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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B283961

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK07102)

Plaintiff and Respondent,

v.

PATRICIA A.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Debra L. Losnick, Commissioner. Affirmed in part and remanded with directions.

Lisa A. Raneri, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

Patricia A. (Mother) appeals from the juvenile court's final custody order, contending it does not conform to the court's oral pronouncements as reflected in the reporter's transcript. We agree there are discrepancies in the court's visitation orders and therefore remand the matter to the trial court to make corrections, but otherwise affirm the final custody order terminating jurisdiction.

FACTUAL SUMMARY¹

Mother and Thomas C. (Father) have two children, Alexis and Katherine. Mother and Father initiated divorce proceedings in 2012. The divorce was very contentious and was not finalized until December 19, 2016. While the divorce was pending, the children began exhibiting emotional distress and turmoil due to the parents' custody dispute. As a result, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under subdivisions (b) and (c) of Welfare and Institutions Code section 300² on August 28, 2014. The children were allowed to remain with their parents and family maintenance services were ordered to be provided by DCFS. Additionally, the children

¹ In this appeal, Mother does not challenge any of the interim orders or findings made during the three years the children were declared to be dependents of the juvenile court. As a result, to resolve this appeal, it is unnecessary to detail the procedural and factual background leading to the juvenile court's final custody order. Although Mother had previously appealed from the juvenile court's disposition findings and orders in appellate case number B277441, that appeal was dismissed after appellant's counsel filed a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835.

² All further section references are to the Welfare and Institutions Code unless otherwise specified.

were ordered into individual and conjoint therapy with the parents.

On April 16, 2015, the juvenile court sustained an amended petition, finding the children were at substantial risk of suffering serious emotional damage due to the parents' custody dispute. The court set forth a custody schedule under which the children primarily lived with Father. Individual and conjoint counseling was again ordered for the children and parents. The juvenile court sustained additional allegations, under section 300, subdivisions (b) and (j), when Alexis began engaging in self-mutilation behaviors. By order dated June 8, 2016, the children were placed with a foster family. DCFS was ordered to provide family reunification services, including setting up monitored visits with Mother and Alexis in a therapeutic setting. The children and parents were ordered to continue with individual counseling.

A contested hearing took place on February 9, 2017. Mother argued the children should be returned to her custody and cited her substantial compliance with the case plan, including completing a parenting course and participating in individual counseling. However, she blamed DCFS for failing to set up court-ordered conjoint counseling and visitation. DCFS recommended jurisdiction be terminated and the children returned to Father's custody, citing the strides Father had made. Father and the children's attorney agreed.

The juvenile court terminated jurisdiction and awarded Father sole legal and physical custody. The court further ordered: "The mother's visits will be monitored in a therapeutic setting. Minimum weekly." Mother's counsel then asked, "Your Honor, I was just going to ask. What will the mother need to do

to modify it [the custody order] because generally that's included on the reason for supervised visits." The juvenile court responded, "Once she completes the case plan, I would say the same case plan, the individual counseling. I don't think she needs to go to a parenting class again. I don't think it would serve any purpose." After prompting by counsel, the court clarified the individual counseling should be with a Spanish-speaking licensed therapist.

The court ordered Father's counsel to prepare the written order for its signature. The juvenile court signed a form final custody order filled out by Father's counsel on February 14, 2017, awarding Father sole physical and legal custody and granting Mother visitation "in a therapeutic setting, 1 time per week. Any liberalization of this arrangement is only upon the recommendation of the therapist." A form attachment to the final custody order entitled, "Reasons for No or Supervised Visitation—Juvenile" indicated Mother was ordered to have supervised visitation because she had not made substantial progress in court-ordered individual counseling or in "[c]onjoint counseling with the children in a therapeutic setting." Mother timely filed a notice of appeal.

DISCUSSION

Mother contends the written exit order conflicts with the juvenile court's oral pronouncement in three ways. Specifically: (1) the exit order incorrectly specifies that visitation is limited to once a week; (2) the exit order incorrectly states that any liberalization of visitation can only be made "upon the recommendation of the therapist"; and (3) the attachment to the exit order incorrectly lists as a reason for supervised visitation Mother's failure to make substantial progress in conjoint

counseling with the children. We agree with Mother as to the first two issues raised, but find her third argument lacks merit.

I. Applicable Law

When the juvenile court terminates jurisdiction over a dependent child, the juvenile court may issue orders determining the custody of, or visitation with, the child. (§ 362.4.) A juvenile court's exit order remains in effect even after dependency jurisdiction is terminated. (§ 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) The Supreme Court has held that under section 362, subdivision (d), the juvenile court may also make collateral orders, such as counseling orders, that are reasonably related to custody and visitation. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203.)

Upon termination of jurisdiction, the exit order becomes part of any family court proceeding concerning the same children and will remain in effect until it is terminated or modified by the family court. (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) The family court may only modify the exit order if it finds there has been a significant change of circumstances since the juvenile court issued the exit order and modification of the order is in the best interests of the child. (§ 302, subd. (d); see Fam. Code, § 3021.)

II. Two of the Written Visitation Orders Do Not Comport With the Trial Court's Oral Orders

Mother is correct that there is a discrepancy between the court's oral order on visitation as reflected in the reporter's transcript and the form exit order filled out by Father's counsel and signed by the court. However, no objections were made to the juvenile court at the time the written exit order were signed and served to the parties. Under normal circumstances, failure

to bring the error to the juvenile court's attention for correction may result in forfeiture of the issue. (*In re S.B.* (2004) 32 Cal.4th 1287, 1291–1293.) Nonetheless, where the facts are undisputed, this court may exercise its discretion to reach the merits of the issue. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314.) In the interests of justice and judicial economy, we will exercise our discretion to reach the merits of these issues.

The reporter's transcript shows the juvenile court ordered Mother's visitation to occur in a therapeutic setting, "[m]inimum weekly." The written exit order, on the other hand, left out the word "minimum," thus limiting visitation to "1 time per week." The written exit order also states that any liberalization of visitation "is only upon the recommendation of the therapist." According to the reporter's transcript, however, the juvenile court made no such order.

Where there is a conflict between the juvenile court's statements in the reporter's transcript and any written orders appearing in the clerk's transcript, we presume the reporter's transcript is the more accurate. (*In re A.C.* (2011) 197 Cal.App.4th 796, 799–800; *Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254, 259.) Accordingly, we direct the juvenile court on remand to correct the exit order so it is consistent with the visitation order stated in the reporter's transcript.

Having determined the juvenile court never made an order that conditioned visitation on the therapist's recommendation, we need not address Mother's related contention that the order constituted an impermissible delegation of authority to the therapist to determine whether increased visitation was appropriate.

III. The Conjoint Counseling Finding Does Not Conflict With the Court's Statements

Mother next challenges the attachment to the exit order which lists as a reason for supervised visitation Mother's failure to make substantial progress in "[c]onjoint counseling with the children in a therapeutic setting." Mother argues this statement might mislead the family court to deny liberalization of her visitation unless she completed "not only . . . individual counseling, but also conjoint counseling with the children" According to Mother, the juvenile court's oral statements only mentioned individual counseling, not conjoint counseling. DCFS opposes Mother's argument. It contends the written order does not conflict with the court's oral pronouncements because the juvenile court stated it believed Mother would have to comply with "the case plan," which required conjoint counseling, before any modification in visitation could be made. We agree with DCFS.

As noted above, the reporter's transcript for the February 9, 2017 hearing shows Mother's counsel asked what Mother needed to do to modify the visitation order. The court responded she needed to complete the case plan, including individual counseling with a Spanish-speaking licensed therapist.

The record shows the case plan in effect on February 9, 2017, included conjoint counseling; a review of the court's orders makes this plain. On September 1, 2016, the children's attorney filed petitions under section 388 requesting that all the children's contact with Mother take place only in conjoint counseling, eliminating Mother's then-current visitation plan of monitored telephone conversations and visits in a therapeutic setting. At the October 31, 2016 hearing on the section 388 petitions, the

juvenile court ordered conjoint counseling “forthwith” and ordered that “visits with Mother and children are to occur in the therapist[’s] office.” Thereafter, an order dated December 8, 2016, indicated that all previous orders remained in full force and effect. Thus, at the time of the February 9, 2017 hearing, the requirements that visitation be in a therapeutic setting and that mother complete conjoint counseling before further visits would be allowed (orders made on October 31, 2016) were still valid. We therefore see no conflict between this exit order and the oral pronouncement made by the juvenile court.³

³ In any event, the juvenile court lacks authority to condition the family court’s modification of the exit order on completion of conjoint therapy. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1455 [juvenile court lacked authority to condition modification of exit order on father’s completion of drug and parenting programs].) Thus, it is pure speculation that the family court would deny modification solely for Mother’s failure to complete conjoint therapy and continue visitation in a therapeutic setting.

DISPOSITION

The matter is remanded to the juvenile court to correct the final custody order to specify that Mother's visitation is to be once a week, at a minimum, and to strike the requirement that liberalization of her visitation may only be made upon the therapist's recommendation. The final custody order terminating dependency jurisdiction is otherwise affirmed.

BIGELOW, P.J.

We Concur:

GRIMES, J.

ROGAN, J.*

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