

Filed 6/22/17 In re B.T. CA2/1

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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re B.T., a Person Coming Under
the Juvenile Court Law.

B279007
(Los Angeles County
Super. Ct. No. DK15102)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.I.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Commissioner. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

M.I. (mother) appeals from a visitation order of the juvenile court, which requires that her visits with B.T, then four years old, be supervised by a professional monitor paid for by mother, or a monitor approved by the child's father. We affirm.

Mother's prior appeal

As we stated in our unpublished opinion in *In re B.T.* (Dec. 15, 2016, B271573), on January 11, 2016, Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging three-year-old B.T. was at risk of harm under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).¹ The petition alleged that mother and father (who is not a party to this appeal) had a history of violent altercations in B.T.'s presence. Mother used methamphetamine, which periodically made her incapable of caring for B.T.; mother had mental and emotional problems including bi-polar disorder, borderline

¹ All further statutory references are to the Welfare and Institutions Code.

schizophrenia, posttraumatic stress disorder (PTSD), and obsessive-compulsive disorder with suicidal ideation, for which she failed to take her prescribed medication; and mother endangered B.T. by possessing a drug pipe and ammunition in the home, within B.T.'s reach. The petition also alleged that father had a history of alcohol abuse which periodically made him incapable of caring for B.T.

Mother's five older children (with a different father) had been detained, mother had failed to reunify, and the maternal grandparents had been declared legal guardians.

Referrals dated December 30, 2015 and January 2, 2016 reported that mother and father engaged in physical and verbal violence in B.T.'s presence, and when father stated he wanted to take B.T. away from the arguing and fighting, mother escalated and scratched father on his chest, neck, and temple, resulting in a domestic violence arrest. The social workers spoke with a substance abuse case manager who had visited the family's apartment on December 30. The case manager observed that mother was very verbally abusive towards father, who disclosed a history of alcohol abuse and wanted counseling. Father wanted mother out of the house and off the lease, as he was concerned for B.T.'s safety in her care. Mother had a history of methamphetamine use, and the building manager and others confirmed that they had recently witnessed mother use methamphetamine.

Paternal grandfather (PGF) told the social worker that mother and father argued a lot, but he had not seen physical

fighting. Mother's behavior had changed for the worse in the last four or five months, including posting negative comments about father on Facebook and undergoing drastic weight loss. Father was currently sober. When mother's other children visited over the holidays, one of the children called maternal grandmother (MGM) and asked her to pick them up because mother and father were arguing and they did not feel safe. MGM picked up the other children and B.T., but after mother called and said she would kill herself if B.T. did not come back, maternal grandfather (MGF) brought B.T. back on January 1. Mother had also posted on Facebook that she wanted to kill herself and had written suicide notes to B.T. Father's six-year-old son Paul (of whom he had full custody, and who is not a party to this case) also lived with mother and father.

Father stated that he and mother met at a recovery center. When mother learned she was pregnant with B.T., she and he enrolled in substance abuse counseling, and until recently mother had remained sober. In the last few months, neighbors had told him she had resumed using, and he noticed a lot of weight loss. When father found the meth pipe in mother's purse, he took Paul to stay with PGF.² After mother threatened suicide and MGF brought B.T. back home against father's wishes, he and mother argued in the kitchen, with B.T. on the floor in the hall. Father told

² Father's case worker reported that father told her he found methamphetamine in mother's possession.

mother he was going to take B.T. to PGF's house, and mother began reading out loud to B.T. a note she had written to him, which said " '[B.T.] mommy's dead because daddy didn't care he just yelled.' " Father became upset and told mother he was taking B.T. and leaving. Mother did not allow father to take B.T., and when he insisted, mother attacked father, inflicting scratches on his cheek, chest, and temple, while B.T. yelled " 'stop . . . stop . . . stop.' " Father left the house and ran to the police station; 45 minutes later the police arrested mother who was shaking and yelling.

Father told the social worker that mother had been diagnosed with bipolar disorder and schizophrenia, and had multiple prescribed medications he was not sure she took. She also told him she had a rare terminal blood disorder but would not show him the paperwork. Father used alcohol and had drunk beer on December 29 and January 1, and had signed up for substance abuse counseling. Neither he nor mother used physical discipline on the children, but the building manager told him that other tenants heard mother yelling at the children all the time.

Mother told the social worker her ex-husband had beaten her severely and caused her PTSD. When a boyfriend attacked her, she hit him with a golf club and was incarcerated for a year (2008–2009), and had signed legal guardianship of her other children over to MGM. Everything father said was a lie. He used alcohol, would get sober for six months and then relapse. He had begun drinking after his case closed in October 2015. He was a

good man but not when he was drinking. Mother said she started drinking when she was seven or eight, smoking marijuana at 10 or 11, and using methamphetamine at 12. Her first child was born when she was 13. She claimed she had been sober since she left jail in 2009. A few weeks ago, she was very stressed out and purchased a pipe and \$10 of what she thought was methamphetamine, which she had not used. She suffered from a blood disease which caused internal bleeding. She had not been taking her prescribed psychiatric medications. She also suffered from auditory hallucinations, which made her paranoid on the day she wrote the note to B.T. about dying.

After MGM had taken the older children and B.T. to her home on December 26, mother texted MGM that she needed B.T. back but did not mention suicide. MGM brought B.T. back, and mother and father argued when they took B.T. to a movie. When they returned the argument continued, and when father grabbed mother to hug her, her PTSD caused her to fight back physically and scratch him.

On January 11, 2016, the juvenile court found father was B.T.'s presumed father, issued a temporary restraining order against mother as to father only, and detained B.T. from mother and released him to father, ordering father to participate in weekly alcohol testing. The court granted mother monitored visitation and reunification services.

DCFS filed a jurisdiction/disposition report on March 1, 2016. The district attorney had declined to prosecute mother. Recordings showed both father and mother being

verbally abusive to each other. Father stated that two days before he found the pipe and a bag of a crystal-like substance in mother's purse in the car, he found a scale and empty plastic baggies in her closet. Mother denied knowing about the pipe and the methamphetamine, and when reminded that she had reported buying it, she claimed father told her to say that. B.T. was doing well in father's custody and attending Head Start. Mother showed an appropriate and affectionate affect during a supervised visit with B.T. on February 2.

Father had been diagnosed with depression, ADHD, and bipolar disorder, and although he was not taking his medication, that did not rise to the level of requiring an amended petition. He had cooperated with DCFS and the children were doing well in his care, but DCFS recommended that the children be declared dependents and father receive family maintenance services. A letter from father's residential case manager stated that he did not believe father required medication to be a fit parent.

A last minute information for the court filed March 1, 2016 reported that in violation of the temporary restraining order, mother had texted father on February 14 that "[i]ts death or jail," and "when I die you can tell him that it's your fault." Mother had been following father, approaching him outside of B.T.'s school and whenever he was out walking. Both mother and father had tested negative for illegal drugs.

At the jurisdiction and disposition hearing on March 1, 2016, mother's counsel requested that the allegation under

section 300, subdivision (a) be stricken. Mother's counsel also argued that the verbal abuse was mutual, and requested that the court strike the allegation under subdivision (b) regarding mother's mental health. Counsel for DCFS stated that mother had not been taking her prescribed medication and her behavior was erratic and volatile.

The court dismissed the allegations under subdivision (a) and (j) and found true the allegations under subdivision (b). The court declared B.T. a dependent under subdivision (b), placed him in the home of father under DCFS supervision, and ordered family maintenance services, drug testing, parenting classes, and individual counseling. The court ordered mother to participate in random on demand weekly drug tests, to take a parent education class, to take her prescribed medication, and to attend individual counseling. The court also ordered her to have a monitored visitation schedule and family preservation services.

Father's counsel requested a permanent restraining order, as mother had violated the temporary restraining order by texting father, and father had filed two police reports regarding mother driving by the house. Mother's counsel opposed the motion and called the father to the stand, contending that father had also been violating the temporary restraining order) by texting and meeting mother to have sex. Father testified that mother had come to his home; he denied texting mother or asking her for sex. Father's counsel pointed out that father was not subject to

the temporary restraining order. Father stated that mother had tried to contact him on numerous occasions, he had called the police three times when she came to his home, and he introduced into evidence two investigative reports dated January 31, 2016 and February 23, 2016.

Mother testified that she currently had a restraining order against father, who had tried to contact her several times after the order issued. On January 21, they filed for benefits together, went out to lunch, and then had sex in the car; father had sent her a photo of himself.

Mother's counsel admitted she violated the restraining orders on one occasion, but requested that B.T. not be on any permanent restraining order.

The juvenile court stated that if B.T. were on the restraining order, this would only preclude mother from seeing B.T. at times outside the visitation schedule. The court believed father's version of events; he had contacted the police, and mother's texts threatened father that it would be his fault if she died. It would be very damaging to B.T. to read such texts. The court issued the restraining order for one year, requiring mother to stay 100 yards away from father and from B.T. except during her scheduled visitation with B.T.

On mother's timely appeal, we struck the words "and ammunition" from one of the jurisdiction findings, and otherwise affirmed the orders.

Subsequent events

A status review report dated August 30, 2016, reported that B.T. continued to live with father and was stable and safe. Father continued to be employed, and engaged fully in services for B.T. and for himself. He wanted nothing to do with mother, describing their relationship as “toxic.” Mother was homeless, unemployed, and still struggling with her emotions and mental health, while insisting that father was not a fit parent. She provided no proof that she was participating in her case plan, and she had not complied with the required drug testing.

Mother’s monitored visitation had been taking place in the DCFS office for three hours each week, monitored by a human services aide, and from 9:00 a.m. to 4:30 p.m. one weekend day each week. Father brought B.T. to the visits, but mother often did not call to confirm, or confirmed and did not show up. When she showed up, she often was dressed inappropriately, and on a few occasions she seemed to be under the influence. Otherwise, most visits were positive and interactive.

DCFS had tried to arrange for maternal relatives (mother’s parents and her 21-year-old son) to monitor the weekend visitation. At first, visits went well, but when it no longer worked out (maternal relatives lived in Riverside County, maternal grandmother had a referral for transporting children in the trunk of a car, and the maternal relatives got into conflicts with father when he dropped B.T. off), mother did not provide alternatives. DCFS believed

that mother should provide a paid monitor to avoid the conflicts.

B.T. was thriving with father, who had a strong support system. Mother continued to accept no responsibility and had made no progress on any level. DCFS recommended that B.T. remain with father and that jurisdiction be terminated, with a family law order granting father sole physical custody, and joint legal custody with mother. Mother's visits should continue monitored as arranged by father, with a neutral monitor at a neutral location.

At the section 364 review hearing on August 30, 2016 (at which mother was not present, although she was given proper notice), counsel for father (joined by B.T.'s counsel) requested sole legal and physical custody, due to mother's instability. Visitation should be supervised by a monitor paid for by mother. Mother's counsel objected to sharing legal custody. Mother's counsel stated, "I would be objecting to the court ordering a professional monitor. My client is indigent and frankly, cannot even afford even a home, let alone a professional monitor. Would ask that perhaps an order be read that any monitor approved to by the father." The court responded, "That's fine. I can have it be monitored by a professional monitor or someone the father agrees to." Visits were to be "minimum weekly." Counsel for mother requested that the time (10:05 a.m.) be put on the record.

The court awarded father sole legal and physical custody with minimum weekly visitation for mother,

monitored by “a professional monitor paid for by mother or any other person approved by father,” and terminated jurisdiction. Mother filed this appeal.

DISCUSSION

When the court terminates jurisdiction over a dependent child, it may make custody and visitation orders that will be transferred to a family court file and will remain in effect until modified or terminated. (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) Visitation is under the court’s sole authority, although the court may delegate discretion to determine the time, place, and manner of the visits. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008–1009.) We review the visitation order for an abuse of discretion, and “will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination.” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

Mother challenges the visitation order because it provides for a monitor approved by father or a paid monitor. Mother’s counsel *requested* at the hearing that the court provide in the order that as an alternative to a monitor paid for by mother, visitation be supervised by someone approved by father. This is how visitation was occurring at the time of the hearing. Mother cannot complain that the juvenile court did what she asked, and she has forfeited this claim on appeal as to the monitor approved by father. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 685–686.)

Mother also challenges the order because it provides that visitation may also take place with a professional

monitor paid for by mother, which she cannot afford. She argues that the order should have provided that she and father mutually agree on a monitor, and if they could not agree, that father be required to pay for a professional monitor. She did not request this at the hearing, and therefore cannot complain that the court did not make the specific order she now proposes. Mother also argues that father could approve only a monitor she is required to pay, making visitation impossible. The order, however, does not provide for a paid monitor approved by father, but for “a professional monitor paid for by mother *or any other* person approved by father.” (Italics added.)

Mother also challenges the visitation order because it does not specify date, time, or location, but she did not argue for a more detailed schedule at the hearing. In any event, the trial court may delegate its discretion to determine the time, place, and manner of visitation. (*In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1009.)

Mother argues that father will frustrate visitation, making the order “illusory.” The record reflects that father consistently brought B.T. to visitation, and there is no basis to assume father will not continue to cooperate.

The visitation order is not an abuse of discretion.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.