Filed 9/26/13 In re Nathan V. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re NATHAN V., a Person Coming Under the Juvenile Court Law.	B242131 (Los Angeles County Super. Ct. No. CK90071)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A. C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

The juvenile court declared six-year old Nathan V. a dependent of the court based upon sustained allegations against his mother A. C. (Mother). (§ 300.)[1] The court placed Nathan with his father Neil V. (Father) who was non-offending. At the dispositional hearing, the juvenile court gave Father sole physical custody of Nathan and terminated jurisdiction. In this appeal, Mother contests the trial court's decision to terminate jurisdiction and suggests that the court abused its discretion in declining to order reunification services for her. We are not persuaded by any of Mother's arguments and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Mother and Father were married on July 6, 2004. Nathan was born in December 2004. Mother and Father lived together and raised Nathan until they separated on February 14, 2010 when Father moved out after Mother threw an object at him, cutting him below the eye. Mother and Father divorced later that year. The family law court granted them joint physical custody of Nathan. Their dissolution proceeding is "an open case" with the family law court.

Mother subsequently married Alfred A. (Stepfather). Nathan continued to reside with Mother and Stepfather but, pursuant to court order, saw Father during the week and every other weekend.

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

[2] Mother filed a motion to augment the record on appeal with the record from a previous case, *In re Nathan V.* (Jan. 24, 2013) B239786. The motion is granted. Our statement of facts is taken from both records.

On August 25, 2011, Department[3] received a report of domestic violence between Mother and Stepfather. The police arrested Stepfather because he had tried to choke Mother while under the influence of alcohol.

On September 2, 2011, Father, who is a Long Beach Police Officer, notified Department that he was concerned about Nathan's safety because Mother had been violent during their marriage. He stated that he intended to obtain full custody of Nathan through the family law court.

Following a detention hearing conducted on September 26, 2011, Department removed Nathan from Mother's custody and placed him with Father.

On September 26, 2011, Department filed a section 300 petition.

On October 24, 2011, Father filed an application for a restraining order against Mother, seeking protection for himself, his fiancée, and Nathan. The trial court issued a temporary restraining order based upon Department's jurisdiction/disposition report. (§ 213.5.)

At the November 7, 2011 adjudication hearing, Mother pled no contest to three counts in an amended section 300, subdivision (b) "failure to protect" petition.[4] Based upon these sustained allegations, the juvenile court found Nathan

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[3] The Los Angeles County Department of Children and Family Services.

[4] The first count averred that Mother and Stepfather engaged in violent altercations in Nathan's presence; that Mother did not protect Nathan because she allowed Stepfather to reside in the home with knowledge of his violent conduct; and that Mother's inability to protect Nathan from Stepfather's violent conduct put Nathan at risk of harm. The second count averred that while married to Father, Mother had engaged in violent altercations with Father in Nathan's presence which had endangered Nathan. The third count averred that Mother had established a detrimental home environment for Nathan because she knew, or should have known, that Stepfather was under the influence of alcohol in Nathan's presence; and that Mother's failure to protect Nathan from Stepfather's conduct placed Nathan at risk.

to be a person described by section 300. Father continued to have custody of Nathan.

On February 14, 2012, the juvenile court conducted a hearing on Father's request that a permanent restraining order be issued against Mother. After taking evidence, including testimony from Father, the court granted a one-year restraining order.[5] The court ruled that Mother could have monitored visits with Nathan who continued to live with Father.

On March 1, 2012, the court conducted a dispositional hearing. Department recommended that the trial court retain jurisdiction over the dependency matter. Department's attorney conceded that it had no "case plan for" Father because he is "non-offending," "there's no programs that the Department is asking [him] to do." Nonetheless, Department, recognizing the "conflict between" Father and Mother, asked for a court order that Father and Mother "participate . . . in the Parents Beyond Conflict program"[6] in order for Mother "to normalize her visitation" with Nathan "so that she can get to unmonitored visits and possibly some sort of joint custody arrangement by the end of it." Both Mother and Nathan's counsel joined in this request.

In contrast, Father's counsel argued:

> "The Father's position is that Nathan's case came to the court because of a safety concern resulting from an incident regarding Mother and [Stepfather]. And that the Department made the decision to have Nathan remain in the custody of his Father. And since that

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[5] Mother appealed from the grant of the restraining order. We affirmed that order in *In re Nathan V., supra*, B239786.

[6] Mother's brief states that the Parents Beyond Conflict program "is a multi-week series of classes offered by the juvenile court, at no cost, to help parents who have difficulty communicating and cooperating [to] learn to co-parent their children."

decision was made, Nathan has continued to remain safe in the care of his Father, which is the goal of dependency.

"Where there are two custodial parents at the start and custody is removed from one but remains with the other, [decisional law has] determined that the goals have been met with regards to child safety. The child is with the parent with whom he remains and is safe.

"And so pursuant to [*In re Pedro Z.* (2010) 190 Cal.App.4th 12] in circumstances like this, the parent from whom custody was removed is not entitled to reunification services.

"So the question remains whether or not the circumstances between the parent who continues to have custody and his ability or her ability to maintain a safe and appropriate home for the child is such that it brings the court to have concerns about whether or not the parent who's in custody of the child can maintain that child in his custody.

"And based on the Department's evidence, it's the Father's position that there is no information provided by the Department that the Father is unable to maintain the child in his custody. The case came to the Department's attention because of some behaviors that occurred by the Mother and not by the Father.

"The Father has not been identified as doing anything to put [Nathan] in jeopardy of his physical safety in terms of his health, his medical needs. There is tension between these parents, that is clear. There is another venue for parents to resolve issues regarding visitation and that's the family law court.

"This court is solely designed to protect children from physical safety risks and under these circumstances, the Father is asking that the court find that Nathan is safe in the care of him, that there is no need for him to have any services, to maintain Nathan in his care, and that the conflict that exists between the Mother and the Father be appropriately resolved in another venue, the family law court from where they have been before."

The trial court found, by clear and convincing evidence, that "there's a substantial danger if [Nathan was] returned to [Mother's] home [in regard to his] physical health, safety, protection, or emotional well-being . . . and there are no reasonable means by which [his] physical health can be protected without removing [him] from [Mother's] custody in this case." The court continued: "With regards . . . to jt-ing [*sic*] [Father] in this case, the court does find that [Nathan] has been in a safe environment in this case, that [Father] has been doing a good job in taking care of Nathan. . . . [¶] *Based on that fact, the court finds that supervision is no longer necessary in this case [and] is going to terminate jurisdiction as to Nathan*." (Italics added.) The court gave Father sole physical custody of Nathan and declined to order Father to participate in the Parents Beyond Conflict program. Over Father's objection, the court granted joint legal custody of Nathan to Father and Mother. Mother was granted visitation with Nathan pursuant to the terms of an order from the family law court.

This appeal by Mother follows.[7]

DISCUSSION

"We begin our analysis with a brief overview of the statutory scheme. Once a section 300 petition is filed, the [juvenile] court first determines whether a child is a person described by section 300. If the court finds the child is such a person, it takes jurisdiction over the child. (§ 300.) The court then considers whether the

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[7] In a letter to this court, Department explained that because it "recommended that mother receive reunification services and the juvenile court retain jurisdiction, it does not oppose mother's appeal and will not be filing a respondent's brief. [It] also suggests that father is the appropriate respondent in this appeal." Department served its letter on, among others, Father's attorney. Thereafter, we sent Father's attorney notice that if she did not file a brief within 30 days, the appeal would be decided upon the record and brief submitted by Mother. Father's attorney failed to respond.

child should be declared a dependent. (§§ 358, subd. (a), 360.) If the child is declared a dependent, the court considers whether he or she will be at substantial risk of harm if left in the custody of the parent. (§ 361.) If there is a substantial risk of harm, the court removes the child from parental custody. (§ 361, subd. (c)(1).)" (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1129.)

If, as in this case, the trial court has made all of the orders described in the preceding paragraph, section 361.2, subdivision (a) comes into play. It 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."[8]

If the trial court decides to place the child with the non-custodial parent,[9] subdivision (b) of section 361.2 gives the court three options. Two of those options are relevant to this case. The first, set forth in subdivision (b)(1), is the one that the trial court selected. It provides: "Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation

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[8] "The noncustodial 'parent [see fn. 9, *infra*] has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent's choices will be "detrimental to the safety, protection, or physical or emotional well-being of the child." [Citations.]'" (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1243.)

[9] Although decisional law has "used the phrase 'noncustodial parent' to refer to a parent described by section 361.2, subdivision (a)" (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55, fn. 6, and cases cited therein), that description is a misnomer in this case since the family law court had granted Father joint custody of Nathan before Department filed its section 300 petition.

by the noncustodial parent. The court shall then terminate its jurisdiction over the child." (§ 361.2, subd. (b)(1).) The second option, which the trial court did not select, is set forth in subdivision (b)(3). It provides: "Order that the parent assume custody subject to the supervision of the juvenile court. *In that case* the court may order that reunification services be provided to the parent . . . from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody . . . , or that services be provided to both parents." (§ 361.2, subd. (b)(3), italics added.)

Mother first contends that the juvenile court abused its discretion when it decided to terminate jurisdiction. "When deciding whether to terminate jurisdiction, the court must determine whether there is a need for continued supervision." (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451; accord: *In re Austin P., supra,* 118 Cal.App.4th at pp. 1134-1135.) "The discretion afforded the juvenile court in this area appears very broad." (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1496, disapproved on another ground in *In re Chantal S.* (1996) 13 Cal.4th 196, 204.)

In this case, Mother does not challenge the material facts relevant to the trial court's decision to terminate jurisdiction. Father was non-offending. Father provided a "safe environment" for Nathan and had done "a good job in taking care of Nathan." Father had done nothing to suggest that he posed any risk to Nathan. Nathan, having been removed from Mother's custody and having been placed in Father's custody, was no longer at risk. He therefore did not need the protection of the juvenile court. On this record, the juvenile court did not abuse its discretion when it terminated jurisdiction, finding, as required by decisional law, "that supervision is no longer necessary." "This is so because the focus of dependency proceedings 'is to reunify the child with *a parent*, when safe to do so for the child. [Citations.]' The goal of dependency proceedings—to reunify a child with at least

one parent—has been met when, at disposition a child is placed with a former [non]custodial parent." (*In re Pedro Z., supra,* 190 Cal.App.4th at p. 20.)

To avoid this conclusion, Mother argues that the juvenile "court should have maintained jurisdiction to monitor the relationship between the parents and to ensure that Nathan had his visitation with Mother [because] there was evidence of a continuing conflict between the adults in the case." This argument misses the mark. "[I]f parents' poor communication skills and distrust established a need for its continued supervision, the juvenile court could assume or continue jurisdiction in virtually every family law case involving custody or visitation issues. It would appear the family law court was better suited to handling the issues relating to visitation. This is part and parcel of the family law court's role." (*In re Sarah M., supra*, 233 Cal.App.3d at p. 1500.)

Mother next contends that the juvenile court erred in denying her request for reunification services. She argues: "By denying mother reunification services, the [trial] court, in effect, gave Father the upper hand in determining mother's eventual ability to reunify with Nathan and pretty much guaranteed she would have to seek recourse in the family court, which would not serve the best interests of Nathan." The implicit premise of this argument—that the trial court had the discretion to order reunification services—is incorrect. "[U]nder section 361.2, the court has several choices. It may provide services to the previously custodial parent, to the parent who is assuming custody, to both parents, *or it may instead bypass the provision of services and terminate jurisdiction.* (§ 361.2, subd. (b)(1), (3).)" (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651, italics added.)

As explained above, the juvenile court selected the option of terminating jurisdiction, an option which precluded it from ordering any reunification services. (See *In re Pedro Z., supra,* 190 Cal.App.4th at pp. 19-21; *In re Janee W., supra,* 140 Cal.App.4th at pp. 1453-1455; and *In re Austin P., supra,* 118 Cal.App.4th at

pp. 1134-1135.) Consequently, Mother misframes the issue when she argues that the trial court abused its discretion by not providing her with reunification services. Simply stated, the court lacked the authority to do so. Mother's argument is, in fact, nothing more than a sub silentio attack on the trial court's decision to terminate jurisdiction. But, as previously discussed, that decision was not an abuse of discretion. No more need be said.

DISPOSITION

The order appealed from is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.