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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re K. D. et al., Persons Coming Under
the Juvenile Court Law.

B246303

(Los Angeles County
Super. Ct. No. CK88823)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RHONDA H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry Truong, Referee. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Denise M. Hippach, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

This is a juvenile dependency case involving Rhonda H. (mother) and her two children, K. D. and Joyce D. After the juvenile court entered orders terminating mother's reunification services and scheduling a Welfare and Institutions Code section 366.26¹ hearing regarding K., mother filed a petition requesting a reversal of those orders pursuant to section 388. On December 17, 2012, the trial court entered an order denying mother's section 388 petition and terminating her parental rights to K. Mother appeals that order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Detention of K. and the Original Petition Regarding K.*

On July 6, 2011, mother engaged in an altercation with her former boyfriend, Jeremy D. and another adult. At one point, mother brandished a knife and threatened to kill Jeremy and the other adult. K. was present during the altercation. He was a little less than two years old at the time. Mother was arrested by the police, charged with committing assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), and incarcerated in jail. K. was detained by respondent Los Angeles County Department of Children and Family Services (the Department).

On July 11, 2011, the Department filed a juvenile dependency petition regarding K. The petition alleged that the juvenile court had jurisdiction over K. under section 300, subdivisions (a) and (b). It was based on mother's conduct during the July 6, 2011, altercation. There were no allegations in the petition against K.'s alleged father, who is not a party to this appeal.

On the same day the petition was filed, the juvenile court found that there was a prima facie case for detaining K. The court also ordered the Department to provide mother with family reunification services.

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

2. *First Amended Petition*

Sometime in July or August 2011, K. was placed in the care of Joyce H., his maternal great grandmother (great grandmother). On September 28, 2011, mother and great grandmother had a physical altercation in K.'s presence. Mother then removed K. from great grandmother's physical custody. On the next day mother was contacted by a Department social worker. Mother admitted that she was using crack cocaine and marijuana. Subsequently mother was arrested for child abduction.

On October 7, 2011, the Department filed a first amended petition regarding K. The amended petition added allegations regarding mother's violent altercation with great grandmother, her abduction of K. and her use of illegal drugs.

3. *Original Petition Regarding Joyce*

On October 29, 2011, mother gave birth to Joyce D. Mother had not received prenatal care and the child was born prematurely after a 32 week gestation period. Joyce tested positive for having cocaine in her system. The Department detained Joyce and released her to the custody of mother's former boyfriend and Joyce's presumed father, Jeremy.

On November 4, 2011, the Department filed a juvenile dependency petition requesting the juvenile court take jurisdiction over Joyce pursuant to section 300, subdivisions (b) and (j). The petition was based on mother's drug use, Joyce having cocaine in her system, and mother's previous violent altercations with Jeremy and great grandmother. On the same day the petition was filed, the juvenile court found that there was a prima facie case for detaining Joyce.

4. *Jurisdiction and Disposition Order Regarding K.*

On November 28, 2011, after mother pleaded no contest to the first amended petition regarding K., the juvenile court sustained the petition, as amended, declared K. a dependent child of the court, and removed K. from mother's physical custody. The court also ordered mother to participate in random drug tests, individual counseling, anger management counseling, and a drug and alcohol program. The Department was ordered to provide family reunification services to mother.

5. *The Juvenile Court Asserts Jurisdiction over Joyce, Dismisses the Petition and Then Reasserts Jurisdiction*

On December 20, 2011, after mother pleaded no contest to the petition regarding Joyce, the juvenile court sustained the petition. The court also terminated its jurisdiction with a family law custody order granting Jeremy sole legal and physical custody of Joyce.²

On December 30, 2011, Jeremy was stopped by a police officer while he was driving a car. Joyce was in the vehicle. After the police officer requested Jeremy to produce his driver's license and vehicle registration, Jeremy fled the scene, abandoning Joyce. The officer, however, was able to apprehend Jeremy. Jeremy was charged with possession of cocaine and child endangerment.

On January 5, 2012, the Department filed another petition regarding Joyce. This petition included allegations based on Jeremy's possession of illicit drugs and abandonment of Joyce, as well as mother's history of drug use. The juvenile court again found that there was a prima facie case for detaining Joyce.

On February 8, 2012, the juvenile court sustained the petition relating to Joyce, in part. The court also ordered the Department to provide family reunification services to mother and Jeremy.

6. *Mother's Failure to Fully Comply With the Case Plan*

From October 2011 to June 2012, mother enrolled in six different drug and alcohol programs. She did not successfully complete any of them. Each time mother was either asked to leave for violating the program's rules, or quit the program after a few days or weeks. Mother also did not complete individual counseling or anger management classes.

² The order of termination of jurisdiction was stayed until December 27, 2012, at which time the court entered a final judgment granting Jeremy custody over Joyce.

After her children were detained, mother was granted monitored visitation rights by the juvenile court. Mother's visits, however, were inconsistent. One reason mother had difficulty consistently visiting her children was that she was incarcerated from June 13 to September 21, 2012.

7. *The Juvenile Court's Orders Terminating Family Reunification Services and Scheduling a Section 366.26 Hearing*

On July 5 and September 24, 2012, the juvenile court entered orders terminating mother's family reunification services. The court also scheduled a permanent placement hearing for K. under section 366.26.

8. *The Foster Parents*

K. and Joyce were placed with foster parents Ariel E. and F. E. (the foster parents). The children developed a strong bond with the foster parents, and the foster parents expressed a desire to adopt the children.

Although K. had speech delays and behavioral problems, such as throwing temper tantrums, the Department determined that the foster parents were meeting all of K.'s needs. According to a Department report dated November 1, 2012, the foster parents have provided K. "with a loving, safe and suitable home."

Unfortunately, mother's visits aggravated K.'s emotional and behavioral problems. According to the foster parents, K. became physically ill (i.e., he vomited and had diarrhea) during or after each visit. Further, it took about a week for K. to emotionally recover after each of mother's visits.

9. *Mother's Section 388 Petition*

On November 1, 2012, mother filed a section 388 petition requesting the juvenile court to modify or vacate its July 5 and September 24, 2012, orders terminating family reunification services and scheduling a section 366.26 hearing. In her papers, mother argued she had maintained her sobriety for five months, and that she was participating in a substance abuse program, random testing, parenting classes, individual counseling, and anger management classes.

10. *December 17, 2012, Hearing and Order*

On December 17, 2012, the juvenile court simultaneously held a hearing on mother's section 388 petition and a section 366.26 hearing regarding K. Mother testified that she began a year-long substance abuse program on September 28, 2012. According to mother, the last time she used illegal drugs was June 13, 2012. At the time she last used drugs, she was pregnant with her third child, Price H., who was born on December 4, 2012. Mother further testified that she was in step one of a twelve step program. When asked about why she had not successfully completed previous substance abuse programs, she said that she was not ready to do so at the time.

After mother testified and counsel for the respective parties argued, the juvenile court entered an order dated December 17, 2012, denying mother's section 388 petition. The court also terminated mother's parental rights with respect to K., finding that the child was likely to be adopted. Mother filed a timely notice of appeal of the December 17, 2012, order.

CONTENTIONS

Mother's main argument on appeal is that the juvenile court abused its discretion in denying her section 388 petition. She further contends that because the section 388 petition should have been granted, the juvenile court prematurely and erroneously terminated her parental rights to K.

DISCUSSION

Section 388, subdivision (a)(1) provides in pertinent part: "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 circumstances or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court."

A party filing a section 388 petition has the burden of showing both (1) a change of circumstances since the order was issued and (2) the proposed modification of the order was in the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47; *In re M.V.* (2006) 146 Cal.App.4th 1048, 1059.) As to the first element, "[n]ot every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order." (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

With respect to the second element, in determining the best interests of the child, the court must consider the issue in light of how far along the case has proceeded. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

We review the juvenile court's ruling on a section 388 petition for abuse of discretion. (*In re M.V.*, *supra*, 146 Cal.App.4th at p. 1059.) A juvenile court abuses its discretion when it acts in an arbitrary, capricious, or patently absurd manner, that is, it acts in a manner that exceeds the bounds of reason. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

Here, the juvenile court found that while mother had made progress, there was no change in circumstances justifying a modification of the court's previous orders. This determination was well within the juvenile court's discretion. The juvenile court asserted jurisdiction over K. and Joyce as a result of mother's long-term abuse of illicit drugs and her anger issues and violent confrontations. At the time of the hearing, however, mother had not completed her substance abuse program or her anger management classes.

Indeed, mother admitted that she would not complete her substance abuse program until September 2013—about eight months after the hearing. While mother’s effort to turn her life around was commendable, she did not demonstrate that her underlying drug abuse and anger management problems had been ameliorated or reduced to such a degree that the juvenile court was required to find a change of circumstances.

Moreover, the juvenile court expressly found that it would not be in K.’s best interest to grant mother’s section 388 petition. At the time of hearing, K. had been detained for 18 months, almost half of his life. He had formed a strong bond with the foster parents and did not respond positively to mother’s visits. The juvenile court thus clearly acted within its discretion in determining that it was in K.’s best interest to deny mother’s section 388 petition.

Although the juvenile court did not expressly find that it was in Joyce’s best interest to deny the petition, we can imply such a finding based on clear evidence in the record. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825.) At the time of the hearing, Joyce had spent virtually her entire life in her foster parents’ care, and had formed a strong bond with them. She had no substantial common experience with mother. Further, as we have explained, mother had not ameliorated her drug abuse problem. The juvenile court thus acted well within its discretion when it impliedly found that it was in the best interests of Joyce, a child born with cocaine in her system, to deny mother’s section 388 petition.

We therefore hold that the juvenile court did not abuse its discretion in denying mother’s section 388 petition. Because mother’s challenge to the juvenile court’s order terminating her parental rights to K. is based on her argument that the court erroneously denied mother’s section 388 petition, we also affirm the order terminating her parental rights.

DISPOSITION

The juvenile court's order dated December 17, 2012, is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.