Filed 6/13/12 In re S.E. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.E. et al., Persons Coming Under the Juvenile Court Law.	B234616 (Los Angeles County Super. Ct. No. CK72459)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. AMBER O., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent.

Amber O., mother of Sh. E. and Sk. E., appeals from the order of May 11, 2011, denying her petition under Welfare and Institutions Code section 388.[1] Mother contends the dependency court abused its discretion. We affirm.

STATEMENT OF FACTS AND PROCEDURE

On March 31, 2008, Sh., born in 2005, and Sk., a newborn born to mother and Shaun E. (father),[2] were detained from parental custody, and a section 300 petition was filed, because Sk. was born with amphetamine in her system.[3]

Mother had an unresolved history of substance abuse and was a current substance abuser. She had a history of neglecting Sh. In 2006, mother received family preservation services for one year under a voluntary family maintenance plan, which ended in August 2007. Father had a history of inflicting domestic violence on mother and an extensive criminal history.

The drug abuse and domestic violence continued after the children were detained. Father hit mother on the head with a baseball bat during an argument.

On October 2, 2008, the children were declared dependents of the court based on sustained allegations, as to mother, under section 300, subdivision (b).[4] Custody was taken from parents. Reunification services were ordered, and mother was ordered to participate in programs of drug rehabilitation, parent education, and individual counseling

---

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

2 Shaun is the children's presumed father.

3 The children were placed in the foster home of Crystal W. in May 2008.

4 Section 300, subdivision (b) describes in pertinent part a child who has suffered, or is a substantial risk of suffering, "serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . . substance abuse."

to address case issues, including domestic violence. Mother was granted monitored visitation three times a week. She continued abusing drugs.

The children thrived in their foster home and were bonded with the caregiver. Mother did not comply with the dependency court's reunification services orders. She was agitated and seemed disengaged during visits, and she argued with other adults in front of the children. Mother inappropriately told Sh. about parents' domestic violence and why father was in prison.

Mother gave birth to a third child, R., in October 2009. The Department of Children and Family Services provided mother with voluntary family maintenance services to safely maintain R. in the home.

Mother failed to reunify with the children, and on November 5, 2009, reunification services were terminated. Mother had made "minimal progress" in rehabilitation. The dependency court granted mother unmonitored visitation with the children on condition she complied with voluntary maintenance services and with drug testing.

Father was released from prison in December 2009. He was arrested in February 2010 for assaulting mother during an extended, escalating argument in the home. He received a sentence of seven years in prison. When father's reunification services were terminated on May 10, 2010, a section 366.26 hearing was set to determine a permanent plan for the children.

The children were bonded with their caretakers in whose home they thrived. The caretakers desired to adopt the children and were approved to adopt. The caretakers had "come to love and cherish the children as if they were their own. They want[ed] to provide permanency to the children and legally make them a part of the family." The children "have been in their out-of-home placement consistently since [May 6, 2008]. During that time frame, the prospective adoptive parents have developed a strong parent-child relationship with the [children]. The relationship is mutual as [the children] appear to have an appropriate bond with the caregivers as well." "The prospective adoptive parents have demonstrated their ability to meet the needs of the children for the past two years. They ensure that the [children] are current with all medical and dental

appointments and have enrolled them in school. The prospective adoptive parents have [provided] and continue to provide for [the children's] basic needs as well as providing a safe, nurturing and loving home environment for the children." Sh. excelled in school.

Mother was unable to establish herself in her own home. She dropped out of vocational school and was unemployed. Her contact with the children was sporadic. During visits, she was disengaged, and the role of nurturing and supervising the children was filled by maternal grandmother.

On December 7, 2010, mother filed a petition under section 388. She asked the dependency court to vacate the November 5, 2009 order terminating reunification services and continuing the suitable placement order, and to order the children placed in home-of-mother or reinstate reunification services. She alleged circumstances had changed in that she completed a rehabilitation program on October 11, 2010. She was now caring for R. without Department supervision. She alleged the change of order would be better for the children, because the children were extremely attached to her, maternal relatives, and R. The court set the petition for a hearing.

Mother gave birth to another baby, A., in February 2011. On February 15, 2011, she tested positive for morphine[5] and missed tests on three occasions in March and April 2011 because she failed to give the testing laboratory her new telephone number. Mother and her children R. and A. resided in maternal grandmother's home, which was overcrowded, cluttered, and unclean. On April 11, 2011, mother went out, leaving R. and A. in maternal grandmother's care, stating she would be home soon. Instead, she was absent for six days, without advising maternal grandmother how long she would be gone or where she could be reached. She failed to arrange a weekend visit in her home which had been granted by the dependency court. She did not answer her cell phone or communicate with maternal grandmother, who became frantic with concern. This was the second time maternal grandmother had to file a missing person report on mother. Upon her return, mother refused to take an on-demand drug test.

---

5 Mother had been prescribed Tylenol with codeine.

The children had an overnight weekend visit in mother's home on April 30, 2011. Sh. did not want to go, because she did not want to leave her foster mother, "Mommy Crystal." She stated she wanted to live with her foster mother. The prospect of the overnight visit made Sh. sad. Sk. returned to her foster home after the visit with a very soiled diaper, and she stopped verbalizing when she needed to use the toilet. Mother failed to attend, call, or cancel the next weekend's visit.

After a hearing on May 11, 2011, the dependency court denied the section 388 petition on the ground the children's best interest would not be promoted by the proposed change of order. The court found mother showed circumstances had changed. However, "[w]hat concerns me is . . . that Sk. came back from a visit with mom after an overnight with a very dirty diaper and . . . she stopped being potty trained for a day or two, and she didn't use her words for a day, and . . . mother didn't visit the next week. And also what concerns me is that Sh. didn't want to leave Mommy Crystal. . . . the caretaker[.] [¶] [T]hese children have been in a very stable home. [¶] . . . [¶] . . . [W]hat I think is really happening [is maternal grandmother is] raising the [two younger siblings]."

DISCUSSION

Abuse of Discretion

Mother contends denial of the section 388 petition was an abuse of discretion, because substantial evidence supports a finding that granting the petition was in the children's best interest. We disagree with the contention.

Under section 388,[6] the dependency court should modify an order if circumstances

---

[6] Section 388 provides in pertinent part that a parent "(a) . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] (d) If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ."

have changed such that the modification would be in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) "Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established." *(In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) "'"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."' [Citations.]" *(In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Abuse of discretion is established if the determination is not supported by substantial evidence. *(Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 796.) In determining whether substantial evidence supports the factual findings, "all intendments are in favor of the judgment and [we] must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court." *(Crogan v. Metz* (1956) 47 Cal.2d 398, 403-404.) The party requesting the change of order has the burden of proof. (Cal. Rules of Court, rule 5.570(h)(1); *In re Michael B., supra,* at p. 1703.)

For a parent "to revive the reunification issue," the parent must prove under section 388 that circumstances have changed such that reunification is in the child's best interest. *(In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) Once it has been determined that reunification services should not be provided to a parent or should be terminated, the focus shifts to the child's need for permanency and stability. (*Id.* at p. 309.) "[O]ur Supreme Court made it very clear in [*In re Jasmon O.* (1994) 8 Cal.4th 398, 408, 414-422] that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion." *(In re Kimberly F., supra,* 56 Cal.App.4th at p. 531.) Moreover, time is of the essence, especially to young children; when it comes to securing a stable, permanent home for children, prolonged uncertainty is not in their best interest. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674 ["'There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the

care of his parents or foster parents, especially when such uncertainty is prolonged.' [Citation.]"]; see § 361.5, subd. (a)(1)(B) [with certain exceptions, parents of children under the age of three years when detained have six months to reunify].) "Childhood does not wait for the parent to become adequate." *(In re Marilyn H., supra,* 5 Cal.4th at p. 310.)

There is evidence that, in the year leading up to the hearing, and within only months of completing a voluntary family maintenance program for R. in late 2010, mother took morphine for pain and went missing from the home for six days without a plan for R.'s and A.'s care and safety. Similarly, within seven months of completing her 2007 voluntary maintenance program, mother was back to abusing drugs and participating in domestic violence. There is evidence maternal grandmother played a significant role in supervising and nurturing R. and A. at home and Sh. and Sk. during mother's visits. Maternal grandmother provided the necessities not only for R. and A., but also for mother. With no vocational skills, job, or housing, mother was not able to stand on her own or provide a home for the children. At the same time, the children lived in a stable, safe, and nurturing foster home that provided for all their needs. During the three years they had been in the foster home, they developed a strong, mutual parent-child relationship and loving bond with the foster parents, who wanted to adopt them. Sh. verbally stated she wanted to live there. She did not want to have a one-night overnight visit with mother. Sk. indicated distress from spending a night away from the foster home by regressing in her toilet training and speech. Ordering further reunification services to mother would delay permanency for the children and prolong the uncertainty of their status and placement beyond the three years they had already endured. The foregoing is substantial evidence that neither reunification nor reunification services were in the children's best interest.

Mother argues the facts R. and A. were in her custody and she had unmonitored visits with Sh. and Sk. show she could provide a good home for the children. We will not reweigh the evidence. (See, e.g., *Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465 ["When considering a claim of insufficient evidence on appeal, we do not

reweigh the evidence**,** but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment."].) Moreover, these facts do not, as a matter of law, require the dependency court to find the change of order is in the children's best interest. (See § 388.) The conclusion reached by the dependency court denying the section 388 petition is amply supported by substantial evidence and, accordingly, not an abuse of discretion.

DISPOSITION

The order is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.