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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ALEXANDER F., a Person Coming
Under the Juvenile Court Law.

B236032

(Los Angeles County
Super. Ct. No. CK54870)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JENNIFER F.,

Defendant and Appellant.

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

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Jennifer F., the mother of 14 year-old Alexander F., appeals from a portion of the order made at a review of permanent plan (RPP) hearing that granted her monitored visitation with Alexander twice per week for two hours each visit. Jennifer contends the order improperly delegates discretion to third parties to decide whether her visitation should continue to be monitored. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initial Dependency Proceedings

Alexander first entered the dependency system in 2004 after the juvenile court sustained a Welfare and Institutions Code section 300¹ petition alleging Jennifer's neglect and inability to provide a stable and safe environment for Alexander and he was removed from his mother's custody. After statutorily prescribed reunification efforts failed, on September 21, 2005 the court terminated reunification services and set the matter for the selection of permanent plan hearing (§ 366.26). On December 20, 2005 the court appointed Alexander's maternal grandfather as his legal guardian and granted Jennifer monitored visitation. Several review hearings followed. On July 29, 2007 the juvenile court terminated its jurisdiction.

2. The Juvenile Court's Resumption of Jurisdiction Following the Death of the Legal Guardian

On November 2, 2010 Alexander's maternal grandfather died. The Los Angeles County Department of Children and Family Services (Department) filed a section 387 supplemental petition alleging Alexander had no legal guardian able to provide him with care, supervision, and the necessities of life (§ 300, subd. (g)). On January 31, 2011 the juvenile court sustained the petition, resumed its jurisdiction pursuant to section 366.3, subdivision (b) (authorizing juvenile court to vacate its prior order terminating dependency jurisdiction if guardianship is later revoked or terminates), declared Alexander a dependent child of the court pursuant to section 300, subdivision (g), and placed him at Vista Del Mar, a residential and treatment foster care facility. The court continued Jennifer's monitored visitation, which had been in place throughout the legal

¹ Statutory references are to the Welfare and Institutions Code.

guardianship, and set the matter for a RPP hearing for August 1, 2011 pursuant to section 366.3.

3. The RPP Hearings

At the August 1, 2011 RPP hearing Jennifer requested additional and unmonitored visitation. The court continued the matter to August 24, 2011 for a full hearing.² At the August 24th hearing the Department reported Alexander had been doing very well at Vista Del Mar and had had frequent visits from friends and relatives. He was also doing well at school and was adjusting to boundaries. Because there were no relatives at this time able to care for Alexander, the Department recommended Alexander remain at Vista Del Mar as the long-term permanent plan and he and Jennifer participate in additional conjoint therapy sessions. As for Jennifer's visitation with Alexander, the Department, Corinne Bennett, Alexander's court-appointed special advocate (CASA), and Alexander's counsel each recommended Jennifer's visitation remain monitored due to her lack of progress in addressing the parenting difficulties that had led to the initial dependency petition in 2004.

The court found return of Alexander to Jennifer's custody would create a substantial risk of detriment to his emotional and physical well being; Alexander was not adoptable; and no legal guardian was available. The court ordered a permanent living arrangement with Vista Del Mar as the permanent plan with the specific goal of a less restrictive setting. The court also ordered two monitored visits per week with Jennifer, at least two hours per visit, in addition to the existing conjoint therapy sessions. Noting Vista Del Mar's status as caretaker and provider of Alexander's mental health therapy, the court explained it would be inclined to modify some of Jennifer's monitored visitation sessions to unmonitored if Vista Del Mar and Alexander's counsel believed the conjoint therapy was going well enough that it would be safe to do so: "If mother's monitored visits with [Alexander] on the grounds of Vista Del Mar go well, Vista Del Mar, the Department, Minor's counsel, and the mother (with her counsel) to confer on

² Jennifer also filed a section 388 petition seeking Alexander's return to her custody, but withdrew that petition at the August 24, 2011 hearing.

whether there could be unmonitored visits between the mother and [Alexander] on the grounds of Vista Del Mar. [Alexander]’s counsel must concur with any decision made.”

The juvenile court continued the matter to February 22, 2012 for another RPP hearing, stating, “Anyone may file a [section] 388 in the interim if the conjoint therapy’s going extremely well and if they have started some unmonitored contact between Alexander and his mother and he is doing well.” The court also directed the Department to ensure Jennifer had the opportunity to see Alexander on his birthday in November and on Thanksgiving and Christmas.³

DISCUSSION

1. *The Juvenile Court’s Visitation Order Was Not an Improper Delegation to Third Parties of the Court’s Power To Order Visitation*

The determination whether to allow visitation, whether that question arises at the reunification stage or after the selection of a permanent plan, belongs to the court alone. (See *In re S.H.* (2003) 111 Cal.App.4th 310, 317 [the “power to decide whether *any* visitation occurs belongs to the court alone”]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 [“juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation” to Department]; *In re M.R.* (2005) 132 Cal.App.4th 269, 274 [under § 366.36, subd. (c)(4)(C), court shall order visitation, even after establishment of legal guardianship, unless such visitation is detrimental to emotional well-being of child].) As we have explained, “When the court abdicates its discretion in th[is] regard and permits a third party, whether social worker, therapist or the child, to determine whether any visitation will occur, the court violates the separation of powers doctrine.” (*In re S.H.*, at p. 318, fn. omitted; accord, *In re Julie M.* (1999) 69 Cal.App.4th 41, 51; *In re M.R.*, at p. 274; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686-687.)

Once reasonable visitation is ordered, however, the court may delegate to third parties the discretion to manage the details of the visitation, including the ability to

³ At the February 22, 2012 RPP hearing, the court set a new RPP hearing for August 22, 2012.

liberalize the visits ordered. (See, e.g., *In re Chantal S.* (1996) 13 Cal.4th 196, 213 [court did not abdicate its discretion to order visitation by vesting in child's therapist the discretion to determine when the ordered visitation should begin based upon therapist's determination parent had made satisfactory progress]; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374-1376 [court may properly delegate to social worker responsibility to manage details of court-ordered visitation such as time, place and manner thereof, but it may not delegate absolute discretion to determine whether any visitation occurs].)

Here, the juvenile court ordered monitored visitation two times per week. Jennifer does not challenge that portion of the order as unlawful or invalid, nor could she: The order for monitored visitation is justified by the record in this case. Rather she contends the court improperly delegated to third parties the decision to determine whether the court-ordered visitation should remain monitored, claiming that authorization is an unconstitutional abdication of the court's discretion in such matters. Yet, the court's order allowing some *additional* unmonitored visitation under specified circumstances is, in effect, a delegation of the power to liberalize the court-ordered visitation, not an abdication of its authority to order visitation. It is only when the visitation order delegates the absolute discretion to determine whether any visitation occurs that the order violates the separation of powers doctrine. (*In re Chantal S.*, *supra*, 13 Cal.4th at pp. 214-215; *In re S.H.*, *supra*, 111 Cal.App.4th at p. 317; *In re Moriah T.*, *supra*, 23 Cal.App.4th at pp. 1375, 1377.)⁴

⁴ If Jennifer becomes dissatisfied with the conclusions of Vista Del Mar, Alexander or his counsel as to whether visitation should be liberalized, of course, she is free to raise that with the court at the next RPP hearing or by filing a new section 388 petition for modification of court order. (See *In re S.B.*, *supra*, 32 Cal.4th at p. 1297.)

2. *The Court Did Not Err in Permitting Vista Del Mar To Participate in the Decision To Liberalize the Court's Visitation Order*

Jennifer contends, because Vista Del Mar is “not a party” to the dependency action, the court “lacked jurisdiction” to make an order requiring Vista Del Mar to meet with her and Alexander’s counsel to decide whether visitation should be liberalized. To the extent Jennifer challenges the order as an improper delegation of the court’s discretion to grant visitation, that argument, as we have explained, lacks merit. To the extent Jennifer objects to the propriety of including Vista Del Mar as one of the stakeholders involved in the decision, she is mistaken. Vista Del Mar is Alexander’s caretaker as well as his therapy provider. It is well settled in dependency proceedings that the court may vest some discretion in the child’s therapist, foster provider or other caretaker in determining how or whether the court-ordered visitation should be liberalized. (*In re Chantal S.*, *supra*, 13 Cal.4th at pp. 214-215 [therapist]; cf. *In re M.R.*, *supra*, 132 Cal.App.4th at p. 274 [although court may not vest guardian with discretion to decide whether any visitation should occur, court may delegate authority to legal guardian to decide time, place and manner of court-ordered visitation].) That is all that has occurred here.

DISPOSITION

The August 24, 2011 order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.