Filed 12/24/19 In re S.U. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.U. et al., Persons Coming Under the Juvenile Court Law.	B290922, B294285, B294289 (Los Angeles County Super. Ct. No. 17CCJP00090)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.U., Defendant and Appellant.	

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

Law Offices of Vincent W. Davis & Associates and Vincent W. Davis for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

M.U. (mother) appeals from the juvenile court's order denying her petition under Welfare and Institutions Code section 388 for reinstatement of reunifications services with one of her children.[1] We conclude the trial court did not abuse its discretion, and affirm the trial court's order.

BACKGROUND

On September 2, 2017, the Lakewood Sheriff Station took 15-year-old S.U., 14-year-old Daniela U., and 13-year-old Emma U. into protective custody after S.U. was caught shoplifting food to feed his siblings, with whom he had been living in a van since December 2016.[2] The four siblings shared the van with their adult sister and her boyfriend, who provided food for the siblings

---

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

[2] Mother and Glen U., father, had a total of six children together. In addition to S.U., Daniela, and Emma, mother and Glen also had two adult daughters, M.U., born in 1994, and Francesca U., born in 1999, and another minor son, M.U., born in 2009. Mother had a seventh child from a previous marriage, Christian U.; Christian died of complications from cystic fibrosis in 2003 at age 11.

with money from the boyfriend's job and the sister's college financial aid.

The children reported that mother ejected them from their home after one of their adult siblings, Francesca, brought candy to her younger siblings at their home in December 2016. Mother took the candy and escalated a confrontation with Francesca that involved mother pulling Francesca's hair and slapping her in the face, biting one of the younger siblings, and hitting father. After the fight, father, S.U., Daniela, Emma, and M.U. left and began living in father's van. After they left, mother found the van and took M.U. back home with her. Father continued living in the van with the remaining siblings until about three weeks before the children were taken into custody, when he returned home to live with mother and M.U.

After detaining S.U., Daniela, and Emma, deputies attempted to contact mother and father. Eventually, deputies went to the family home where they located mother, father, and eight-year-old M.U. in the back yard. After the parents refused the deputies access to M.U., a deputy climbed over the fence into the back yard and removed M.U. All four children were medically cleared and placed in foster care that evening.

During follow-up interviews with the children, deputies and the Los Angeles Department of Children and Family Services (DCFS) learned that mother and father had physically and verbally abused the children their entire lives.[3] The children said

---

[3] The family had four prior referrals to DCFS. Two, both in October 1997, involved Christian U., who, in addition to cystic fibrosis, had been diagnosed with failure to thrive. At age six, he weighed 20 pounds and was the size of a two-year-old. According to one of the physicians who treated Christian, mother was

that mother punched them in the face, kicked them, slapped them (in the face and in the back of the head with a large ring she wore), and hit them with objects like a broom handle, a seat belt, a wooden board (she hit one of the children so hard on the head that it made the girl "blind for a few minutes"), a stick, army boots (she reportedly knocked S.U. unconscious), and a two-foot-long piece of wood the parents called "The Enforcer." The children also reported mother biting them, pulling their hair, pouring hot coffee on S.U.'s chest, and throwing a glass pot at one of the children and a baby bouncer at another. Mother had also locked the children out of the home several times, at least once for seven hours, and once when it was raining and cold. Father also beat the children, many times at mother's urging, primarily with his hands and a belt. The children reported that the beatings were worse when the parents were drunk, and that the children "got hit on more days than not." One of the young girls reported that mother "used me as a punching bag after my older sisters left."

---

noncompliant with medical recommendations "for years. . . . [M]other would sign [Christian] out of the hospital against medical advice. This happened many times. They would go to different hospitals and do the same." The doctor stated: "This was the most extreme case of neglect I have ever seen and never in my career have I seen such a situation. They consistently refused care, disrupted [Christian's] care and interfered with his care." Parents did not visit Christian in the intensive care unit at the end of his life; the hospital sent a social worker to the family home to notify parents of Christian's death.

Two other referrals, one in November 2014 and one in February 2015, involved allegations of emotional and physical abuse of the oldest sisters—M.U. and Francesca U.—by both parents.

The children also reported violent altercations between the parents: "[T]hey always fight with each other. I've seen [mother] scratch him and once she cut his arm with a knife. I have seen him pull her hair and punch her too. I know that she broke his nose when he tried to save [adult sister M.U.] when [mother] was choking her when she was little."

Mother and father also prohibited the children from leaving the family home, having friends, or attending school (except for a few months in 2014). DCFS reported that "[a]ll of the children except Emma are struggling in school due to the lack of a proper educational foundation." Additionally, the children were all underweight, and the oldest boy, S.U. was diagnosed as failure to thrive.

On September 6, 2017, DCFS filed a petition under section 300 alleging the parents physically abused and neglected the four minor children. At a detention hearing on September 7, the juvenile court detained the children from both parents and granted the parents monitored visitation.

The juvenile court held the jurisdiction hearing on October 30, 2017. On October 16, DCFS had filed an amended section 300 petition, alleging jurisdiction over each of the four minor children under subdivisions (a), (b), (c), and (j) of section 300. At the jurisdiction hearing, the juvenile court found jurisdiction based on five counts under section 300, subdivision (a) and six counts under subdivision (b) based on each parent's abuse and failure to protect the children by abuse from the other parent, two counts under section 300, subdivision (b) based on mother's substance abuse, a July 2017 driving under the influence and open container arrest, and father's alcohol abuse and driving under the influence with the children in the vehicle, one count under

section 300, subdivision (c) for physical and emotional abuse by the parents, and seven counts under section 300, subdivision (j) for the parents' physical abuse and exclusion of the children from the family home. The juvenile court dismissed counts based on domestic abuse allegations. The court ordered no further visitation for the parents and set the matter for a contested disposition hearing.

Mother and father were uncooperative with DCFS's investigation. Additionally, at virtually every stage of the proceedings, each of the children shared their anxiety about contact with parents and expressed that they "fear reunification with them."

The juvenile court held a disposition hearing on February 28 and March 6, 2018. Mother and father both refused to testify at the disposition hearing. After hearing evidence, the juvenile court ordered the children removed from the parents and placed in the custody of DCFS. The court denied family reunification services under section 361.5, subdivision (b)(6).[4] At the

---

[4] Section 361.5, subdivision (b)(6) states: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following . . . [¶] . . . [¶] (6)(A) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. [¶] . . . [¶] . . . A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the

disposition hearing, the court concluded that family reunification services were not warranted and that parents had failed to demonstrate by clear and convincing evidence that reunification services would be in the children's best interests. The court found that both parents had inflicted severe physical harm or injury on the children and that the evidence the parents submitted was not sufficient for the court to discern "the level of meaningful engagement of the parents with respect to addressing" the issues that led to the children's detention. The court recounted examples of the abuse the children suffered at the parents' hands, the parents' education and training backgrounds (mother is a licensed attorney, father is a Navy veteran) that should have instructed their ability to care for their children, and the significant recovery the children faced. The court further noted that no evidence suggested that parents were "gaining meaningful insight into understanding the nature of the lengthy history of abuse and the severity of the abuse to these children, both emotional and physical." The court noted that "none of the children . . . want to reunify" and "[t]hey don't even want to visit with their parents at this time because of the lengthy history of abuse." The court left its no visitation order in place (because visitation "would be detrimental to these children, to their safety, protection, physical and emotional well-being") and set the matter for a permanency planning hearing. Parents filed notices of intent to file writ petitions; attorneys for both

---

child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage."

parents in that matter filed letters informing us (in No. B288763) that pursuant to *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, they were unable to file writ petitions on behalf of the parents.

On May 11, 2018, parents filed section 388 petitions requesting that the court order family reunification services, take the permanency planning hearings off calendar, and monitored visitation. The juvenile court held a hearing on June 15, 2015 to determine whether to grant parents a full evidentiary hearing on their section 388 petitions. The court concluded that parents had failed to make a prima facie showing of changed circumstances. "None of the information set forth in the 388 shows that these parents have gained any insight into the serious psychological and emotional harm they have caused their children," the court stated. "Neither parent has even stayed in contact with [DCFS] in order to submit themselves to random testing to ensure that they are not abusing substances, even though this court did sustain a count that they engaged in alcohol abuse. [¶] They've never even bothered to be a part of this case plan with [DCFS] and have made an effort to go at it on their own. [¶] When [DCFS] made an effort to communicate with them, they've just backed out, bowed out and not participated, and that is shown by the previously admitted adjudication disposition report and the parents' own conduct in this courtroom by walking out when they don't like the court's rulings. [¶] Neither parent is in communication with DCFS now." The court expounded at length on the petitions' failures to establish a prima facie showing of either changed circumstances or that the requested modifications would be in the children's best interests. Mother timely appealed from the trial court's order (No. B290922).

On August 27, 2018, the juvenile court held a permanency review hearing. At that hearing, mother requested that her brother be assessed as a placement for the youngest boy, M.U. The court denied mother's request.[5] M.U. had been placed in a foster home, and the court also appointed the foster caregivers co-holders of educational rights for M.U. Mother filed a timely notice of appeal from the juvenile court's August 27, 2018 orders (No. B294285).

The juvenile court conducted permanency planning hearings for the four children in October 2018. On October 12, 2018, the court appointed S.U.'s paternal cousin as his legal guardian and again ordered that parents would have no visitation. The hearing on termination of parental rights and permanency planning for the remaining three children was continued to October 23, 2018.

---

[5] The maternal uncle with whom mother sought to have M.U. placed misled DCFS about his criminal history, and had reportedly abused the two adult sisters while they were in his care. DCFS interviews revealed a concern that mother would have access to M.U. if he was in maternal uncle's care. For his part, M.U. told DCFS that "he did not want to talk about his uncle and stated he did not want to live with him." DCFS recommended that the child not be placed with maternal uncle. The juvenile court agreed: "I'm not ordering further placement for [M.U.] He's happy where he is and he specifically states that he does not want to be placed with his uncle. [¶] I'm not going to further traumatize this child. [¶] He's suffering from what I find to be severe emotional and psychological damage and it would only place him in a more risky position to evaluate this uncle when [M.U.] clearly states that he does not want to be placed with his uncle."

In spite of the juvenile court's no contact and no visitation orders that had been in place since the disposition hearing, on October 18 and 19, 2018, mother arrived unannounced at the children's schools. After she showed up at the older children's school, the children had to be escorted by security, and the children, who feared that mother was there to take them, had to be reassured by their therapist that mother could not take them. After mother showed up at the youngest child's school (and specifically sought out the child's classroom), the child had to start going to the school office after school to wait for his caregivers to pick him up.

On the morning of October 23, 2018—the date set for the permanency planning hearing for Daniela, Emma, and M.U.—mother filed a section 388 petition requesting the juvenile court to "reinstate family reunification services for my son [M.U.] and I." Neither the petition nor any supporting document mentioned either S.U., Daniela U., or Emma U.

Because of the timing of mother's filing—on the day of the permanency planning hearing for the three younger children—the juvenile court entertained all argument and evidence presented on the section 388 petition. In support of her petition, mother submitted evidence that she had "maintained a stable housing situation for over one year," had "completed 28 Domestic Violence class sessions[,] 12 Anger Management clases [*sic*][,] 10 parenting education classes[,] one parent in partnership meetings[,] 13 couple's [*sic*] counseling sessions and 20 individual counseling sessions at Alternative Options." Mother argued that her "housing will enable [her] to provide a permanent home for [M.U.]" and that "[c]ompletion of programs has given [her]

insight into [her] past shortcomings as a parent, and the ability to correct those shortcomings in the future."

The trial court denied mother's section 388 petition and conducted the scheduled permanency planning hearing. The court terminated parental rights as to Daniela, Emma, and M.U., and selected adoption as the children's permanent plans. Mother filed a timely notice of appeal (No. B294289).[6] On April 8, 2019, we consolidated mother's three appeals and ordered that all filings be made under No. B290922.

DISCUSSION

A. Mootness

Mother's opening brief challenged only the trial court's denial of her section 388 petition (for reunification services only with M.U.) filed on the same day the juvenile court conducted the section 366.26 permanency planning hearing for Daniela, Emma, and M.U., which implicates only appeal No. B294289. Because

---

[6] Mother's notice of appeal specifies only the trial court's order terminating parental rights and not the trial court's denial of mother's section 388 petition requesting reunification services for M.U. "By no means do we condone the practice of only citing the termination order in the notice of appeal if there was also an order denying the parent's section 388 petition made at or close to the termination hearing, which appellate counsel would likely raise as an appellate issue. Nor do we condone any omission on appellate counsel's part to carefully review the notice of appeal and promptly bring the issue to this court's attention. However, we are pragmatic. . . . [W]e will . . . liberally construe a parent's notice of appeal from an order terminating parental rights to encompass the denial of the parent's section 388[] petition provided the trial court issued its denial during the 60-day period prior to filing the parent's notice of appeal." (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450-1451.)

mother's brief requests relief only as to the section 388 petition seeking reunification services for M.U., there is no effective relief this court could provide mother in connection with the notices of appeal filed in connection with her first section 388 petition (No. B290922) or the juvenile court's August 27, 2018 orders regarding M.U.'s placement and educational rights (No. B294285). Accordingly, B290922 and B294285 are dismissed as moot.[7] (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1488-1489.)

B. Mother's Section 388 Petition for Reunification Services with M.U.

Mother's opening brief challenges the trial court's denial of a section 388 petition filed on the day of the children's permanency planning hearing seeking reunification services with only M.U. When it ruled on mother's section 388 petition, the trial court created a record of its reasons for denying the petition. The court stated: "So due to the lateness of the filing of this, I gave you a hearing and gave everyone an opportunity to argue. [¶] I'm denying the motion, both based on the JV 183 form, which states that prima facie showing that there has been a change in circumstances has not been met. [¶] But I'm also denying the motion and signing the JV 184 finding that in addition to the fact that the mother has failed to show a change of circumstances, she's also not shown the best interest of the minor is furthered by granting the motion.

---

[7] On October 25, 2019, DCFS filed a motion for partial dismissal of appeals related to S.U., Daniela, and Emma. DCFS's motion was based on the arguments in mother's opening brief, which relate only to M.U. To the extent we now dismiss appeals B290922 and B294285, DCFS's motion is denied as moot. We decline to grant the relief DCFS requests with regard to B294289 to the extent necessary to preserve mother's appellate rights.

"As aptly pointed out and argued by minor's counsel, which I'm not going to recite all the evidence that I found previously, as shown in the exhibits of DCFS, this case was all about severe physical abuse, tantamount to torture, and I even made a record of that when we heard the disposition hearing. [¶] This is why the mother was denied services and bypassed. This is why father was denied services and bypassed, under the appropriate provisions of [section] 361.5[, subdivision (b)].

"There's nothing in this motion that nearly shows to the this court that the circumstances have changed, including the fact that this parenting class and anger management would not be nearly enough for this court to grant the mother any [family reunification services] with any child, including [M.U.]

"And the court also has additional information in its possession that the mother has been acting in such a manner contrary to this court's order, by making an effort to see the children when a no-visitation and no-contact order was issued at disposition, by trying to go to their schools during the time the children are in school and being disruptive at that time.

"So it is clear to this court that the mother has not even been complying with the court's orders or she's been attempting to thwart those orders. And I do find that both the mother has failed to demonstrate circumstances have changed and she's failed to demonstrate it would be in the best interest of this minor for this to be granted."

"Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance . . . , petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . The petition . . . shall set forth in concise

language any change of circumstance . . . that is alleged to require the change of order . . . ." (§ 388, subd. (a)(1).)

" 'The petitioner requesting the modification under section 388 has the burden of proof.' [Citations.] With a few exceptions, the petitioner seeking modification must satisfy a preponderance of evidence standard [citations]." (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116.) "The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*).)

We review juvenile court orders on section 388 petitions for abuse of discretion. (*Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

"When a juvenile court bypasses reunification services due to a finding that a child suffered 'severe physical abuse' [citation], the focus of the dependency proceedings turns to the child's need for permanence and stability instead of family reunification. [Citation.] Once severe abuse has been found, a court is '*prohibited* from granting reunification services "unless it finds that, based on competent testimony, those services are likely to prevent reabuse . . . or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent." ' [Citations.] Stated another way, in the 'comparatively extreme situation[ ]' when a child is the victim of severe abuse, the legislative presumption is that services are

not to be provided to the parent. [Citation.] When this presumption applies, the evidentiary burden is heightened at any hearing to consider a section 388 petition requesting reunification services. In such a case, a juvenile court may modify an order denying reunification services only if there is clear and convincing evidence that the services would be in the child's best interests, and only if it makes the same findings that would have been required to offer services at the disposition hearing instead of bypassing services." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157-1158.)

Mother had severely abused and neglected every one of her seven children, including precipitating the death of one of them by actively preventing him from receiving medical care. For each of the children still under mother's care as of the date three (of the four) were found living in a van with an older sibling, mother had severely abused the children for as long as any of the children could remember. She beat them with her hands, kicked them, bit them, pulled their hair, and hit them with any object within reach. She knocked one of the children unconscious with a pair of army boots and hit another on the head with a board so hard that the child was "blind for a few minutes." Mother locked the children out of the home on more than one occasion, and they finally came to the attention of DCFS after they had been living in a van for eight months, even though parents owned multiple homes. All of the children were underweight and had to steal food to survive. The abuse was unrelenting and its effects were catastrophic. The juvenile court characterized the pervasive abuse of all of the children as "tantamount to torture."

At the least, the juvenile court could have reasonably expected mother to participate in court proceedings, to

communicate with DCFS, and to show some sign at some point of the process that she would cooperate with the court's plan for the children. Instead, mother absented herself from proceedings, ignored DCFS's attempts to work with her, and disobeyed court orders even *days* before she asked the court to conclude that circumstances had changed. The juvenile court could have reasonably concluded from mother's failure to cooperate or comply with court orders at any stage of the proceedings that circumstances had not sufficiently changed to warrant reunification services based on a motion filed on the same morning as the permanency hearing. The court could also have concluded that the services that mother engaged *outside* the dependency process were insufficient to prevent reabuse. Those services involved no communication between service providers and DCFS, and yielded no evidence that the services were either geared toward the issues that resulted in M.U.'s removal from the home or sufficient in their summary nature to effect the wholesale change that would have been required.

By the time of the permanency hearing in this matter, M.U.'s "interest in stability was the court's foremost concern, outweighing any interest mother may have in reunification." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.) Mother's evidence in support of her section 388 petition was insufficient to show either that circumstances had changed justifying reunification services or that M.U. would have benefited in any way from reunification services. We find no abuse of discretion.

DISPOSITION

The juvenile court's orders denying mother's section 388 petition and terminating parental rights as to Daniela, Emma, and M.U. are affirmed.

NOT TO BE PUBLISHED

CHANEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.