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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

In re JAMES G., et al., Persons Coming  
Under the Juvenile Court Law.

B242318  
(Los Angeles County  
Super. Ct. No. CK70678)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VALERIE A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Marilyn Martinez, Juvenile Court Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County  
Counsel, Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

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Appellant Valerie A. (“Mother”) appeals from the juvenile dependency court’s visitation orders made regarding her children pursuant to Welfare and Institutions Code<sup>1</sup> section 366.26. The court ordered monitored visitation for Mother “approximately 1 to 2 times per month, . . . for approximately 1 to 2 hours per visit” and gave the legal guardians the discretion to “determine the details of the visits, including the time, place and manner of the visits.” Before this court, Mother asserts the visitation order was improper because it effectively delegated all visitation decisions to the guardians.<sup>2</sup> Mother did not object to the visitation order below. Nonetheless, as we shall explain, because the factual issues are undisputed and this matter concerns only an issue of law, we exercise our discretion to reach the merits and conclude the court did not err. Accordingly, we affirm.

### ***FACTUAL BACKGROUND AND PROCEDURAL HISTORY***

In November 2007, the Department of Children and Family Services (“the Department”) filed a section 300 petition on behalf of James G. (then age 6), Aaron A. (then age 2) and the boys’ eight-year-old sister, Sarah G.<sup>3</sup> The petition alleged that Mother suffered from emotional and mental problems, used inappropriate discipline and failed to provide appropriate supervision for the children.<sup>4</sup> Mother blamed eight-year-old Sarah’s “oppositional behavior” for many of the family’s difficulties. On November 13, 2007, the juvenile dependency court ordered the children detained from Mother’s custody and ordered supervised visitation.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code section unless otherwise indicated.

<sup>2</sup> The legal guardians are not parties to this appeal.

<sup>3</sup> Neither Sarah, nor the children’s respective fathers are subjects of this appeal.

<sup>4</sup> The Department had previously offered mother voluntary family maintenance services, but those efforts failed to resolve the family’s problems.

The jurisdictional and dispositional report disclosed that children's adult sister, Melissa, and Juan (then Melissa's fiancé, but now her husband), were willing to care for the children.

In January 2008, the juvenile dependency court sustained an amended petition, declaring the children to be dependents under section 300, subdivisions (a), (b), (g), and (j). The children were removed from Mother's custody. The court further ordered family reunification services for Mother, and ordered her to attend parenting classes, individual counseling, and conjoint counseling with the children. The court also ordered Mother to undergo a psychiatric evaluation. The court also ordered the children to participate in individual and family counseling and for supervised visits between Mother and the children.

At the sixth-month review hearing, it was reported that Aaron was living with Melissa and Juan and that the other two children were residing with their paternal grandmother. The children were doing well in their placement. The psychological evaluation of Mother revealed that she suffered from obsessive-compulsive disorder tendencies, anxiety and depression and it was recommended that Mother participate in psychotherapy. The court found Mother to be in partial compliance with the reunification case plan and ordered continued services. The court liberalized visits to be unmonitored. However, by the late fall of 2008, based on reports of Mother's abusive behavior, the juvenile court ordered Mother's visitation to again be supervised and for Mother to address anger management issues.

In 2009 the caretakers expressed concerns about the children's behavior after returning from visits with Mother and concerns about Mother's conduct during visits. Nonetheless, the Department's reports expressed the Mother's visits with the children and their therapy sessions in positive terms. Mother filed a section 388 petition in late 2009. The Department recommended that Mother's section 388 petition be denied, but that her visitation be liberalized to include overnight visits. In December 2009, the children had a positive overnight visit with Mother.

In 2010, the Department reported all the children exhibited behavioral problems since the onset of Mother's overnight visits, and that Mother was spending less time with the children. Nonetheless, in October 2010, the juvenile court granted Mother's section 388 petition and returned the children to Mother's custody.

In early December 2010, the Department filed a section 387 petition on behalf of the children indicating Mother was unwilling and unable to care for Sarah and requested the child be removed from her care. The Department also alleged that Mother's actions placed all three children at risk of harm. Mother conceded that she was overwhelmed caring for Sarah. The Department detained the children, concluding that Mother preferred James and Aaron to Sarah, and that Mother's treatment of Sarah was detrimental to all three of the children.

At the detention hearing on December 7, 2010, the juvenile court ordered the children detained from Mother and placed them with Melissa and Juan. The court found that "the environment that mother has perpetuated within her household, the way she's been mistreating Sarah, overtly favoring the boys, has created a very hostile environment for the children."

In March 2011, the juvenile dependency court adjudicated the section 387 petition. The court sustained an amended version of the petition containing allegations relating to Sarah, but struck the references to James and Aaron. The court removed Sarah from Mother's custody, but returned the boys to her.<sup>5</sup>

Thereafter in October 2011, the Department filed a section 387 petition on behalf of James and Aaron, alleging Mother suffered from mental and emotional problems; that she had failed to ensure the children participated in court-ordered treatment; and that she was unwilling and unable to care for the children and had requested their removal from her home. According to the Department Mother had indicated she was having suicidal

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<sup>5</sup> On August 26, 2011, the juvenile court granted Melissa and Juan legal guardianship of Sarah.

thoughts, James had expressed fear that Mother was going to get rid of him as she did Sarah, and that Aaron had been left unsupervised. At the detention hearing, the juvenile court detained the children and placed them together with Melissa and Juan.

On January 11, 2012, the juvenile court sustained an amended version of the section 387 petition filed on behalf of James and Aaron, removed the boys from Mother, and denied her further reunification services. The court set the matter for a permanency planning hearing.

At the section 366.26 hearing in April 2012, the Department recommended that Melissa and Juan be granted legal guardianship of James and Aaron. Mother was reportedly visiting the children about twice per month, but often missed visits because she frequently canceled or attempted to re-schedule visits in conflict with the caretakers' schedules. Mother failed to appear at the initial section 366.26 hearing and the proceedings were briefly continued.

Mother did not appear at the continued section 366.26 hearing on May 3, 2012, despite being noticed by her counsel. Mother's attorney indicated she had no direction from Mother regarding the hearing. At the hearing, the juvenile dependency court did not terminate Mother's parental rights, but instead granted Melissa and Juan legal guardianship, terminated jurisdiction, and filed papers of guardianship for the boys. The visitation schedule attached to the court's guardianship orders indicated that "[M]other shall have monitored visits approximately 1 to 2 times per month, if she so requests, for approximately 1 to 2 hours per visit. Mother and Legal Guardians shall share the cost of a monitor, 50% each, unless the Legal Guardians are able to arrange for a no-cost monitor. Legal Guardians shall determine the details of the visits, including the time, place and manner of the visits."<sup>6</sup>

Mother filed an appeal from the visitation order.

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<sup>6</sup> Melissa and Juan were not interested in monitoring Mother's visits.

## ***DISCUSSION***

Before this court, Mother complains that the juvenile court's order concerning visitation<sup>7</sup> must be reversed because the court improperly delegated visitation decisions to the children's legal guardians, which effectively gave them authority to decide whether Mother received any visitation at all. The Department asserts that Mother failed to object to the order below and therefore forfeits any complaint as to the order. Finally, the Department maintains that Mother has not shown that the court improperly delegated its duties and responsibilities concerning visitation to the legal guardians. We address these contentions in turn.

### **1. Forfeiture**

Mother did not attend the section 366.26 hearing and did not challenge the order concerning visitation. Mother's counsel indicated that he had no direction from Mother regarding the hearing. Mother does not claim to this court that she gave her trial attorney timely instructions to contest the orders made at the section 366.26 hearing, nor is there any evidence in the record to suggest that she attempted to contact the Department, or the juvenile court, to state her disagreement. Therefore the Department argues that Mother forfeited her right to challenge the visitation order on appeal. Although we agree that Mother forfeited the issue by failing to raise it in the juvenile court, we will exercise our discretion to consider it. "[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.]" (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) However, "application of the forfeiture rule is not automatic." (*Ibid.*) An issue may be raised on appeal if "'it raises only a question of law and can be decided based on undisputed facts.' [Citations.]" (*In re V.F.* (2007) 157 Cal.App.4th 962, 968, superseded on other grounds, as stated in *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 57-58.) Where, as here, "the facts are not disputed, the effect or legal significance of

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<sup>7</sup> We note that before this court Mother does not contest the guardianship order.

those facts is a question of law,” which “is not automatically subject to the doctrine of forfeiture.” (*Ibid.*) We therefore exercise our discretion to address Mother’s contention. (See, e.g., *In re M.R.* (2005) 132 Cal.App.4th 269, 272 [exercising its discretion to address the visitation order despite the mother’s failure to object to the order in the juvenile court].)

## **2. Visitation Order**

Before this court, Mother complains that the visitation order is infirm because it failed to specify with certainty the frequency and duration of the visits with James and Aaron. In Mother’s view the order effectively gave the guardians the authority to decide whether she would receive any visitation at all.

When legal guardianship is ordered, the dependency court must make an order for parental visitation, unless visitation would be detrimental. (§ 366.26, subd. (c)(4)(C),<sup>8</sup> *In re M.R.*, *supra*, 132 Cal.App.4th at p. 274.) The guardians must not be given absolute discretion to determine whether visitation will occur at all. (*In re M.R.*, *supra*, at p. 274.) The power to determine the right and extent to visitation by a noncustodial parent in a dependency case resides with the court and may not be delegated to non-judicial officials or private parties. (*In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476 (*Donnovan J.*); see *In re Chantal S.* (1996) 13 Cal.4th 196, 213-214 [rule of non-delegation applies to exit orders issued when dependency jurisdiction is terminated].) Nonetheless, a visitation order may delegate to a third party the responsibility for managing the details of visits, including their time, place and manner. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374 (*Moriah T.*)) Appellate courts have overturned visitation orders that delegate discretion to determine whether visitation will occur, as opposed to simply the management of the details. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310 [rejecting order which delegated authority to legal guardian discretion to decide frequency and

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<sup>8</sup> “The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.” (§ 366.26, subd. (c)(4)(C).)

duration of parent's visits with children]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 51 [delegation to child]; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138 [same]; *In re S.H.* (2003) 111 Cal.App.4th 310, 317-320 (*S.H.*) [same]; *Donnovan J., supra*, 58 Cal.App.4th at pp. 1476-1478 [delegation to therapist].)

The visitation schedule attached to the court's guardianship orders indicated that "[M]other shall have monitored visits approximately 1 to 2 times per month, if she so requests, for approximately 1 to 2 hours per visit. Mother and Legal Guardians shall share the cost of a monitor, 50% each, unless the Legal Guardians are able to arrange for a no-cost monitor. Legal Guardians shall determine the details of the visits, including the time, place and manner of the visits." Mother specifically complains that the use of the word "approximately" provided the guardians with too much discretion to control the frequency and duration of the visits.

We do not agree. The juvenile court determined that Mother was entitled to have supervised visitation. When the juvenile court in a dependency case "orders visitation, it must also ensure that at least some visitation, at a minimum level determined by the court itself, will in fact occur." (*In re S.H.* (2003) 111 Cal.App.4th 310, 313; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505 [order must ensure that some visitation will occur].) In the visitation order at issue here, the juvenile court described the frequency and duration of visits with sufficient specificity. The order gave the guardians guidance—at a minimum Mother was entitled to at least one visit a month for at least one hour, and could have a maximum of two visits a month for two hours. The order not only assured that visits would take place, it also provided all of the parties with flexibility in managing the visitation. As such, Mother's right to visitation is not illusory. (*In re S.H., supra*, 111 Cal.App.4th at p. 319 ["by failing to mandate any minimum number of monitored visits per month or even to order that some visitation must occur each month, the court's abstract recognition of [the parent's] right to visitation is illusory"].) There is no abuse of discretion in this case. (See *In re R.R.* (2010) 187 Cal.App.4th 1264, 1284 [order setting visitation reviewed for abuse of discretion].)



*In re M.R.* (2005) 132 Cal.App.4th 269 and *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, both cited by Mother, are distinguishable. In each of those cases, the juvenile dependency court left both the frequency and duration of parental visits to the legal guardians' discretion and in each case the appellate court held that the visitation order improperly delegated the judicial function to the legal guardian. (*In re M.R.*, *supra*, 132 Cal.App.4th at pp. 272-274; *In re Rebecca S.*, *supra*, 181 Cal.App.4th at p. 1314.) In contrast, as set forth above, the terms of Mother's monitored visits were not left entirely to the discretion of the guardians. Thus, there is no reversible error.

### ***DISPOSITION***

The order is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**