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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B271734
(Los Angeles County
Super. Ct. No. DK07219)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

PAMELA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Joshua D. Wayser, Judge. Modified and affirmed with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant Pamela M. (Mother) appeals the juvenile court's order appointing Mother's cousin a co-holder of educational rights, along with Mother, for her youngest child, D.M. (Daughter). Although the order at issue contains a clerical error, we conclude the juvenile court did not abuse its discretion in appointing a co-holder of educational rights for Daughter and, therefore, affirm the order as modified below.

BACKGROUND

1. Juvenile Court Proceedings Concerning Mother's Four Other Children

In addition to Daughter, Mother has four older children, all of whom became (and remain) dependents of the court before Daughter was born. Beginning in August 2012, the Los Angeles County Department of Children and Family Services (Department) received various referrals with respect to Mother's four other children. The allegations included physical abuse by a father, sexual abuse by father's friend, general neglect, caretaker absence, domestic violence, and Mother's substance abuse. Most allegations were found to be unsubstantiated, in large part because Mother moved a lot and the Department could not locate her.

Eventually, in September 2014, the Department filed a petition under Welfare and Institutions Code section 300¹ on behalf of Mother's four other children. The petition alleged domestic violence between Mother and Daughter's father, Patrick (Father), as well as Mother's substance abuse.

In January 2015, the juvenile court sustained the petition, finding that the children were endangered as a result of the parents' history of domestic abuse, Mother's substance abuse, and Mother's failure to protect the children by allowing Father to live in their home and to have unlimited access to the children. The court adjudged Mother's four older children dependents of the court and ordered them detained in shelter care. The parents were granted monitored visits with the children, which visits were not to occur at the same time. The court ordered Mother to participate in substance abuse counseling. The court later granted Mother unmonitored day visits.

2. Allegations and Juvenile Court Proceedings Concerning Daughter

a. Allegations

While juvenile court proceedings were underway with respect to Mother's other children, Mother gave birth to Daughter. Daughter was born about 14 weeks early and weighed one pound, 12 ounces at birth. Mother did not inform the Department of Daughter's birth. The Department learned of Daughter about a month later, when a mandated reporter reported Mother's suspected general neglect of Daughter. The neglect allegations were based on suspected prenatal drug

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

exposure, Mother's history of substance abuse and prior prenatal drug exposure with Daughter's half siblings, Daughter's premature birth, and Mother's failure to be forthright about her pregnancy.

Upon learning of Daughter's birth, a Department social worker spoke with a social worker at the hospital where Daughter was born and remained for medical care. The hospital social worker indicated no drug screening had been performed on Mother or Daughter, Mother's visits with Daughter were inconsistent, and Mother had indicated she was moving from Los Angeles to Lancaster.

When asked why she had not reported Daughter's birth to the Department, Mother initially claimed she had provided hospital documentation. Later, however, Mother stated she did not report Daughter's birth because she did not want anyone to bother Daughter in light of her fragile state and because Mother did not want Daughter removed from her care. Mother explained that, in light of the dependency proceedings involving her other children, she had been under a lot of stress during her pregnancy, which contributed to Daughter's premature birth. Mother denied any prenatal substance exposure. Mother thereafter consented to release Daughter's medical records to the Department.

At the time Daughter was discharged from the hospital, Mother was living in her sister's one-bedroom apartment. Mother's only source of income was Daughter's social security benefits, and her other children were still removed from her care.

About mid-October 2015, the caregiver for Mother's other children contacted the Department to report that one of Mother's other daughters had bed bug bites and had transferred bed bugs to a staff member at school. The caregiver explained that the bed

bugs came from the mattress on which Mother had been sleeping, which was located at Father's home. The caregiver stated Mother was not living at her sister's apartment, but rather was living with Father.

That same day, a Department social worker confronted Mother with this information. Mother insisted she was still living at her sister's apartment and that the bed bugs were coming from the caregiver's home, not Father's home. Department social workers then made an unannounced visit to Mother's sister's apartment, but neither Mother nor Daughter was there. The social workers also made an unannounced visit to Father's home. A woman named Nicky told the social workers that neither Father, Mother nor Daughter was there.

The following day, Department social workers and two sheriff's deputies made another unannounced visit to Father's home. A different woman, Ms. Welch, answered the door and stated neither Father, Mother nor Daughter was there. Eventually, Ms. Welch allowed the social workers and deputies inside the home. They searched the home and backyard and did not find Father, Mother or Daughter. Although Ms. Welch stated she did not know where Mother was, she confirmed that Mother was at Father's home the night before.

In addition to apparently violating the juvenile court's order regarding Father's restricted visitation rights with respect to the four older children, Mother was not regularly attending her court-ordered substance abuse classes and had missed two of Daughter's three eye appointments.

About a week later, two Department social workers made an unannounced morning visit to Mother's sister's apartment. Again, Mother was not there. One of the social workers contacted

Mother to let her know they were at the apartment. Mother told the social worker that she was at a doctor's appointment, but she was unable to give the social worker the exact address of the office. Nonetheless, the social worker located the doctor's office and went there to meet Mother. By the time the social worker arrived, however, Mother was gone. The social worker again contacted Mother, who said she could not meet with the social worker until later that afternoon because she had a substance abuse class to attend. Before their arranged meeting time, however, Mother texted the social worker to say she could not make their meeting because she had a family emergency. The social worker then contacted the program director at the substance abuse program where Mother said she had a class. The program director said Mother had not attended the class.

Later that month, two Department social workers visited Mother and Daughter for a scheduled visit at Mother's sister's apartment. Daughter was using her oxygen tube and was active. At one point, Daughter appeared to have trouble breathing and turned red in the face. Because the social workers did not see any of Mother's belongings and only a few items for Daughter at the apartment, the social workers concluded Mother was no longer living there. Mother indicated she had some housing leads in Lancaster, but had no information to give the social workers. Mother did provide Daughter's most recent medical information to the social workers, which stated Daughter suffers from chronic lung disease, is oxygen-dependent, and suffers from anemia and rehnopathy of prematurity. Mother was instructed to follow up with Daughter's eye doctor, as well as to attend Daughter's well-child medical exams, developmental surveillance appointments, and pulmonary clinic visits. Mother told the social workers that

she might attend training sessions at the LAC/USC Premature clinic, but she did not seem very interested in doing so. Mother also missed four of five random drug tests.

On January 28, 2016, a Los Angeles Police Department SWAT team conducted a raid on Father's home, where guns and drugs were being sold and people had barricaded themselves inside. Father was arrested on felony charges and incarcerated. Daughter was in the home at the time of the raid. Daughter was eventually released to Mother, who remained in the area with Daughter for three hours. Mother then left, leaving Daughter with Father's mother. Father's mother requested oxygen for Daughter from the Los Angeles City Fire and Rescue, who then detained Daughter and transferred her to a hospital, where she was placed on a hold.

It was later discovered that for more than four months, Daughter's oxygen tanks were being delivered to Father's house.

b. Juvenile Court Proceedings

Soon after learning of Daughter's birth, the Department unsuccessfully sought to remove Daughter from parental custody. In November 2015, the Department filed another unsuccessful application to remove Daughter from her parents. In denying the application, the juvenile court found the Department had not shown there were no reasonable means, short of removal, to protect the child, and the facts presented were insufficient to support removal. The court ordered the Department to "file a petition."

On November 5, 2015, the Department filed a petition under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j) on behalf of Daughter, citing Mother and Father's history of violent altercations in the presence of Mother's other

children, and Mother's history of substance abuse. The Department sought to have Daughter detained. At the detention hearing that same date, the juvenile court ordered Daughter detained from Father and released to Mother.

Following the January 28, 2016 raid at Father's home, the Department filed an amended petition on February 2, 2016. The amended petition contained the same allegations as the initial petition (history of domestic violence and Mother's substance abuse), as well as allegations related to Mother's violation of the court's order with respect to unmonitored visits with Father, Daughter's presence during the weapons and drug raid of Father's home, and both parents' failure to ensure Daughter had necessary medical equipment with her. That same day, the juvenile court ordered Daughter detained from Mother.

At the February 10, 2016 hearing on the amended petition, the juvenile court sustained in part and dismissed in part the amended petition. The court sustained the section 300, subdivision (b) allegations with respect to Mother's violation of the court's order regarding monitored visits with Father and Daughter's presence during the weapons and drug raid at Father's home. The court also sustained the section 300, subdivision (j) allegation with respect to the parents' history of domestic violence. The court dismissed the remainder of the petition. The court ordered Daughter removed from her parents, giving custody to the Department for suitable placement. The court also ordered family reunification services terminated for Mother.

In early April 2016, the Department sought to have Mother's cousin appointed the educational rights holder for Daughter so that Mother's cousin could make both educational

and developmental services decisions on behalf of Daughter. Although at the time Daughter was placed in a foster home, it was agreed that she would soon be placed with Mother's cousin, who had agreed to be the educational rights holder for Daughter. Mother opposed the request.

On April 5, 2016, the juvenile court appointed Mother and Mother's cousin as co-holders of Daughter's educational rights, authorizing both "to make educational and developmental-services decisions" for Daughter.

At the hearing on Daughter's educational rights, neither the parties nor the court indicated the statutory authority under which the order would be made. However, in the educational rights order prepared by counsel for Daughter and signed by the juvenile court, a box was checked signifying that the order was made under section 319, subdivision (g). Of the other boxes counsel or the court could have checked was the box for section 361, subdivision (a), which was located just below the one counsel had checked. Additionally, in requesting to limit Mother's educational and developmental services rights, the Department used a form that lists the statutory authority for the requested order, which authority includes section 361. The Department's form did not mention section 319. The Department explained it sought to limit Mother's educational and developmental services rights because, although "Mother has been cooperative with signing the necessary documents in order for [Daughter] to begin receiving Regional Center Services . . . mother has a history of not following through with the necessary services in a timely manner."

Mother appealed the juvenile court's April 5, 2016 order designating her and her cousin as co-holders of Daughter's educational rights (the April 5 order).

DISCUSSION

Mother argues the April 5 order must be reversed as a matter of law because it purports to have been made under section 319, which was inapplicable to the proceedings. Mother also argues that assuming the juvenile court had the authority to issue the April 5 order, the court abused its discretion in doing so.

1. Clerical Error

The juvenile court may limit a parent's rights to make educational and developmental services decisions for his or her child. The court's authority for making such an order depends on the procedural stage of the proceedings. As the parties agree, section 319 applies from the time the initial hearing is held on a petition until the juvenile court either adjudges the child a dependent of the court or dismisses the petition. (§ 319, subd. (g).) And section 361 applies after a child has been adjudged a dependent of the court. (§ 361, subd. (a).)

Here, because the juvenile court issued the April 5 order almost two months after having adjudged Daughter a dependent of the court in February 2016, it is clear the court did not have authority under section 319 to issue the April 5 order. Instead, section 361 provided the authority for the court to issue the April 5 order. Nonetheless, the court's April 5 order includes language suggesting it was made under the authority of section 319. Specifically, on page 2 of the April 5 order—which counsel for Daughter completed for the court—a box is checked indicating the rights of Mother to make educational and developmental

services decisions for Daughter were being “temporarily limited under section 319(g).”

This appears to be a clerical error. First, neither the parties nor the juvenile court discussed the applicable code section at the April 5 hearing on the matter. Second, no one argued the court was without authority to make such an order. Third, in connection with its request to limit Mother’s right to make educational and developmental services decisions for Daughter, the Department submitted a form that did not mention section 319, but rather invoked, among other provisions, section 361 as authority for the request.

This court has the power to “correct a judgment containing an obvious clerical error or other defect resulting from inadvertence by modifying the judgment.” (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 506–507.) As explained below, we elect to do so in this case.

2. The juvenile court did not abuse its discretion.

When a child is a dependent of the court, the juvenile court may limit a parent’s constitutionally protected rights to make educational decisions for their child by appointing a responsible adult to make such decisions. (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1276; § 361, subd. (a).) Section 361 provides: “In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations.” (§ 361, subd. (a)(1).)

“A court-imposed limitation on a parent’s educational rights ‘may not exceed those necessary to protect the child.’” (*In re R.W.*, *supra*, 172 Cal.App.4th at p. 1276, quoting § 361,

subd. (a).) “All educational decisions must be based on the best interests of the child.” (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 510.)

We review the juvenile court’s order limiting a parent’s educational rights for an abuse of discretion, keeping in mind the focus of dependency proceedings is on the child rather than the parent. (*In re R.W., supra*, 172 Cal.App.4th at p. 1277.) We indulge in all reasonable inferences to support the findings of the juvenile court and review the record in the light most favorable to the juvenile court’s order. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) We do not weigh the credibility of the witnesses or resolve conflicts in the evidence. (*Ibid.*)

The record supports the juvenile court’s April 5 order. To her credit, Mother participated in substance abuse classes, brought Daughter to doctor’s appointments, assisted in administering Daughter’s oxygen, and signed paperwork so that Daughter could receive Regional Center services. However, Mother also failed to attend many of her classes, failed to report for drug testing, did not bring Daughter to all her scheduled doctor appointments, was not forthright with the Department in terms of her living arrangements, and could be difficult to locate. In addition, Mother violated court orders, most significantly that prohibiting unmonitored visits with Father. Indeed, at a time when Daughter was prohibited by the court from being unmonitored with Father, she was caught in the middle of a police raid at the home, which resulted in her not only being in immediate physical danger, but also going three hours without her oxygen, being admitted to the hospital, and eventually removed from Mother’s custody. Moreover, the record reveals

Daughter has multiple serious and chronic health issues and requires regular monitoring and support.

Thus, although prior to the April 5 educational rights hearing Mother signed the requisite paperwork for Daughter to receive Regional Center services, and although Mother's attorney had no complaints about her availability and willingness to comply with court orders and a reunification plan, the record also amply demonstrates that Mother was often difficult to contact and to locate, was not always forthright with the Department, and did not show interest in available services—including court-ordered services such as training sessions at the LAC/USC Premature clinic and drug testing.

Consequently, viewing the evidence in the light most favorable to the order, and keeping in mind the focus of these proceedings is on Daughter, who requires continual support and monitoring, we conclude the juvenile court did not abuse its discretion in ordering Mother's cousin to be a co-holder with Mother of Daughter's educational and developmental services rights.

DISPOSITION

The juvenile court's April 5, 2016 order is modified by deleting the checkmark in the "6(c)" box on page 2 and checking the "6(d)" box instead. The court is directed to amend the order to reflect this modification. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.