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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re LEAH B. et al., Persons Coming
Under the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

SAMUEL B.,

Defendant and Appellant.

A129155

(San Francisco County
Super. Ct. No. JD08-3153 A-E)

In a child dependency action, the court terminated family reunification services and placed children in long-term care following a review hearing in which the children's mother contested the placement. The children's father appeals. In the trial court, father agreed to the child welfare agency's recommendations for termination of services and child placement but, nevertheless, objected when the court precluded the father's trial counsel from examining witnesses at the hearing. The father renews that objection on appeal, and contends that the court barred his trial counsel from representing him in the review hearing, in deprivation of his right to counsel and due process. We reject the contention and affirm the order.

I. FACTS

Samuel B. (Father) and A.G. (Mother) are the parents of six children, five of whom are the subject of this appeal.¹ Father and Mother have a long history of child abuse and neglect spanning their children's lifetimes. The instant juvenile dependency petition was filed in June 2008. In October 2008, the children were adjudged dependents of the court upon the court finding that the parents had a relationship characterized by domestic violence, witnessed and repeated by the children; a female child reported being sexually abused by her half brother; the children reported that their parents used excessive physical discipline; Mother had mental health problems requiring therapy; Father had a possible drinking problem requiring assessment; Father physically abused his children from another relationship; and several children of one or both parties were former dependents of the court. (Welf. & Inst. Code, § 300, subds. (b), (j).)

Review hearings were held, culminating in the 18-month review hearing held in June and July 2010, which is the hearing at issue here. In advance of the hearing, the San Francisco Human Services Agency (Agency) filed status reports for the children. The Agency noted that Mother and Father had divorced in March 2010, and concluded in a lengthy assessment that neither was able to care for the children. The Agency recommended that family reunification services be terminated and that the children remain in long-term care.

On June 9, 2010, a review hearing for the two female children was commenced before Judge Mahoney. Mother contested the Agency's recommendation and the matter was set for a contested hearing the next day. Father's attorney said Father was "prepared to submit to the agency's recommendation for termination of services" but reserved his right to put on evidence concerning his request for continued visitation. Judge Mahoney ordered Father's reunification services as to the girls terminated. The judge told Father's attorney to discuss the evidentiary process for presenting his visitation request with the judge who would preside over the upcoming contested hearing.

¹ Father and Mother also have two children each from other relationships.

A contested hearing for all five children began on June 10, 2010 before Judge Chaitin. Mother was present at the hearing. Father was absent and said to be in a substance abuse rehabilitation program. The parents were represented by attorneys at the hearing, as were the Agency and children.²

Mother asserted that the children should be returned to her custody or, alternatively, that Mother receive additional reunification services. Father's attorney advised the court that Father had submitted to the Agency's recommendation to terminate services as to the two girls, and was now making the same submission for the three boys. The attorney reserved the right to present evidence concerning Father's visitation. The court accepted Father's submission and proceeded to hear testimony from witnesses.

The first witness was called and Father's attorney cross-examined her. During examination of the second witness, Judge Chaitin said to Father's attorney: "It's occurring to me why are you participating in this, because your client, as I understand it, has signed off on all of this; correct?"³ The attorney agreed that Father "has signed off" but said Father still had an interest in visitation after termination of services. The court asked the attorneys representing the Agency, the children, and Mother to state their positions on visitation, and obtained their agreement that Father could have visitation subject to certain conditions, such as drug testing. Father's attorney requested, and was granted, an opportunity to speak to Father by telephone over the lunch break to see if Father accepted the stipulated visitation.

Father's attorney returned to court and said: "I spoke with my client, your Honor, and we are happy to settle on termination of services and visitation. . . . [¶]My client, however, has instructed me or asked that I be allowed to continue to sit here during the duration of the trial." The following colloquy ensued.

² Minors' counsel has filed a respondents' brief on appeal supporting the trial court's order. The Agency did not file a brief.

³ The reporter's transcript is printed in all capital letters. We do not follow that format here.

“The Court: I’m not going to allow you to sit during the duration of the trial. If you’re submitting on everything, then you’re not contesting anything, what is the point of sitting through the trial? [¶] [Father’s attorney,] Mr. Goering: So that my client would have representation and have some understanding as to what is being testified about against him at this trial. [¶] The Court: Why does he need that if he is agreeing to it? [¶] Mr. Goering: Is the Court suggesting if he wants to know that, then I order a copy of the transcript? [¶] The Court: I don’t even understand why—if he is submitting to the report. Right? He’s submitting to the recommendation at this point? That’s my understanding. [¶] Mr. Goering: He is. [¶] The Court: And you’ve worked out his visitation, then what issues does he have left? I don’t see it, Mr. Goering. [¶] Mr. Goering: I don’t understand how submission somehow acts as an exclusion from my client having representation. He specifically stated, your Honor—[¶] The Court: He has no issue. That’s why. There’s no issue for him here. He is submitting to the recommendation of the [Agency]. What issue does he have? [¶] Mr. Goering: Well— [¶] The Court: I won’t throw you out [of] the courtroom if you want to stay here, but you’re not going to stay at counsel table because you’re no longer a party to this. [¶] Mr. Goering: `Okay. All right. Certainly, I can sit in the back of the courtroom. My client has specifically asked that I be in the courtroom. [¶] The Court: Well— [¶] Mr. Goering: I did not attempt to solicit that response. [¶] The Court: It doesn’t matter. You either contest this and you participate in this, or you don’t. If you on your own time want to sit in the courtroom, I won’t make you leave. But when a client submits, they don’t participate. [¶] Mr. Goering: Well, what I will do then, your Honor, is this: I will state my objection on the record because in conferring with other counsel on this, my understanding is that my submission does not somehow act as an exclusionary measure for my client having representation at this hearing. [¶] The Court: Well, if you could show me some authority on that, I will happily take a look at that. I don’t think that’s the state of the law at all. [¶] Mr. Goering: I don’t have it with me. [¶] The Court: When someone submits, what submission means is I submit. I have no

issue; so you tell me what you want to do. You've made your objection noted for the purpose of the record."

Attorney Goering raised the matter again later in the hearing. The attorney repeated the request that he be permitted to represent Father at the evidentiary hearing and explained that "my client has a specific interest in whether or not mother's reunification services are terminated or not in this hearing. Such an issue will have direct bearing on where his children end up being placed." The Court said: "Well, then he doesn't submit. Either you submit or you don't submit. If you submit, then you don't participate. If you don't submit, then you participate. It's a contradiction in terms, Mr. Goering. So I'm only relying upon what you told me, you were submitting. If you are submitting, you don't participate. I can't take any more time on this. Okay? You made your record. And that's it." Attorney Goering raised the matter a third time when the hearing was resumed the next day but the court said, "I'm not going to let you address the court again. You've addressed the court twice now on this issue. If you have anything else you want to say, you should put it in writing." Attorney Goering appears to have remained in the courtroom as an observer.

The review hearing concluded on July 9, 2010, after several days of testimony. The court noted that Father's submission to the Agency's recommendations had been taken. Upon the evidence presented, the court found a substantial danger to the children if they were returned home to their parents, found that reasonable reunification services had been provided, and terminated the parents' reunification services. The court ordered the girls placed in long-term foster care, and the boys placed with a maternal aunt. The court ordered visitation for Father, consistent with the prior stipulation. Father alone filed a notice of appeal.

II. DISCUSSION

Father contends that the court erred when it "barred" his trial counsel from representing him in the review hearing, in deprivation of his right to counsel and due process. The contention misconstrues the true nature of the court's actions. The court

never barred Attorney Goering from representing Father at the hearing. Attorney Goering represented Father and, with Father's apparent consent, submitted to the Agency's recommendations on termination of services, long-term care for the children, and post-termination visitation. At that juncture, there were no issues being disputed by Father, and thus nothing to advocate. It would be a waste of judicial resources to permit a party to cross-examine witnesses, present evidence, make arguments to the court, or otherwise participate in a hearing designed to determine the resolution of particular issues when the party has expressly agreed to the resolution of those issues.

Father argues that he agreed only to the termination of his own reunification services and continued to have a protectable interest in the preservation of Mother's reunification services and possible placement of the children with her, rather than in foster care. The argument is untenable even if we assume such an interest exists. Father submitted to *all* of the Agency's recommendations, without restriction. The Agency's recommendations were for termination of services to both parents, and placement of the children in long-term care. Father never indicated any wish to argue that the children should be placed with his ex-wife instead of foster care.

The discussions between counsel and the trial court, and the arguments presented by appellate counsel on appeal, reflect counsel's fundamental misunderstanding of the nature of a submission. In submitting to the Agency's recommendations, Father was agreeing that there were no disputed issues, and thus no triable issues. The court explained this to Father's trial counsel, Attorney Goering. Attorney Goering asked to participate in the examination of witnesses, saying "my client has a specific interest in whether or not mother's reunification services are terminated or not in this hearing. Such an issue will have direct bearing on where his children end up being placed." The Court explained to the attorney: "Well, then he doesn't submit. Either you submit or you don't submit. If you submit, then you don't participate. If you don't submit, then you participate. It's a contradiction in terms, Mr. Goering." Attorney Goering did not withdraw the submission but continued to press the contradiction—while agreeing to the Agency's recommendations, he still wanted an opportunity to challenge those

recommendations. The court acted properly in precluding such contradictory, and wasteful, practices.

III. DISPOSITION

The order is affirmed.

Sepulveda, J.

We concur:

Reardon, Acting P.J.

Rivera, J.