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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

In re S.M., a Person Coming Under the Juvenile Court Law.	C062677
SISKIYOU COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. E.M., Defendant and Appellant.	(Super. Ct. No. SCSCJVSQ095085501)

Appellant, the mother of the minor, appeals from the juvenile court's jurisdictional and dispositional orders placing the minor with her father and terminating jurisdiction. (Welf. & Inst. Code, §§ 360, subd. (d), 361.2, subd. (a), 395.)[1] Appellant claims the court erred in failing to grant a continuance after she was placed on a mental health hold that prevented her from attending the dispositional hearing. She also argues it was error for the court to place the minor with the father and to grant him sole legal custody. Finally,

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

appellant contends the court erred in not granting her request for appointment of an expert on the issue of whether placement with the father, who lived in another state, would be detrimental to the minor. Disagreeing with these contentions, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2009 a juvenile dependency petition was filed by the Siskiyou County Human Services Department (the Department) concerning the four-year-old minor and her six-month-old sibling, based on appellant's mental health problems and drug use.[2] According to the petition, there had been two voluntary family maintenance cases concerning the family during the preceding three years, including a case in 2006 based on physical abuse of the minor and "mental health concerns." The petition alleged that the minor's father was a police officer who lived in another state and wanted the minor to be placed with him.

At a hearing in May 2009 the juvenile court took jurisdiction and continued the matter for a dispositional hearing. At the hearing, the attorney for the minor's father informed the court that they would be requesting placement of the minor with the father and dismissal of the matter at the dispositional hearing.

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[2] The sibling, who has a different biological father from the minor, is not a subject of this appeal.

According to the dispositional report, appellant had been struggling with her mental health issues for many years, frequently stopped using her medication, and "self-medicat[ed]" with drugs and alcohol. The minor and her sibling, who were placed together, had visits with appellant five days a week and seemed to enjoy them. The minor also had regular telephone contact with her father, which she enjoyed, although she did "not seem to understand that he is her father."

The father reported he was living with his girlfriend and that his home was appropriate for the minor. The social services agency in the father's area was unavailable to evaluate the father's home, so the social worker suggested that the father ask his sergeant at the police department to visit the home and report back to the social worker. The father's supervisor did so and informed the Department that the bedroom the father had prepared for the minor was "very suitable for a child." However, because the minor's contact with the father had been limited in the past, the social worker recommended that before placing the minor with her father a series of visits should occur, after which it was anticipated the minor could be placed with him.

Appellant was present on the date set for the dispositional hearing, at which the attorney for the minor's father again argued that the minor should be placed with the father and requested the matter be set for a contested hearing. The attorney for the Department reiterated that the Department anticipated placing the minor with the father after a few

visits, and the juvenile court commented that "perhaps this issue would resolve itself" if the father came a few days in advance of the hearing and had several visits with the minor.

Soon after the hearing, appellant's attorney requested a continuance of the dispositional hearing to obtain a psychological evaluation to determine whether placement with the father would be detrimental to the minor. Appellant's attorney later stated that, even if the court was unwilling to continue the matter, an expert still could testify on the issue of detriment. The juvenile court denied the request for an evaluation, concluding that, "unless there's some indication that there's something unusual going on that would justify this request," it would not "be worthwhile to have a psychologist come in and say . . . it's going to be a disruption for [the minor] to go across the country." At a subsequent hearing, the court explained it is "common knowledge that a child who's lived with one parent for a number of years is going to have some negative impact if that child is separated from that parent."

On the day of the contested hearing, appellant was taken into custody prior to the hearing because of "some disturbance" outside the courthouse. As a result of appellant's behavior once at the jail, she was being evaluated by "behavioral health services" and was not available to appear at the beginning of the hearing. The juvenile court informed the parties that it was necessary either to go forward with and conclude the hearing that day or continue the matter because the court would be on vacation and unavailable for the following three weeks. The

court inquired of appellant's attorney whether there was anything he wished to say in this regard, to which he replied, "No, your honor. That's accurately stated."

The attorney for the Department informed the court that the Department now was recommending placement of the minor with the father without the need for further visits. The social worker testified he had observed a "delightful visit" between the minor and her father that morning, during which the minor was "slightly hesitant, but smiled," and "went to her father." After the visit, the social worker asked the minor outside the presence of the father whether she would like to live with him, and she responded excitedly and without hesitation that she would. The social worker observed another longer visit during a break in the hearing and testified that it went "very well."

The social worker explained he initially recommended a few more visits and conditions before placing the minor with the father, but once he met the father and saw him with the minor, he felt more comfortable, and he did not have any concerns about the father's ability to care for the minor.

The social worker had observed several visits between the minor and appellant, and he testified that the minor "obviously loves her mother." He acknowledged that removing the minor from appellant would be detrimental to the minor "[i]n some ways" and that "[i]t may be difficult for her." He also acknowledged "[i]t could be a little problem for [the minor] missing her sister," but not to the extent it would preclude the placement. The social worker felt it would be in the minor's best interest

to be placed with the father, with physical and legal custody to him, and dismissal of jurisdiction.

Following a recess in the proceedings, the juvenile court announced that appellant had been placed on a "5150 hold."[3] At that point, appellant's attorney objected to the proceedings continuing in her absence. Noting that a continuance would require exceptional circumstances, the court declined to continue the matter.

The father testified he was present at the minor's birth and during her first six months, and that he saw her a few times when she was between one and two years old. He testified that he wanted appellant to be "a major part" of the minor's life, "[a]s long as she gets the help that's necessary."

Following testimony, the attorneys for the father and the minor argued in favor of placing the minor with the father and dismissing the matter. Appellant's attorney, noting that appellant was not present and it was "a critical stage in her case," argued that, in light of the minor's relationship with appellant, she should be placed with the father on a temporary basis with reunification services for appellant.

The juvenile court found there would not be a detriment to the minor's safety, protection, or physical or emotional well-being if placed with the father. The court also concluded that

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[3] Welfare and Institutions Code section 5150 provides that a person may be detained in a mental health facility for 72 hours if, as a result of a mental disorder, that person is a danger to herself or others, or is gravely disabled.

jurisdiction over the minor should be terminated, as there was no evidence the father needed services. The court acknowledged that the mother's absence from the hearing may have been beyond her control, but the minor's removal was based on a lengthy history of mental illness, substance abuse, and domestic violence, including domestic violence against the minor.

At a hearing the following day regarding the "exit order," appellant's attorney stated he "still" had not been able to talk to appellant and again expressed concern about the fact that the case was proceeding under such circumstances. The juvenile court adopted the findings prepared by the minor's father, ordering legal and physical custody of the minor to the father, with visitation as arranged by both parents.

DISCUSSION

I

Appellant claims the juvenile court erred by denying her attorney's request for a continuance of the dispositional hearing so that she could be present. We disagree.

"Notwithstanding any other provision of law, if a minor has been removed from the parents' or guardians' custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance." (§ 352, subd. (b).)

Additionally, a continuance may not be granted if it is contrary to the interests of the minor. (§ 352, subd. (a).) "In considering the minor's interests, the court shall give 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." (§ 352, subd. (a).) "The intent of the Legislature, especially with regard to young children, is that the dependency process proceed with deliberate speed and without undue delay." (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1151.)

The juvenile court is accorded broad discretion in determining whether to grant a continuance. (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1186-1187.) "Continuances are discouraged [citation] and we reverse an order denying a continuance only on a showing of an abuse of discretion." (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

In the present matter, the minor was ordered detained on April 23, 2009, and the dispositional hearing, initially scheduled for June 8, had been continued to June 25 upon a prior finding that there were exceptional circumstances warranting the continuance. Therefore, to continue the matter again, the court was required once more to find exceptional circumstances.

The court denied appellant's request for a continuance because it was not convinced that appellant's mental health hold constituted exceptional circumstances warranting a continuance. As noted in the dispositional report, appellant, who was

24 years old, had been struggling with mental health issues for more than 10 years. Her lack of cooperation with treatment dated back to when she was a teenager. During the two years preceding the filing of the petition, there were repeated reports of appellant not taking her prescribed medication, accompanied by an increased inability to cope and, sometimes, hospitalization.

According to appellant's trial attorney, appellant's most recent mental health hold was triggered when she went off of her medications. At the jurisdictional hearing, the attorney had explained that this was also the primary problem that had led to the initiation of the dependency proceedings. At that time, the attorney noted that appellant was back on medication and that "there is a slow curve in terms of seeing results from that."

Appellant argues it was error for the juvenile court to commence the dispositional hearing in her absence and complete the hearing without giving her the opportunity to testify and assist her attorney. We note that appellant's attorney did not object to the commencement of the hearing without appellant. Only when it was determined that appellant had been placed on a mental health hold did her attorney object to the proceedings continuing in her absence.

Moreover, once appellant's attorney did make the request, it was not an abuse of discretion for the juvenile court to find that exceptional circumstances did not warrant a continuance under the circumstances. Had it been unusual for appellant to stop taking her medication and become hospitalized or otherwise

unavailable, her argument might be more compelling. However, appellant's chronic mental instability rendered her future availability subject to uncertainty, whereas the minor had a statutorily recognized interest in promptly resolving the issues presented at the dispositional hearing. (See § 352, subd. (a).)

Appellant maintains a continuance was necessary for her to "present [her] full case" and for the court to observe her demeanor while testifying. But the juvenile court accepted as "common knowledge" that there is "some negative impact" anytime a child is separated from a parent with whom she has lived for a number of years. The court explained that its focus was on whether there would be a detriment to the minor's safety, protection, or physical or emotional well-being if placed with the father. (See § 361.2, subd. (a) [juvenile court must place child with noncustodial parent unless it finds that placement with that parent would be detrimental to safety, protection, or physical or emotional well-being of child].) Appellant does not explain what other evidence she possibly could have produced on this issue that might have resulted in a different outcome in the proceedings.

Appellant also suggests that her attorney was unable to consult with her after the Department changed its recommendation to placement with the minor's father. But this possibility was discussed more than two weeks earlier at a hearing at which appellant was present, when the Department informed the court it would be changing its recommendation if the minor's father was able to attend some visits before the dispositional hearing.

At that time, the court commented that "perhaps this issue would resolve itself" if the father came a few days in advance of the dispositional hearing and had several visits with the minor.

Appellant also suggests that one of the reasons the juvenile court proceeded in her absence was because it had an upcoming vacation scheduled. While it is true that the court mentioned its upcoming vacation prior to commencing the dispositional hearing, it went on to state that, therefore, it was necessary to either begin the hearing in appellant's absence or continue it. As already noted, appellant's trial attorney did not request a continuance at that time or object to the commencement of the hearing in her absence. When appellant's attorney later asked to continue the matter, the court did not mention its upcoming vacation as a basis for denying the request. Rather, as already discussed, it found there was an absence of exceptional circumstances warranting a continuance.

In sum, we conclude the juvenile court acted within its discretion in finding that, under the circumstances before it, exceptional circumstances did not warrant a continuance of the dispositional hearing.

II

Appellant next contends there was insufficient evidence to support the juvenile court's finding that it would not be detrimental to place the minor with her father and that the court abused its discretion by awarding sole legal custody to him. Again, we disagree.

Section 361.2, subdivision (a) provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

A finding that placement with the noncustodial parent would be detrimental must be made by clear and convincing evidence. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1569.) On appeal, the juvenile court's finding is reviewed in the light most favorable to the order to determine if substantial evidence supports it. (*Id.* at pp. 1569-1570.)

In the present matter, the minor's father was a police officer, who had paid regular child support and whose home was reported to be "very suitable for a child." Although the father's contact with the minor had been minimal during the two years prior to her removal from appellant, the social worker observed two visits between them that went very well, and the minor expressed excitement when presented with the possibility of living with her father. The social worker testified that he had no concerns about the father's ability to care for the minor.

The juvenile court could deny placement with the father only if there was clear and convincing evidence that such placement would be detrimental to the minor. Appellant argues that her relationship with the minor "militates for a finding of detriment," and that the minor's relationship with her sibling was also "a relevant consideration in evaluating her emotional well-being." While we agree that evidence concerning these relationships was relevant when considering whether placement with the father would be detrimental to the minor, the juvenile court also was entitled to consider the stability the minor would gain in a placement with her natural parent, as well as the fact that the minor's sibling was an infant and appellant's mental illness often rendered her unavailable. Taking all of these circumstances into account, we conclude that substantial evidence supports the juvenile court's finding regarding the absence of clear and convincing evidence that placement with the father would be detrimental to the minor.

Appellant also claims the court's placement finding was undermined by contradictory information in the social worker's report regarding whether the minor recognized the father as her parent during telephone contacts and whether the father had sent pictures and gifts to the minor as requested by the social worker. There is no basis in the record for concluding that the juvenile court's placement decision was based on any of this information. It was only after visits between the father and the minor occurred and the father's ability to care for the

minor was established that the court was willing to place the minor with him.

Appellant also claims it was error to grant the father sole legal custody. But when the juvenile court places a child with the noncustodial parent at the dispositional hearing and determines there is no need for further jurisdiction, the court's only option is to "[o]rder that the parent become legal and physical custodian of the child," with reasonable visitation to the other parent. (§ 361.2, subd. (b)(2); *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134-1135.)

Accordingly, we reject appellant's claims as to the minor's placement with the father.

III

Finally, appellant claims the juvenile court erred by denying her request for a psychological evaluation relating to placement of the minor with the father. This claim, too, lacks merit.

Pursuant to Evidence Code section 730, a court may appoint an expert on its own motion or the motion of a party "[w]hen it appears to the court . . . that expert evidence is or may be required by the court or by any party to the action[.]" "[T]he reason for appointment of an expert is that the expertise is, or may be, required to resolve issues in the case." (*In re S.R.* (2009) 173 Cal.App.4th 864, 869.) "[T]he trial court is never obliged to appoint an expert to assist it in making a factual, much less a legal, determination under Evidence Code section 730 unless, as that section provides, '*it appears to the court* . . .

that expert evidence is . . . required.'" (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394, fn. 4.)

Appointment of an expert is a matter of discretion for the court. (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084.) In reviewing the court's order for abuse of discretion, "[t]he applicable standard of review is whether, under all the evidence viewed in a light most favorable to the juvenile court's action, the juvenile court could have reasonably refrained from ordering a bonding study." (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341.

Here, the juvenile court denied appellant's request for appointment of an expert because it did not believe such evidence would be necessary to resolve the issues before it. As the court explained, it is "common knowledge that a child who's lived with one parent for a number of years is going to have some negative impact if that child is separated from that parent." The evidence regarding the minor's contact with her sibling and with appellant did not suggest there were any questions about these relationships that a formal assessment might resolve. Furthermore, appellant did not make her request until more than a month after the jurisdictional hearing, at which the father's attorney informed the court that the father would be requesting placement. The juvenile court reasonably concluded under the circumstances that a formal assessment was not necessary for it to resolve the issues before it and would only serve to delay the proceedings. No abuse of discretion appears disclosed by this ruling.

The cases cited by appellant do not dictate a different conclusion. Although the appellate court in *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1018 noted that a sibling bonding study may be helpful and even indispensible in some cases, it held that in the case before it, the juvenile court could reasonably conclude that any bond that might exist would not outweigh the benefits to the children of adoption. In *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427, which addressed the significance of sibling bonds when evaluating whether to place children with a noncustodial parent, the appellate court held that the social worker's opinion as to the detriment that would be caused by separating the children was sufficient to support the juvenile court's ruling denying placement with the father. Although the appellate court noted that "evidence from a psychologist would undoubtedly be probative" on the issue, it did not require such evidence. (*Ibid.*, fn. 8.) Thus, neither of the cases relied on by appellant found that an evaluation concerning the sibling bond was required under the circumstances.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

SCOTLAND, P. J.

SIMS, J.