Filed 6/5/12 In re J.N. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.N., A Person Coming Under the Juvenile Court Law.	B235505
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RACHEL N., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK87669)

APPEAL from a judgment of the Superior Court of Los Angeles County. Donna Levin, Referee. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Appellant.

No appearance by Respondent.

Mother Rachel N. appeals from the dependency court's family law exit order giving her former domestic partner and the other mother of their child, J.N., discretion to select a monitor for Rachel N.'s visits with the child. We affirm.

FACTS AND PROCEDURAL HISTORY

Rachel N. is the biological mother of J.N., who was conceived with a sperm donor and was born in 2004. Rachel N. was in a registered domestic partnership with Kris F. at the time, and Kris F. is therefore considered J.N.'s other parent.[1] (Fam. Code, §§ 297, 297.5, subd. (d); *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 119.) They dissolved their domestic partnership in 2010, but shared custody of J.N. Their break-up was acrimonious, and custody exchanges took place at a police station.

Both women had lengthy criminal records for drug use, although both had remained clean for years. Kris had since gotten a college degree, gained long-term employment, a good credit rating, and owned two homes. It is undisputed that Kris never resumed using drugs.

After Rachel moved out and began a relationship with someone else, Kris became concerned that Rachel was taking drugs again. During an April 2011 custody exchange, Rachel appeared intoxicated and a police officer noticed possible track marks on her arms. The Los Angeles County Department of Children and Family Services (the department) was notified, leading to the detention of J.N. and the filing of a petition alleging that J.N. should be declared a dependent of the court because of Rachel's drug use.[2]

The child remained in Kris's custody throughout the proceedings, and Rachel was ordered to take drug tests. By the time of the jurisdictional and dispositional hearing on August 11, 2011, Rachel had been a no-show for at least eight drug tests, and had one

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[1] For ease of reference, we will refer to Rachel N. and Kris F. by their first names.

[2] The petition also alleged that Kris's drug use put J.N. at risk, but that allegation was later dismissed upon the stipulation of the parties.

clean drug test and one that tested positive for alcohol. Rachel was also a no-show for a hair follicle drug test she had requested. The court also learned that Rachel had a misdemeanor theft conviction in November 2010, and that in April 2011 she had an outstanding arrest warrant on a theft charge.

The court said it would terminate jurisdiction, retain sole custody in Kris, and issue a family law exit order regarding visitation. The department told the court that Rachel's mother, who had been monitoring Rachel's visits with J.N., was not an appropriate monitor and asked for an order that the grandmother was not to monitor the visits. Kris's lawyer asked that the monitor be agreeable to Kris. The exit order that was eventually signed stated that Rachel was to have monitored visits at least once a week for two hours, so long as she was not under the influence, with the "[m]onitor to be anyone approved by [Kris]."

Rachel contends the visitation order must be reversed because it gives Kris unfettered discretion in the selection of a monitor, thereby allowing her to frustrate Rachel's ability to visit J.N.

DISCUSSION

1. *The Appeal Is Not Moot*[3]

The dependency court's order terminating its jurisdiction would ordinarily render this appeal moot. However, dismissal is not automatic and must be decided case-by-case. An issue is not moot if the purported error infects the outcome of later proceedings. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488 (*C.C.*).) In *C.C., supra,* the mother appealed a dependency court order that denied her visitation pending further review hearings based upon findings that the visits would be detrimental to the child. While the appeal was pending, the dependency court terminated its jurisdiction and issued a family law exit order granting the mother monitored visits at least once a month.

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[3] We asked for and received supplemental briefing from the parties on this issue.

Even though the dependency court had terminated its jurisdiction and then later given mother the relief she had requested, the *C.C.* court held that the appeal was not moot, based on the mother's contention that the finding of detriment upon which the order denying visitation was based could prejudice her in later family law proceedings. Although this concern was "highly speculative," the appellate court agreed to consider the merits of the appeal out of "an abundance of caution and because dismissal of the appeal operates as an affirmance of the underlying judgment or order . . . ." (*C.C.*, *supra*, 172 Cal.App.4th at pp. 1488-1489, citations omitted.)

The department contends that we should not follow *C.C.* because it departs from the general rule of mootness after the termination of dependency court jurisdiction. The department also contends that *C.C.* does not apply because Rachel is not challenging the jurisdictional findings that led to the visitation order and because she can seek relief from the family law court if Kris unreasonably refuses to approve a monitor.

If a visitation order did give one parent unfettered discretion over visitation, we agree that such an order might infect later family law proceedings, where the family law court might be unwilling to modify the dependency court's order. Like our counterparts in *C.C.*, we recognize that such a concern is speculative, but, out of an abundance of caution, choose to reach the issue on its merits.

2. *The Visitation Order Was Not Overbroad*

Although the dependency court may delegate to third parties the responsibility for managing the details of visitation such as the time, place, and manner, the power to determine the right and extent of visitation resides with the court and may not be delegated. This rule applies to exit orders issued when dependency jurisdiction is terminated. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123 (*T.H.*).) Rachel contends that

the dependency court's exit order violated this rule by giving Kris the discretion to choose a visitation monitor.[4]

The decisions Rachel relies on involved actual or effective delegations of the right to determine whether visitation would even occur, and are therefore inapplicable. (*In re Chantal S.* (1996) 13 Cal.4th 196, 213 [no visitation without permission of children's therapist]; *T.H., supra,* 190 Cal.App.4th at p. 1124 [visitation would occur, but only upon agreement of the parents, effectively delegating to mother the power to determine whether visitation will occur at all]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 51 [court gave minors the option to refuse visitation]; *In re Donnovan J.* (1997) 58 Cal.App.4th 1474, 1476 [no visitation without permission of child's therapist].)

Instead, we conclude that the visitation order was proper under *In re A.C.* (2011) 197 Cal.App.4th 796. After resolving a conflict between the reporter's transcript and the clerk's transcript, the *A.C.* court interpreted an exit visitation order to read that the parents would agree on a monitor, but, if they could not agree, the father would choose one. Distinguishing that order from the one in *T.H., supra,* 190 Cal.App.4th 1119, the *A.C.* court held that it was not a delegation to father of the right to determine whether visitation would occur at all. (*A.C.* at pp. 799-800.) That order is substantially the same as the one at issue here – vesting in one parent the sole discretion to choose a monitor. Additionally, the order at issue here specifies that visitation *shall* occur at least once a week for two hours at a time unless Rachel is intoxicated, thereby mandating both visitation and its frequency. We therefore hold that the visitation order was not improper.[5]

We alternatively hold that Rachel waived the issue by failing to make a proper objection below. At the end of the August 11 jurisdictional and dispositional hearing, the

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[4] The department and counsel for J.N. each declined to file appellate briefs regarding the merits of Rachel's contention.

[5] Because visitation is mandated by the exit order, we are confident that the family law court would issue an appropriate order if Kris acted unreasonably to frustrate visitation.

dependency court announced in a group its entire set of orders and findings: that J.N. be removed from Rachel, that reasonable efforts had been made to prevent and eliminate the need for that removal, that the court would terminate its jurisdiction and enter a family law exit order, that Kris was to have sole legal and physical custody of J.N., and that Rachel would have monitored visits at least once a week for two hours, with the monitor to be approved by Kris. In response, her lawyer said, "All of those orders are over [Rachel's] objection."

Issues concerning visitation orders are waived by the failure to object below. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1001.) Vague and non-specific references to an issue are not sufficient to preserve an issue for appellate review. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 642.) Because Kris's blanket objection to the court's group of orders did not state any ground for objection, we deem the issue waived.

DISPOSITION

The dependency court's exit order regarding visitation is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.