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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.C. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.O.,

Defendant and Appellant.

B279737

(Los Angeles County
Super. Ct. No.
CK60870)

APPEAL from an order of the Superior Court of Los Angeles County, Lisa R. Jaskol, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and

Kimberly Roura, Deputy County Counsel, for Plaintiff and
Respondent.

The juvenile court in this case assumed jurisdiction over a baby boy (C.C.) and his older brother (S.C.) based on evidence S.O. (Mother) shook C.C. and caused him to suffer a subdural hematoma (i.e., bleeding between the brain and skull). The court later terminated jurisdiction over both children with a final custody order giving the boys' father, G.C. (Father), sole legal and physical custody of the children. We consider whether Mother can now challenge the final custody order despite acquiescing to its terms during the juvenile court proceedings.

I

At the time dependency proceedings commenced, C.C. was three months old. Medical staff at a Los Angeles-area hospital contacted the Los Angeles Department of Children and Family Services (the Department) in August 2015 when Mother and Father brought C.C. to the emergency room and doctors discovered he had injuries that aroused suspicion of child abuse. Specifically, doctors found C.C. had "a bruise on his left cheek and bleeding on the brain that is most consistent with trauma." The injury to C.C.'s head was a "diffuse axonal injury, which means that the child ha[d] an injury to both the front and back of his head, most consistent with being shaken."

A social worker interviewed Mother at the hospital. Mother said C.C. had been "fussy" before she and Father took him to the emergency room. When asked by the social worker if she knew how C.C. had been injured, Mother responded, "To say I saw something or know something happened? No." Father likewise had no explanation for C.C.'s injuries. When the social worker later interviewed 8-year-old S.C., he also stated he did not

know what happened to C.C., but S.C. acknowledged Mother would sometimes yell at C.C. when he would scream.

The police were called in to investigate whether C.C. had been physically abused. Two days after C.C. was admitted to the hospital, a police officer contacted the social worker and informed her Mother had confessed to shaking C.C. after taking a polygraph exam. The officer told the social worker that Mother had been arrested and was then being held in custody.

The Department filed a petition alleging C.C. and his older brother S.C. were children described by Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (e) (severe physical abuse), and (j) (abuse of sibling). The gist of the petition (as later amended) was that Mother physically abused C.C. by shaking him and causing head trauma, and that Father knew or reasonably should have known of the abuse but failed to protect C.C. The Department further alleged Father was an abuser of marijuana, which rendered him incapable of providing the children with regular care.

In advance of the jurisdiction hearing, the Department obtained additional information concerning the ongoing criminal investigation and the Department re-interviewed Mother. Police reports obtained by the Department provided additional details concerning Mother's post-polygraph statements admitting she shook C.C.¹ According to the reports, Mother told the polygraph examiner she had been under a lot of financial stress, C.C. had been fussy, she heard him crying, she took him out of his crib, and she grabbed him by his torso and shook him "for one to two minutes" because she was tired and frustrated and "took it out on

¹ According to the reports, her statements were audiotaped.

[C.C.].” Police officers Mirandized Mother after she made this statement, and Mother again confessed to shaking C.C. Mother was then charged with a felony violation of Penal Code section 273a, inflicting pain on a child under circumstances likely to produce great bodily harm or death. But when the Department re-interviewed Mother approximately six weeks after the polygraph examination, she maintained she had not shaken or otherwise hurt C.C. Mother told the Department that the detective who interviewed her after the polygraph examination was very intimidating, but according to Mother, she continued to deny shaking C.C. during that interview with the detective.

The juvenile court held a jurisdiction hearing and found C.C. and S.C. were dependent children under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j). (The petition counts alleging severe physical abuse and a failure to protect from Father’s marijuana use were dismissed.) At a later disposition hearing, the court placed both children with Father (in the home of the paternal grandmother). The court ordered services for Mother, including individual counseling, conjoint counseling with Father, and an anger management program. Mother was also granted monitored visitation with C.C. and unmonitored visitation with S.C. The court set a review hearing to occur in six months.

The Department prepared a status report in preparation for the review hearing. It addressed the status of the criminal case against Mother, her progress in court ordered services, and visitation between Mother and the two boys.

The report indicated Mother had been convicted in the criminal case filed against her and sentenced to probation with a requirement that she complete a 52-week child abuse class.

Mother told the Department “she took a plea bargain for her freedom” and explained the plea bargain allowed her to continue to work and have visits with C.C. and S.C. A Department social worker also reviewed a copy of a protective order issued in the criminal case that prohibited Mother from having contact with C.C. except, as recounted in the status report, for “peaceable contact . . . for the purposes of Dependency and reunification/custody of the child under Dependency discretion.”

As to court-ordered services, Mother was assessed for an anger management program and the assessment determined the program was unnecessary because any issues could be addressed during her individual counseling sessions. A therapist also determined conjoint family counseling was unnecessary because the children did not show any significant signs of detriment in their interaction with their parents. Mother had been attending individual counseling sessions to address issues of depression, anger, grief, and frustration, but she had not yet completed the course of counseling.

The Department’s status report revealed Mother’s visitation with C.C. and S.C. had by all accounts gone well. The Department had liberalized her visits with S.C. to include unmonitored weekend visits. Visits with C.C. remained monitored, in large part because of the Department’s belief that the protective order in the criminal case (and perhaps the requirement that Mother participate in a 52-week child abuse class) prevented unmonitored visitation. Based partly on the requirements of Mother’s criminal probation and the individual counseling regimen she had yet to fulfill, the Department’s status report recommended the juvenile court terminate jurisdiction over the children and issue an order giving Father sole legal and

physical custody of the boys with monitored visitation between Mother and C.C. and unmonitored visitation between Mother and S.C.

Mother and Father, represented by counsel, appeared in court for the six-month review hearing. The juvenile court recited the aforementioned Department recommendation at the outset of the hearing and asked counsel if they wished to be heard. Mother's attorney responded by stating her client "would have no objection to closing the case." The following discussion then ensued between Mother's attorney and counsel for the Department: [The Department's Attorney]: Your Honor, if Mother is in agreement with the conditions of closing the case, I'm asking that . . . the juvenile custody order include a copy of the criminal protective order that was previously provided to the court[and] that it also be referenced in the body of the juvenile custody order I believe that Mother needs to continue in individual counseling. [¶] . . . [¶] [Mother's Attorney]: *Mother is in agreement.* I just ask that the [custody order] also include specific language regarding the [criminal protective order] and her visits with [C.C.]" (Emphasis ours.)

Further discussion of whether and to what extent any custody order should reference the criminal protective order ensued, and Mother's attorney ultimately stated, "Mother would submit on the Department's recommendation today, without any additional language." Having heard Mother's position, the juvenile court terminated jurisdiction over the children and issued a custody order consistent with the Department's recommendation: sole legal and physical custody of the children awarded to Father with monitored visitation between Mother and C.C. and unmonitored visitation between Mother and S.C.

II

On appeal, Mother challenges the custody order she agreed to in the juvenile court. She contends the juvenile court abused its discretion by awarding sole legal and physical custody of the children to Father; in her view, the court should have awarded legal custody of both children, and physical custody of only S.C., to her and Father jointly.

No extended discussion is necessary to resolve the contention. Mother forfeited her ability to challenge the custody order on appeal by failing to object to the order (and in fact acquiescing to it) during the juvenile court proceedings. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 “[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. . . . 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. . . . [¶] Dependency matters are not exempt from this rule”]; *In re Ricky T.* (2013) 214 Cal.App.4th 515, 522; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.) While we agree with Mother that courts have discretion to excuse a forfeiture, this is not an appropriate case for exercise of that discretion. (*In re S.B.*, *supra*, at p. 1293 “[T]he appellate court’s discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue”].)

Indeed, our decision to refrain from exercising our discretion to excuse the forfeiture is partly informed by our view that, even if the issue had been preserved, we would hold the custody order was not an abuse of the juvenile court’s broad discretion. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4.) Mother concedes C.C. and S.C. were doing well in Father’s

care at the time of the six-month review hearing. And Mother’s decision to deny shaking C.C. when she was interviewed by the Department—after confessing to doing just that and accepting a plea deal in the criminal proceedings—leaves us convinced further progress in individual counseling would be helpful before a joint custody order might be in the boys’ best interest. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“One cannot correct a problem one fails to acknowledge”].)

DISPOSITION

The juvenile court’s order is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.