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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JASMINE G. et al., Persons Coming  
Under the Juvenile Court Law.

B242299  
(Los Angeles County  
Super. Ct. No. CK75290)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.  
D. Zeke Zeidler, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for  
Defendant and Appellant.

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

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D.G. challenges juvenile court rulings denying his request for a continuance and terminating dependency jurisdiction with a guardianship in place. He also contends that the visitation order is impermissibly vague. We find no abuse of discretion and affirm.

### **FACTS**

Appellant D.G. (Father) is the father of Jasmine G. (born in 2007) and a son, D.G. (born in 2009). He is the stepfather of K.M. (born in 2001). Father is married to Christine M. (Mother), the mother of all three children.<sup>1</sup>

In October 2008, the Department of Children and Family Services (DCFS) was alerted that Father sexually abused six-year-old K.M., who reported that Father exposed his genitals to her on more than one occasion and “rubbed his penis on her and that ‘white stuff’ came out after she and he rubbed his penis fast” while they watched a pornographic movie. K.M. also stated that Father “kissed [her] butt.” Mother took the children to the home of the maternal grandmother (MGM) when she learned of the abuse.

During an interview, K.M. disclosed that she kissed Father’s private part but “did not know it was a bad thing to do.” When she rubbed Father’s penis, “he had asked her to go faster but she couldn’t so he finished and white stuff came out.” Mother admitted to hitting K.M. with a belt: she was angry because K.M. exhibited sexualized behavior by exposing herself on a bus. The social worker saw bruises on K.M.’s buttocks. K.M. indicated that Mother pinched and twisted her arm, pulled her hair, and used the belt on her back and buttocks, which hurt. Mother was uncooperative when the police arrived to take a report: she told the social worker that she did not want Father to be arrested because her religion requires that she stand by him “for better or worse.”

In November 2008, the social worker went to the home of the MGM, who indicated that Mother lived with Father, where she sometimes takes Jasmine. K.M. resided with the MGM and had not seen Father since she reported his sexual abuse. Mother arrived and expressed displeasure with the continuing DCFS investigation. She

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<sup>1</sup> Mother and K.M. are not parties to this appeal.

planned to continue living with Father, and felt confident that he would not molest Jasmine. Father called DCFS to say that he was innocent; he wanted to know how K.M. “came up with these sexual abuse stories.”

DCFS took K.M. and Jasmine into protective custody because Mother refused to report the sexual abuse to the police and continued to live with the perpetrator. They were placed with the MGM, who alerted the police. During an interview with the police, K.M. said that she and Father “had sex” and “humped.” She demonstrated how Father made her masturbate him, and stated that Father licked her unclothed vagina and made her watch “dirty movies.” Father warned her not to tell Mother about his conduct.

A dependency petition was filed alleging that K.M. was physically abused by Mother and sexually abused by Father, placing Jasmine at risk of harm. The children are exposed to domestic violence in the parental home. Both parents denied the allegations. On November 13, 2008, the court found a prima facie case for detaining the children in the care of the MGM. Father was allowed monitored visits with Jasmine, but was forbidden from contacting K.M.

The jurisdiction report included K.M.’s interview with a forensic investigator. Referring to Father as “Daddy,” K.M. said that she lives with her grandparents “[b]ecause my dad, he did stuff to me he’s not supposed to,” such as watching pornography, plus “he humped me” in the parental bedroom, licked her private part, and had her kiss his penis. K.M. described herself as “sad” that she was removed from Mother’s custody. K.M. told the social worker that Mother “whooped me with a belt” on her bare buttocks. Father “is the only person that has ever touched her private area or that has asked her to touch theirs.” K.M.’s biological father has been incarcerated most of her life. Mother and Father refused to be interviewed.

In December 2008, Mother and Father separated; Mother intended to live with her sister in a house on the MGM’s property. In January 2009, Mother gave birth to Father’s son D.G., prompting DCFS to file a dependency petition because Mother and Father pose a risk to D.G.’s safety. On February 13, 2009, the court found a prima facie case for

detaining D.G. from Father. The newborn was placed in Mother's care, under court supervision. Father was given monitored visitation.

In an interview, Mother admitted striking K.M. four times with a belt after the child exposed herself in public, but denied harming K.M. Mother agreed that she and Father regularly engaged in mutual slapping or punching, leaving Mother bruised. Mother once broke a decorative glass tree over Father's head. Mother recounted two incidents of sexual abuse that K.M. disclosed to her: Father asked K.M. if she wanted to have sex and placed her on his lap with her panties off, and he masturbated in front of the child. Mother believes that K.M. is telling the truth. Father attended eight sessions of a sexual abuse treatment program. He consistently denied abusing K.M., but acknowledged his domestic violence with Mother.

At the jurisdiction hearing on April 6, 2009, Mother waived her right to a trial and pleaded no contest to the petition. Father invoked the Fifth Amendment and refused to testify, but asked the court to dismiss the petition for insufficient evidence showing a risk of harm. The court sustained charges that Mother used inappropriate physical discipline on K.M., leaving marks and bruises and placing Jasmine and D.G. at risk of harm; Father sexually abused K.M. on repeated occasions and forced her to watch pornographic movies, placing K.M. and Jasmine at risk of harm; and Father and Mother have a history of domestic violence, placing the three children at risk of harm.

Moving to disposition, the court forbade corporal punishment on the children. Father was ordered to participate in parent education; domestic violence counseling; individual counseling; and sex abuse counseling for perpetrators. He was authorized to have monitored visits with Jasmine and D.G.

In October 2009, DCFS reported that the children are living with Mother in the home of the maternal grandparents and are happy, healthy and well cared for. Mother was participating in court-ordered programs. Father attended 21 of 31 sessions in a sexual abuse program; by September 22, Father had missed five consecutive sessions. He completed parenting, domestic violence counseling and anger management courses, but continued to deny engaging in sexual abuse. His visits with Jasmine and D.G. were

inconsistent. Father often requested that D.G. not participate in visits because the child “cries so much and [ ] he does not feel there is any bonding there.”

In November 2009, Mother physically attacked the MGM, then threatened suicide by holding a knife to her wrists. The police disarmed Mother at gun point and she was involuntarily hospitalized. DCFS filed a subsequent petition alleging that Mother engaged in a violent physical altercation in the presence of Jasmine and attempted suicide, placing the children’s safety at risk. Mother pleaded no contest to the new petition. On December 30, 2009, after sustaining a single count that Mother failed to protect the children, the court ordered her to participate in anger management counseling and undergo random drug testing. The court detained the children from Mother and placed them with the MGM.

An April 2010 report indicated that Father has monitored weekly visits with Jasmine and D.G. He is not living in permanent housing or working. The sexual abuse program he attended was axed by budget cuts. While actively participating in the sessions, he continued to deny the sustained allegations that brought him into the program. DCFS recommended that Father’s reunification services be terminated. Father began another sexual abuse counseling program in May 2010.

The June 2010 status report states that the children are well cared for and loved in the home of the maternal grandparents. They are happy, friendly and progressing appropriately. Mother lives on the same property and visits the children regularly, assists her parents, and gets along with the MGM, but did not randomly drug test and or enroll in an anger management program. She was given further reunification services.

On June 25, 2010, Father testified regarding his reunification services. He detailed the lessons he has learned from his classes, such as self-control and not abusing anyone. He denied molesting K.M. The court terminated Father’s reunification services. Subsequent reports state that the children are happy and thriving with the maternal grandparents.

Father filed a request for a modification on November 12, 2010, asking for reunification services and unmonitored visitation, claiming that he has resolved all issues

that brought the case into the system, is a stable protective parent, is bonded to the children, and able to provide them with a safe environment. He has learned not to watch pornography when children are present or show any body parts to children. Father's counselor opined that he should have unmonitored visits. On December 13, 2010, the court reinstated Father's reunification services.

In March 2011, Father's counselor reiterated support for reunification, describing Father as responsible, honorable and open to achieving therapeutic goals. Father resided in a one-bedroom apartment and lives on unemployment benefits and odd jobs. DCFS noted that Father's counselor is a trainee, not a licensed therapist, and argued that it is too risky to give Father unmonitored visits with children who are four and two years of age. The court ordered Father to undergo an assessment by forensic psychologist. Father's counselor insisted that Father is not in denial and is a fit parent who deserves unmonitored visits.

Father, Mother and the MGM concur that Father's weekly visits with the children go well. Mother continued to miss drug tests and tested positive in June and July 2011. DCFS recommended that Mother's reunification services be terminated.

The court began a contested hearing regarding Father in April 2011. Father testified that he lived with Mother since K.M. was 10 or 11 months old. Initially, he admitted misconduct on one occasion. As he described it, he was watching television when K.M. entered the room. He told her to pull her pants down and she got on top of him, at which point he stopped. He was clothed. The court asked, "Did you ever sexually molest [K.M.]?" and Father replied "No." He denied watching pornography with K.M. Father clarified that the social worker "told me on the phone that if I don't come in this court and say that I did that, then I will never see my kids because the court is going to say I'm in denial . . . ." Father has continually denied molesting K.M. during all of his sexual abuse therapy sessions.

Father's counselor testified that Father has no risk factors for engaging in sexual abuse, such as a history of substance abuse, being a victim of sexual abuse himself, and having family attachment issues. He did not perform any standardized tests to determine

Father's propensity for sexual abuse because he is not qualified to do so. When the counselor wrote in a letter that Father is not in denial, he meant that Father understands the charges against him, but denies that the charges are true. The counselor was shocked when he heard Father testify, but rationalized Father's testimony by saying that Father "felt a lot of pressure from the social worker." Father's counselor did not contact K.M.'s therapist to engage in a dialogue about the victim before recommending that Father have unmonitored visitation. Father's therapist did not have a personal opinion as to whether Father did or did not molest K.M.

The court heard expert testimony from Barry Hirsch, who performed a psychological evaluation on Father. In his report, Hirsch wrote, "It is clear . . . that [Father] should not have any of the children in his care" and visits should be monitored until he successfully completes psychotherapy with a licensed mental health professional and has conjoint therapy with the children. In court, Hirsch opined that Father poses a moderate risk of reoffending and estimated that Father should have another year of therapy before having unmonitored visits, in a "best case scenario." He believes that the gender of the child does not alter the risk level. Hirsch testified that Father's current counselor is unqualified to treat Father. The court found a continuing risk to the children and terminated Father's reunification services.

In October 2011, DCFS reported that Mother missed a random drug screening and had three positive tests in June and July. DCFS recommended that her reunification services be terminated. The court terminated Mother's services on October 17, 2011, and set a permanent plan hearing for February 6, 2012, identifying guardianship or adoption as the likely plan. Mother comes daily to the home of the MGM to help care for the children. The maternal grandparents have been married for 53 years and are retired. They are committed to providing their grandchildren with a safe, loving, stable and permanent home, and the children are closely bonded to them.

On February 6, 2012, Father asked for a contested hearing because he opposes the MGM as guardian. The court continued the hearing. On May 8, the day of the continued permanent plan hearing, the court received a request for a modification from K.M.'s

father, who was finally released from prison. The court continued the matter to June. On June 5, K.M.'s father asked for a continuance. Father was not at the hearing because his attorney thought that a continuance was going to be granted and Father lacked funds to get to the courthouse. The court continued the case for 15 days.

At the hearing on June 20, 2012, Father did not appear. His attorney asked for a continuance, so that Father could be present to testify. The request for a continuance was denied. Father's attorney argued that the MGM was not an appropriate guardian: he has had "immense difficulty in getting his visitation with the children" because the MGM "comes up with excuses as to why Father should not be able to visit" on the days scheduled by the social worker. Over Father's objection, the court granted a guardianship to the maternal grandparents and terminated dependency jurisdiction. Father appeals.

## **DISCUSSION**

### **1. Denial of a Continuance**

The court has discretion to grant or deny requests for a continuance, giving "substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (Welf. & Inst. Code, § 352, subd. (a).)<sup>2</sup> A request for a continuance must be made in writing at least two court days prior to the hearing date, together with declarations "detailing specific facts showing that a continuance is necessary" unless the court for good cause entertains an oral motion for a continuance. (*Ibid.*) The denial of a continuance is reviewed for an abuse of discretion and will not be overturned unless it was arbitrary, capricious, patently absurd and resulted in a manifest miscarriage of justice. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.)

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code.



This dependency case began in the fall of 2008, when Jasmine was one, and D.G. was detained from Father shortly after his birth in January 2009. With children of such tender years, the Legislature has made clear that dependency proceedings must be concluded as soon as possible. The case lasted for three and a half years before a guardianship was established. Jasmine and D.G. lived the entire time with (or next door to) the maternal grandparents, and are closely bonded with them. Father never progressed beyond monitored visitation because he continuously denied the wrongdoing alleged in the sustained petition, even after K.M. described his conduct in great detail. His reunification services ended in August 2011.

As the case wound to a close, Father was in no position to take custody of his children. His only argument was that the MGM should not be the children's guardian—even though the MGM effectively did all the parenting of his children—because she did not cooperate with Father's visitation schedule. It is not an abuse of discretion to deny a continuance if doing so would merely prolong the dependency case when the parents are unable to take custody and children want to stay with their grandmother. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510-1511.)

The permanent plan hearing was originally scheduled for February 6, 2012. Three continuances were granted. No reason was given for Father's failure to appear on June 20, 2012, the day the permanent plan hearing was finally held. Certainly, there was no "showing of good cause." (§ 352, subd. (a).) Father makes no claim that he lacked notice of the hearing, and his attorney made no written or oral request detailing specific facts showing why yet another continuance was needed. There was no indication that Father would appear in court at any time that day. (Compare *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1460, 1464-1465 [trial court should have granted a short delay after a father appeared for the morning calendar call, then left to obtain a signed certificate from his treatment program with the intention of promptly returning to court].) Under the circumstances, the court properly proceeded and brought this long-delayed case to a close. It is unimaginable that Father's testimony could have persuaded the court to wrench the children from the happy, stable home where they have spent their lives.

## **2. Termination of Dependency Jurisdiction**

When children have been placed with a relative for more than six months, “the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship . . . .” (§ 366.3, subd. (a).) The court’s ruling is reviewed for an abuse of discretion. (*In re Twighla T.* (1992) 4 Cal.App.4th 799, 805; *In re K.D.* (2004) 124 Cal.App.4th 1013, 1018-1019.)

Here, the maternal grandparents consented to a legal guardianship and welcomed the children into the same safe permanent home they have known all of their lives. Thus, the court was required to terminate dependency jurisdiction unless there is proof of “exceptional circumstances.” The only circumstance Father points to is the MGM’s alleged failure to comply with a visitation schedule. This is not exceptional. If the guardians fail to comply with the court’s visitation order in the future, Father can return to court to seek enforcement. (§ 366.3, subd. (a).) There need not be a continuing dependency case to enforce the court’s orders.

## **3. Visitation**

Father contends that the juvenile court improperly delegated authority over visitation to the legal guardian. When the court selects guardianship as the permanent plan, it “shall also make an order for visitation with the parents . . . 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).) The court has sole power to determine whether visitation will occur. (*In re M.R.* (2005) 132 Cal.App.4th 269, 274; *In re S.H.* (2003) 111 Cal.App.4th 310, 319; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-49.) Once visitation is ordered, the court may delegate responsibility for managing details such as the time, place and manner of visits, none of which affect a parent’s defined right to see his or her child. (*In re Chantal S.* (1996) 13 Cal.4th 196, 213; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.)

The visitation order must give some indication of how often visitation should occur. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 [an order giving a parent “reasonable” visits is sufficient]; *In re Moriah T., supra*, 23 Cal.App.4th at pp. 1375-1376 [court specified that visitation must be “consistent with the well-being of the minor”].) A guardianship order authorizing visits, without more, is unacceptably vague. The court cannot “allow[ ] the guardian to decide whether visitation actually will occur” and thereby “transfer this important decision to the possible whims of the legal guardian.” (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314. See also *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136 [the court’s written order allowing visitation but not specifying the frequency or even “regular” visits is impermissible] and *In re Grace C.* (2010) 190 Cal.App.4th 1470, 1478 [court must specify frequency of visits].

The court order states that Father is entitled to visits “[m]onitored by an approved monitor at least one time per week. Guardian is to ensure parents receive their visits.” This order is sufficient because it guarantees weekly visits (at a minimum) and orders the guardian to ensure visitation occurs. (Compare *In re S.H., supra*, 111 Cal.App.4th at p. 319 [court failed to order even a minimum number of visits].) Because the order specifies a minimum number of weekly visits, Father’s challenge fails.

### **DISPOSITION**

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.