

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.S., a Person Coming Under
the Juvenile Court Law.

B277197
(Los Angeles County
Super. Ct. No. CK58878)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RAUL S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Amy Pellman, Judge. Reversed and remanded with directions.

William Hook, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ the juvenile court appointed minor R.S.’s maternal grandmother as her legal guardian and terminated dependency jurisdiction. In the same minute order, the court granted R.S.’s father, Raul S. (Father), monitored visitation. Father appeals from the order, contending the court erred in failing to specify the frequency and duration of the visits, “effectively delegat[ing] to the grandmother the power to determine whether visitation would occur at all.” We reverse the portion of the order regarding visitation and remand the matter to the juvenile court for a determination of the frequency and duration of Father’s visits.

BACKGROUND

On June 18, 2014, the juvenile court declared eight-year-old R.S. a dependent child of the court under section 300, subdivision (b), based on a finding Father and R.S.’s mother, Maureen S. (Mother),² had a history of “domestic altercations.” The court removed R.S. from Father and Mother’s custody and ordered her placed with her maternal grandmother, Kathleen Y., where R.S. had resided with her three half siblings³ since the

¹ Further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

³ R.S.’s half siblings (Mother’s children) were parties to the dependency proceedings below, but are not parties to this appeal.

detention hearing in November 2013. The court also ordered reunification services for Father and Mother as well as monitored visits to occur “no less than twice per week for two hours per visit.”

At the 12-month review hearing in July 2015, the juvenile court granted Father (but not Mother) unmonitored visits with R.S.⁴ At the 18-month review hearing in February 2016, the court terminated reunification services after finding there was not a substantial probability R.S. (and her half siblings) would be returned to their parents’ custody.

The juvenile court declined to terminate parental rights at the June 23, 2016 section 366.26 hearing, selecting legal guardianship with the maternal grandmother as the permanent plan for R.S. (and two of her three half siblings who were still minors). At the same hearing, the court granted Mother monitored visits and initially stated that Father could continue his unmonitored visits. The maternal grandmother/legal guardian, who was present at the hearing, interjected: “I think they [Father’s visits] should be monitored.” The court therefore ordered monitored visits for Father, but did not specify in its order the frequency and duration of the visits (for either Father or Mother). Father was not present at the hearing. His counsel did not object to the visitation order or seek clarification regarding the frequency and duration of visits.⁵

⁴ Throughout the proceedings, reports from the maternal grandmother and R.S. about Father’s visits were positive.

⁵ We exercise our discretion to address Father’s contention although he did not raise it below. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314 [“application of the forfeiture rule

DISCUSSION

Father contends the juvenile court erred in omitting from its order the frequency and duration of his visits with R.S.⁶ Without this information, he argues, the court improperly delegated to the maternal grandmother/legal guardian the discretion to control whether visitation would occur at all.

“In a section 366.26 permanency hearing, if the court appoints a legal guardian for children who are dependents of the court, [t]he 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).” (*In re Rebecca S.*, *supra*, 181 Cal.App.4th at p. 1313.) The court may “not delegate authority to the legal guardian to decide whether visitation w[ill] occur.” (*Ibid.*, quoting *In re M.R.* (2005) 132 Cal.App.4th 269, 274.) “The time, place, and manner of visitation may be left to the legal guardian, but leaving the frequency and duration of visits within the legal guardian’s discretion allows the guardian to decide whether visitation actually will occur. [Citation.] To hold otherwise would be to

is not automatic”; a court may exercise its discretion to decide an issue first raised on appeal if ““it raises only a question of law and can be decided based on undisputed facts””].) There are no disputed facts or issues on appeal. The Los Angeles County Department of Children and Family Services did not file a respondent’s brief on appeal and does not oppose the relief Father seeks. Nor have we heard opposition from any other party to the dependency proceedings.

⁶ Father does not challenge the change in his visits from unmonitored to monitored.

transfer this important decision to the possible whims of the legal guardian.” (*In re Rebecca S.*, *supra*, 181 Cal.App.4th at p. 1314.)

In this case, the juvenile court did not expressly state in its order that the frequency and duration of Father’s visits were within the legal guardian’s discretion. (Cf. *In re Rebecca S.*, *supra*, 181 Cal.App.4th at pp. 1313, 1314 [juvenile court’s visitation order stating, “Monitored visits for parents. Duration, frequency and location to be determined by the legal guardian,” constituted an improper delegation of authority to the legal guardian to decide whether visitation would occur and therefore was an abuse of the court’s discretion]; *In re M.R.*, *supra*, 132 Cal.App.4th at pp. 272, 274 [same holding regarding visitation order stating, “Visitation between the child and parents shall be supervised and arranged by the legal guardians at their discretion”].) But the court’s silence on this issue allows the legal guardian to set whatever parameters she chooses for Father’s visits. So long as Father has *some* visitation with R.S. (e.g., even only a one-hour visit, a few times per year), the legal guardian has complied with the court’s order, as currently written. It is for the court to set the frequency and duration of visitation to which Father is entitled, not the legal guardian. Accordingly, we reverse the visitation order and remand the matter to the juvenile court for a determination of the frequency and duration of Father’s visits.

DISPOSITION

The portion of the June 23, 2016 order regarding visitation is reversed, and the matter is remanded to the juvenile court with directions to specify the frequency and duration of Father's visits.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.