Filed 7/5/18 In re Nathaniel P. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re NATHANIEL P., a Person Coming Under the Juvenile Court Law. _____ KARLA G., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B289157 (Los Angeles County Super. Ct. No. DK16049A)

ORIGINAL PROCEEDINGS; petition for writ of mandate. Veronica S. McBeth, Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Katherine Anderson, for Petitioner.

No appearance for Respondent.

No appearance for Minor.

Office of County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Kim Nemoy, Deputy County Counsel, for Real Party in Interest.

Karla G. (Mother or Petitioner) petitions for relief from an order of the juvenile court issued after a contested rehearing of the Welfare & Institutions Code section 366.22[1] hearing which terminated Mother's reunification services and set the matter for a section 366.26 hearing to select a permanent out-of-home plan for the minor child.

Mother argues that the juvenile court erred in failing to rehear the issue of whether to return the child to Mother at the contested section 366.22 hearing even though rehearing was sought and granted only as to the issue of the continuation of reunification services beyond 18-month statutory limit. She also argues there is no substantial evidence to support the court's finding there was a substantial risk of detriment to the child if he were to be returned to Mother. We affirm.

FACTUAL BACKGROUND

Facts Leading to Juvenile Court Jurisdiction

On March 4, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral that

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

Mother and Father engaged in a physical altercation while intoxicated, which resulted in police intervention. According to the Father, he asked Mother to come to his home with the baby for a visit despite the existence of a restraining order between the parents. After she and the baby arrived, Mother and Father argued and she slapped Father in the face. This occurred in the baby's presence. The maternal grandmother called the police and Mother was arrested for violating the restraining order.

A DCFS CSW interviewed Mother while she was in jail. Mother admitted she and Father had used methamphetamines in the past and had multiple physical fights since May 2014. She stated she last used methamphetamines in January 2015, and since then only smoked "weed" and drank beer, although Father still used drugs and drank alcohol every day. She further admitted to having begun violating the restraining order on December 30, 2015, by spending nights with the baby at the Father's home.

Mother posted bail on March 8, 2016, and on March 9, 2016, told the CSW that she was disappointed in herself and ready to end the relationship with Father. Mother reported she had attended a domestic violence class that day and she agreed to submit to an on-demand drug and alcohol test.

At the March 15, 2016 detention hearing, the child was ordered detained and placed with a maternal relative. Mother was granted monitored visitation three times a week and the jurisdictional hearing was set for May 4, 2016.

Jurisdictional Hearing

Both parents plead no contest to the section 300 petition at the May 4th jurisdictional hearing. The juvenile court declared the child a dependent under section 300, sustaining allegations

b-1 (regarding violent altercations in the presence of the child which placed the child at substantial risk of serious physical harm, damage and danger), b-2 (regarding Mother's unresolved history of drug and alcohol abuse) and b-3 (regarding Father's unresolved history of drug and alcohol abuse), as amended by interlineation. Both parents were granted reunification services and monitored visitation. They both were ordered to complete a full drug/alcohol program with aftercare, submit to random or on demand drug/alcohol testing, complete a parenting program, and participate in individual counseling to address case issues with a master's level or certified therapist. In addition, Mother was ordered to complete a 52-week Batterer's Intervention Program and Father was ordered to join a domestic violence support group for victims. Mother already was enrolled in the parenting class and a 52-week domestic violence program and was visiting the child according to schedule with no reported problems or concerns. The six-month review hearing was set for November 2, 2016.

Six-Month Review Hearing

At the six-month review hearing of November 2, 2016, it was determined Mother was doing well and complying with the case plan. She was enrolled in a substance abuse program and was participating in individual therapy, had tested negative for drugs at all of her tests and had completed the domestic violence classes. She also visited her son consistently and the child had bonded with her. The court granted the Department discretion to liberalize the Mother's visits.

Because Father had not started or completed any of the programs he had been ordered to complete and because he had not visited with his son or inquired into his well being, DCFS

recommended his reunification services be terminated. The court adopted that recommendation and subsequently terminated his services at the December 19, 2016 contested hearing he requested on the issue.

On March 28, 2017, DCFS liberalized Mother's visitation to include overnight visits. Less than two weeks later, on April 8, 2017, DCFS received a child abuse hotline call from the police indicating that the "Mother had the child and was very drunk. The child was found in the middle of the street and mother was disoriented." Mother told the CSW that she had taken her son to the park where an Easter egg hunt was in progress and became depressed when she saw all of the families together, so she decided to buy a beer. She cried when she explained this to the CSW and said she regretted what she had done and was upset with herself.

On May 10, 2017, Mother enrolled herself in an inpatient substance abuse program at Pacifica House.

Twelve-Month Review Hearing

By the 12-month review hearing of June 19, 2017, Mother was in full compliance with the program at Pacifica House, other than having tested positive for marijuana when she first arrived. The court ordered the child to remain in out-of-home care and that DCFS provide Mother with further reunification services. It found "that there is a substantial probability that the minor may be returned to their [sic] parents by the 18-month date. The court further finds that the parent has consistently and regularly visited the child, has made significant progress in resolving the problems that led to the removal of the child, and has demonstrated the capacity and ability to complete the objectives

of the treatment plan and to provide for the child's safety, protection, physical and emotional health and special needs."

Eighteen-Month Review Hearing

The 18-month review hearing began on December 14, 2017. The DCFS Status Review Report indicated DCFS had confirmed that Mother was enrolled in an outpatient substance abuse program which began in October 2017, and was scheduled to finish in April 2018. She also returned to individual therapy and was employed. Nevertheless, DCFS recommended the juvenile court terminate Mother's reunification services and set a permanency planning hearing because Mother had not submitted to drug testing from July to October, 2017, missing 19 tests, because she "knew she had marijuana in her system." She tested positive for drugs on October 27, 2017, November 3, 2017 and November 15, 2017, and negative on November 6, 2017.

Mother requested a contested hearing on the DCFS recommendation, which was scheduled for January 25, 2018.

The January 25, 2018 Section 366.22 Hearing

On January 17, 2018, DCFS filed a Last Minute Information for the court report. It confirmed that Mother was enrolled in a parenting class, a substance abuse program and individual therapy, all at ACE Alcoholism Center for Women, and was doing well. She was actively participating and never missed a day. Mother also was randomly drug testing and all of her tests had been negative since December 2017. The court[2] received the DCFS reports into evidence, along with a letter from the ACE program and the DCFS service logs.

Mother and her counsel appeared at the hearing. Mother's attorney asked the court to return the child to Mother's custody

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[2] A commissioner presided over this section 366.22 hearing.

on the conditions that she reside with the child in the home of the maternal grandmother and continue in treatment. The child's attorney joined in the request, arguing Mother had made significant progress in her program and that living in the maternal grandmother's home with the child was "more than sufficient to ensure the minor's safety." In the alternative, the child's counsel argued the minor should be placed in the maternal grandmother's home, rather than in non-relative foster care. County Counsel reminded the court, however, that after Mother's April 2017 relapse, she enrolled in an inpatient program but relapsed again and only recently regained sobriety.

The juvenile court made findings that returning the child to Mother's custody would pose a substantial danger to the child, found Mother in partial compliance with the case plan and ordered DCFS to provide further reunification services to Mother until the section 366.25 hearing. Reunification services were continued because the court found "there is a substantial probability that the child will be returned to the physical custody and safely maintained in the home of the identified mother within 18 months of the date the child was taken from the physical custody of the identified mother." The court further found that Mother consistently and regularly visited the child, made significant progress in resolving the problems that led to the child's removal from the home, and demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional well-being. The court ordered the child to be placed immediately with the maternal grandmother and set the section 366.25 hearing for March 15, 2018.

The March 28, 2018 Section 366.22 Rehearing

DCFS filed an Application for Rehearing (Application) of the Commissioner's order, requesting only that the "order for an additional period of reunification services be vacated and that a hearing be scheduled pursuant to WIC 366.26." DCFS did not desire, or ask for, rehearing of the Commissioner's decision not to return the child to Mother's home. The juvenile court granted the Application, specifically stating it was "granted as to court's order for further reunification services."

The rehearing ultimately took place on March 28, 2018. At the outset, there was dispute concerning its scope. DCFS argued it was limited to the issue of whether it was appropriate to continue reunification services beyond the 18-month statutory limit because that was the issue DCFS identified in the Application and the issue that was designated to be reheard in the written order granting the Application. Neither Mother nor the minor filed a request for a rehearing of any other issues.

Mother's counsel conceded that Mother did not have a right to further reunification services under section 366.25, but argued the court nevertheless could "extend" reunification services under section 352[3] by continuing the section 366.22 hearing because Mother was doing well in her programs. Counsel also argued that if the court did not order reunification services extended, then the court was required to "consider both options, whether it be return [of the minor to home of Mother] or whether to terminate [reunification services and set a 366.26 hearing] . . . ."

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[3] Section 352 permits continuances of hearings for "good cause and only for that period of time shown to be necessary by the evidence presented . . . ."

Minor's counsel argued the "whole 22 should be reheard based on the fact that the standard is . . . de novo" and asked the juvenile court to make a "home of parent Mother rec[ommendation] . . . based on Mother's substantial progress in this matter."

The juvenile court determined only the reunification services issue was before it. Finding that Mother had not finished the program by the section 366.22 hearing and was not in a live-in drug program, the court was unaware of anything in the law that allowed it to extend the 366.22 hearing to the time of the section 366.25 hearing. The court ordered the reunification services terminated and set a section 366.26 hearing to select and implement an out-of-home permanent plan for the child. Speaking directly to Mother, however, the court advised her to stay in the program because she was doing a good job and was going to get her child back if she kept at it. The court suggested filing a section 388 motion to make a renewed request for custody or reunification services at some point after she had a longer period of sobriety and more clean drug tests.

Mother filed a timely Notice of Intent to File Writ Petition.

DISCUSSION

I. Standard of Review

Mother's petition presents two issues. The issue concerning the scope of rehearing is a purely legal question which requires construction of statutory language and application of legal principles and is reviewed de novo. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1414.) The issue concerning whether the juvenile court's finding that the return of the child to the parent would create a substantial risk of detriment to the child's safety

is a factual issue reviewed for substantial evidence. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1345 (*Jennifer A.*); *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.)

II. The Juvenile Court was authorized to grant rehearing of only that portion of the order for further reunification services.

Mother argues the juvenile court erred by rehearing just the reunification services issue. She contends the juvenile court also should have reheard whether to return the minor to Mother's custody.

The permissible scope of rehearings is governed by section 252, which states: "At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor or his or her parent or legal guardian or, in cases brought pursuant to Section 300, the county welfare department, may apply to the juvenile court for a rehearing. *That application may be directed to all or any specified part of the order or findings*, and shall contain a statement of the reasons the rehearing is requested. . . ." (Italics added.)

"The objective of statutory interpretation is to ascertain and effectuate legislative intent," and to do so, the court is required to "look first to the words of the statute, giving effect to their plain meaning." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437.) The language is given "'its usual and ordinary meaning, and "[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs."'" (*Los Angeles County Dept. of Children & Family Services v. Superior Court*, *supra*, 162 Cal.App.4th at p. 1415.) Mother fails to identify any ambiguity in Section 252's language. We find the language specifically allowing for rehearing of only

certain portions of an order or findings is clear and unambiguous and means what it says.

DCFS's Application does not ask the court to rehear whether returning the child to Mother's custody would pose a substantial danger to the child and does not state any reasons why rehearing of that finding should be granted. It requests rehearing of only that part of the order continuing reunification services because the mother failed to meet any of the statutory exceptions permitting extension of reunification services beyond the 18-month statutory limit. It asks only that the "order for an additional period of reunification services be vacated and that a hearing be scheduled pursuant to WIC 366.26."[4] The Application was specifically granted only "as to court's order for further reunification services."

Although Mother acknowledges that section 252 permits rehearing of only a specific part of an order, she nonetheless argues without citation to authority that the decisions made at

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[4] The Application states in full that "[DCFS is] requesting a rehearing of the order made by Commissioner Byrdsong at the WIC 366.22 hearing granting mother a further period of Family Reunification Services to the 366.25 date. The order for an additional period of reunification services was without as [sic] basis of fact or law. The mother, at the time of the hearing, was not participating in a residential drug treatment program, nor had she been recently incarcerated, requirements under WIC 366.22 for additional reunification services. Additionally, Commissioner Byrdsong did not state the grounds for ordering additional Family Reunification Services to the 366.25 date. [DCFS is] requesting that the order for an additional period of reunification services be vacated and that a hearing be scheduled pursuant to WIC 366.26."

an 18-month review hearing -- which she contends are whether to return the child and whether to terminate reunification services -- are so "inextricably linke[d]" that "the juvenile court should make both findings *simultaneously*." (Italics in original.) We are not persuaded. That argument is contrary to the language of section 252, which expressly permits partial rehearing of specified parts of orders or findings.

We are persuaded, however, by DCFS's argument that the juvenile court does not simultaneously consider the issues of the return of custody and the provision of further reunification services at the 18-month review hearing in any event. At that hearing, the court is tasked with returning custody of the child to the parent or legal guardian unless doing so would create a substantial risk of detriment to the child.[5] If the child is not returned, the court is required to set a section 366.26 hearing to select a permanent out-of-home plan for the child. It is only in very limited circumstances not present here that the court considers whether to continue reunification services at that hearing.[6] (§ 366.22, subds. (a)(3), (b).) The Legislature has

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[5] See, section 366.22, subdivision (a)(1) (". . . After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . .")

[6] The court may continue the section 366.22 hearing for up to six months and order additional reunification services if the parent is in a court-ordered residential substance abuse

determined that 18 months is the maximum amount of time that the juvenile court may offer reunification services (§ 361.5, subd. (a)(3)),[7] and accordingly, those services are terminated at the 366.22 hearing when the section 366.26 hearing is set. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) At that point, the focus shifts away from monitoring the parent's progress toward reunification to determining the appropriate plan to provide a stable and secure home for the child. (*In re S.B.* (2009) 46 Cal.4th 529, 532.)

Mother also argues that the manner in which the court conducted the rehearing was somehow prejudicial. She vaguely complains she was unsure of what legal argument to make because the "juvenile court itself appeared to be confused as to the scope of the rehearing" and purportedly made contradictory statements, not specified in the petition, as to what it intended to do. The short answer is that it was Mother's job to make whatever arguments she deemed appropriate to her cause and to the issues under consideration at the hearing, whether or not she was sure of the court's intentions. She does not identify any particular argument she refrained from making due to anyone's

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treatment program, or is a minor parent or a nonminor dependent parent, or a parent recently discharged from incarceration or institutionalization. None of those circumstances are present here. (§ 366.22, subds. (a)(3), (b).)

[7] Section 361.5, subdivision (a)(3)(A) provides in pertinent part that ". . . court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent . . . ."

uncertainty and accordingly, has failed to demonstrate any purported prejudice.

She also argues that failure of the rehearing court to consider the return of custody to Mother denied her an opportunity to be heard and violated due process. Once again, section 252 specifically permits rehearing of only a specific part of an order or findings and the issue of custody was not designated for rehearing. DCFS challenged only the provision of further reunification services after the permissible statutory period. Mother failed to preserve her right to have the custody issue reheard by failing to file her own Application designating the part of the order or findings she desired to be reheard.

III. Substantial Evidence Supports the Juvenile Court's Finding that Returning the Child to Mother Would Create a Substantial Risk of Detriment to the Child.

Section 366.22, subdivision (a)(1) states in relevant part that "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . ." This is a factual determination reviewed for substantial evidence. (*Jennifer A., supra,* 117 Cal.App.4th at p. 1345.) Substantial evidence must be """"reasonable in nature, credible, and of solid value . . . ."" In the presence of substantial evidence, appellate justices are without the power to reweigh conflicting evidence and alter a dependency court determination." (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705, citations omitted.)

The evidence demonstrates that Mother has unresolved problems with substance abuse. She came to the attention of authorities in this matter when she engaged in domestic violence while intoxicated. Although she showed admirable compliance with her case plan for almost nine months, she had a serious relapse in April of 2017, that placed the child, who was approximately one and one-half years old at the time, in significant physical danger. She drank to excess, became disoriented, and the child was found wandering in the middle of the street because Mother failed to properly buckle him into his stroller or to monitor his whereabouts and well-being.

To her credit, Mother enrolled in a program a few weeks later, in May 2017. But shortly after enrolling, she failed to submit to drug testing on 19 occasions between July and September 2017, because she knew she had marijuana in her system. While she tested on October 27, 2017, November 3, 2017 and November 15, 2017, the results were positive for drugs. This relapse, spanning at least five months from July through November, is significant for its lengthy duration. By January 25, 2018, the date of the 18-month review hearing, Mother had been sober for little more than one month after at least five months of drug usage. On these facts, the juvenile court had a substantial basis to conclude that Mother needed to demonstrate a longer period of sobriety before the court could be assured that returning custody to her would not result in risk to the child's safety and well-being.

Mother's reliance on *Jennifer A.* is misplaced. There, the court of appeal reversed the juvenile court's finding of detriment due to mother's positive drug tests and failure to test. However, substance abuse was not the cause of the mother's lapse in

judgment when she left the children home alone and, in any case, the dependency petition did not allege substance abuse. Here, the substance abuse allegation was sustained and, in part, the child was declared dependent based upon it. Drug rehabilitation was a primary component of the reunification case plan and Mother was unable to complete a program or demonstrate resolution of her drug dependence, despite having had 18 months to do so. The evidence substantially supports the finding of a substantial risk of detriment to the child.

DISPOSITION

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.*
MATZ

We concur:

_____ , P. J.
LUI

_____, J.
CHAVEZ

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