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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.S., a Person Coming Under the
Juvenile Court Law.

B234692
(Los Angeles County Super. Ct.
No. CK43789)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CATRINA W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jacquie Lewis, Juvenile Court Referee. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Catrina W., mother of K.S., appeals from the order of July 8, 2011, denying her petition under Welfare and Institutions Code section 388¹ for six months of reunification services. Mother contends the orders denying the petition and terminating her visitation with K. were an abuse of discretion. We affirm.

STATEMENT OF FACTS AND PROCEDURE

K. was born in May 2010 to mother and J.S., who did not live together, with the drug phencyclidine (PCP) in his system and drug withdrawal symptoms.² Mother abused PCP and alcohol during the pregnancy and had a 12-year history of substance abuse. She also abused PCP during the pregnancy with her son Z., nine years earlier. Two of mother's three older children received permanent placement services due to her substance abuse, which she was unable to resolve despite being offered remedial services.³ She never completed a rehabilitation program.

K. was detained at birth by the Department of Children and Family Services (Department), and a section 300 petition was filed. K. was placed in a foster home.

On July 15, 2010, K. was declared a dependent of the court, based on sustained allegations as to mother, under section 300, subdivision (b).⁴ Custody was taken from

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

² He suffered many complications due to his prenatal exposure to PCP and alcohol, including inability to feed properly, agitation, crying, frequent body tremors, and low birth weight (four pounds), despite being born at full term. His pediatric nurse stated, "[h]e is experiencing horrible withdrawal, and this is one of the worst cases I have ever treated." The hospital social worker stated, "[t]his is the worst case of withdrawal I have ever seen at this hospital."

³ All three older children resided with maternal grandmother under legal guardianship.

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

mother. Pursuant to section 361.5, subdivisions (b)(10) (failure to reunify with sibling and no reasonable effort to remediate the problem that led to sibling's removal) and (b)(13) (history of chronic drug use and resisted treatment during three years prior to filing of petition), no reunification services were ordered. Mother was granted monitored visitation. The matter was continued for a permanent plan hearing under section 366.26.

Diagnosed with failure to thrive, K. needed frequent medical services for conditions arising from prenatal drug and alcohol exposure. He received services from the regional center.⁵

In late September 2010, mother enrolled in an outpatient/day treatment program. She used PCP in September and October 2010.

Mother frequently complained about K.'s foster placement and visitation. These complaints disrupted K.'s foster placement. The disturbance caused by mother's unfounded allegation K.'s foster home was unsafe caused the foster mother to have K. removed, depriving him of a potential adoptive home. K. was replaced in another foster home in October 2010. Mother complained the new foster mother neglected K. and continued complaining about visitation.

Permanency for K. was delayed, because the dependency court found J.S. to be the presumed father and granted him reunification services. Mother tried to interfere with J.S.'s efforts to reunify with K.

K. was placed in the home of maternal cousin Tracie W. in January 2011; mother tried to cause the placement to fail by making unfounded allegations and complaints. After her twice weekly visits, mother lodged unfounded complaints that Tracie was abusing and neglecting K. She complained to the monitor, social workers, child abuse

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."

⁵ Regional centers assist persons with developmental disabilities and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (§ 4640.7, subd. (a).)

hotline,⁶ board of supervisors, and dependency court. Every allegation was thoroughly investigated, resulting in disturbance to K., his foster mother, and the foster household. Home visits by social workers and the police were made at all hours of the day and night. K. was awakened from sleep and required to undergo medical examinations. All the complaints were meritless.

On March 28, 2011, mother filed a section 388 petition asking the dependency court to vacate the July 15, 2010 order of no reunification services and to order that mother be offered six months of reunification services. Mother attached evidence that she had been participating in a drug treatment program since September 2010 and testing clean since October 2010. She alleged it would be in K.'s best interest to have a chance to reunify with him, because she was actively addressing her addiction and consistently visiting. The court set the petition for a hearing.

K. continued to receive services from the regional center addressing his delays. Although displaying many special needs from his prenatal exposure to PCP and alcohol, K. thrived in Tracie's care, due to Tracie's consistent attention to his needs and dedication to his welfare.⁷

Mother had been testing clean since her dirty test in October 2010. This was the longest period of sobriety she had experienced in 12 years. Despite attendance for nine months in a drug treatment program and attendance for 12 months in Alcoholics Anonymous and Cocaine Anonymous, which are 12-step programs, mother had not started working on the steps and did not know what the first step was. Maternal grandmother monitored mother's visits with mother's three older children, and mother did not try to regain custody of them.

⁶ From February 23, 2011, to July 6, 2011, mother called the child abuse hotline on Tracie 11 times around the dates of visits.

⁷ Mother, too, displayed effects of PCP use. She had difficulty concentrating and thinking, anxiety, agitation, paranoid thoughts, intense feelings of alienation, depression, and bizarre or hostile behavior.

Mother's constant child abuse referrals alleging neglect that she allegedly observed during visits eventually caused such stress that the Department recommended mother's visits be terminated.⁸ Tracie wanted to adopt K. and, based on an adoption assessment, the Department recommended adoption as the permanent plan for K.

After a hearing, the dependency court denied mother's petition on July 8, 2011, terminated visitation, and continued the matter to a future date for an 18-month review hearing for father. The court found the child's best interests would not be promoted by the requested change of order. The court stated: "The court cannot find there's been a substantial change of circumstances. Mother is in a very short period of sobriety, is matched by other periods of sobriety through the mother's drug history. So while circumstances may -- and I indicate may be changing -- they have not done so yet. [¶] In addition to that, not only does the court not find that offering mother reunification services would be in the child's best interest, the court finds it would be detrimental to K. to be offered services at this point." Concluding that mother's numerous referrals were harassment and caused distress to K. and Tracie, the court made a finding that "continued contact with the mother is detrimental to the child's physical well-being."

DISCUSSION

Abuse of Discretion

A. Denial of the Section 388 Petition Was Not an Abuse of Discretion

Mother contends denial of her section 388 petition was an abuse of discretion. We conclude the dependency court did not abuse its discretion.

⁸ Moreover, mother's recurring allegations prevented the Department from permitting visits to be unmonitored, as a monitor's presence was needed to ensure that abuse or neglect was not an issue "and that mother in an act of desperation does not create the illusion of such abuse and/or neglect."

Under section 388,⁹ the dependency court should modify an order if circumstances 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.” (*Croghan 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

⁹ Section 388 provides in pertinent part that a parent “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 [¶] . . . [¶] 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”

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*, at p. 310.)

When the dependency court denied reunification services to mother in July 2010, mother was suffering from an 11-year addiction to PCP with periods of sobriety, including giving birth to two drug-addicted babies, had failed to succeed in any rehabilitation program offered to her, and had lost custody of her three older children and failed to regain custody of any of them. A year later, when the section 388 petition was heard, mother was sober for nine months, was in two 12-step programs but had not begun working on the steps, had not completed any drug rehabilitation program, and had not regained custody of any of her older children. Her visits with K. remained monitored. This is substantial evidence supporting the dependency court’s finding on the first prong of section 388 that circumstances had not changed.

There is evidence that, during the year leading up to the hearing, mother continued to suffer from serious, negative mental and behavioral effects of her long-term drug use, such as paranoid thoughts and hostile behavior, which interfered with her ability to act in K.’s best interest. Her relentless, unfounded assaults on K.’s placements harmed K. and undermined his stability in placement, as her child abuse referrals required K. to undergo unnecessary medical examinations and investigators to go to the foster homes at all hours of the day or night. She caused an earlier potential adoptive placement to fail, and her innumerable complaints placed great stress on the current caretaker who wanted to adopt K. The current caretaker was providing this very young, special needs child the

supervision and services he needed to ameliorate the deficits caused by the drugs and alcohol mother exposed him to prenatally. K. thrived in the home, where he had lived for seven months and which was his third foster home. Providing reunification services to mother would delay permanency and stability for K. This is substantial evidence supporting the finding concerning the second prong that not only would it not be in the child's best interest to offer mother reunification services, but offering services would be detrimental to K. The dependency court did not abuse its discretion in denying mother's section 388 petition.

B. Termination of Visitation Was Not an Abuse of Discretion

Mother contends the dependency court abused its discretion in ordering visitation terminated. We disagree.

If reunification services were not ordered under section 361.5, subdivision (b)(10) or (b)(13), among other subdivisions, the dependency court "may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child." (§ 361.5, subd. (f).) Orders concerning visitation are reviewed for abuse of discretion. (See, e.g., *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

The finding that continued visitation would be detrimental to the child is supported by substantial evidence of mother's ongoing campaign to disrupt K.'s life and stable placement in his foster home by making false accusations of neglect. The order terminating visits was not an abuse of discretion.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.