366.26. The court also granted mother two monitored visits per month.

12. *Section 388 Petition By S.'s Counsel to Terminate Mother's Visitation*

On January 11, 2011, S.'s attorney filed a section 388 petition requesting the court to terminate mother's visitation rights. The petition alleged that S. was experiencing high levels of stress from the visits and that the visits were undermining her psychological therapy. The petition was supported by evidence, including a letter from S.'s therapist.

On March 10, 2011, the court held a hearing on the section 388 petition. Mother did not appear, though she was represented by counsel. The court granted the petition on the ground that it was in the best interests of S. to do so. Mother filed a timely appeal of the order.

CONTENTIONS

Mother contends that the juvenile court abused its discretion and violated her due process rights when it failed to appoint a guardian ad litem, sua sponte, to represent mother's interests. Although mother did not seek a guardian ad litem in the trial court, she contends she did not forfeit the issue on appeal because the juvenile court allegedly made a "structural error."

DISCUSSION

A guardian ad litem must be appointed to represent a mentally incompetent parent who is a party to a juvenile dependency action. (Code Civ. Proc., § 372, subd. (a); *In re B.C.* (2011) 192 Cal.App.4th 129, 143.) The court can make this appointment upon an application of a relative or friend of the parent, or on its own motion. (Code Civ. Proc., § 373, subd. (c).)

A mother is incompetent when she does not understand the nature of the proceedings against her, cannot meaningfully participate in the proceedings, and cannot

assist her counsel in representing her interests. (*In re R. S.* (1985) 167 Cal.App.3d 946, 979-980; *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1367.) We review a juvenile court's decision to not sua sponte appoint a guardian ad litem for an allegedly incompetent parent under an abuse of discretion standard. (*In re Ronell A.*, at p. 1368.)

Here, the juvenile court did not abuse its discretion because there was no substantial evidence that mother was incompetent. Mother repeatedly demonstrated that she understood the nature of the proceedings against her by indicating to Department social workers and the court that she was worried and upset about possibly losing custody of S. She also understood the grounds for the juvenile dependency petition. For example, mother expressed concern about the juvenile court's reaction to her positive drug test, which she attempted to minimize as "one mistake."

Mother's reliance on a few statements she made at the August 31, 2010, hearing is unpersuasive. She was temporarily confused at one point but soon understood the nature of the court's statements. At another point, mother lost focus and her mind wandered off momentarily as the court asked her a question. But she quickly recovered and coherently answered the court's inquiries. When placed in context, mother's statements only indicate that at one early hearing she was very upset and at times had some trouble following the proceedings. This is far short of evidence of incompetence.

There is also no evidence that mother was unable to meaningfully participate in the proceedings. Merely because mother did not attend all of the hearings, does not mean she was unable to meaningfully participate. Mother was represented by an attorney at each hearing. Her counsel vigorously and competently asserted arguments on her behalf.

Moreover, there is no evidence that mother could not assist her counsel due to her alleged incompetence. Although mother's attorneys at times had difficulty contacting her, they never advised the court that mother was unable to assist them due to her alleged incompetence or for any other reason.

In light of the lack of evidence in the record regarding mother's alleged incompetence, there was no reason for the juvenile court to appoint a guardian ad litem for mother on its own motion. The court did not abuse its discretion by not doing so.

Having concluded that the juvenile court acted within its discretion, we do not reach the issue of whether mother forfeited her arguments on appeal by not raising them in the juvenile court.

DISPOSITION

The juvenile court's order of March 30, 2011, is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.