

Filed 10/20/17 In re Lyric C. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LYRIC C., a Person Coming
Under the Juvenile Court Law.

B277586
(Los Angeles County
Super. Ct. No. DK03727)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Olivia Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ T.L. (Mother) appeals from the dispositional order, challenging the sufficiency of the evidence supporting the removal of her then 21-month-old son, Lyric C., from her custody. We affirm.

BACKGROUND

In January 2016, when Lyric was 17 months old, the Los Angeles Department of Children and Family Services (DCFS) detained him from Mother and Daniel P. (Father)² after they both tested positive for methamphetamine and marijuana when they sought shelter at a rescue mission. Mother and Father also admitted to alcohol use. They had been homeless for over a year, staying at hotels and shelters. They arrived at the rescue mission without diapers or a change of clothes for Lyric, and the clothing the child was wearing appeared dirty and smelled like urine, according to a DCFS social worker who visited the mission after receiving a referral about the positive drug tests.³ DCFS placed Lyric in foster care.

¹ Further statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal. Accordingly, we will discuss his involvement in the dependency case only to the extent it is relevant to the issue on appeal.

³ DCFS concluded Mother had the financial means to provide for Lyric's care because she received \$550 per month from CalWorks to meet Lyric's needs and \$881 per month in

Mother, who was 42 years old when Lyric was detained, had a 29-year history of drug and alcohol use. She told a dependency investigator during a February 2, 2016 interview that she began using when she was 13 years old, experimenting with marijuana and alcohol. In high school, she experimented with “acid” and cocaine. By her own account, her drug use “became a problem” when she was about 17. At 22, she began using methamphetamine and continued using this drug for the next 19 years, until after DCFS detained her daughter Chloe L. (Lyric’s older half sibling), and she stopped using methamphetamine for a little over a year before relapsing.

In May 2014, about two months before Lyric’s birth, the juvenile court removed Chloe (whose age was not specified in the record before us) from Mother’s custody, based on sustained allegations about Mother’s drug and alcohol use, Mother’s violent altercations with Father in Chloe’s presence, and Mother’s failure to attend to Chloe’s medical needs.⁴ Chloe was diagnosed with pulmonary hypertension, a congenital heart defect and protein C deficiency. The juvenile court ordered reunification services for Mother.

When Lyric was born in July 2014, during the pendency of Chloe’s dependency case, he and Mother tested negative for

Supplemental Security Income as Father’s caretaker. Father, who was 37 years old, was legally blind.

⁴ Mother also has a son, who is over 18 years old and resides with a maternal aunt. Father is not the biological father of this child or Chloe.

drugs.⁵ DCFS did not detain Lyric from Mother, but offered her a voluntary family maintenance plan conditioned upon her entering an inpatient substance abuse treatment program with Lyric. On September 5, 2015, Mother checked herself into a program where she bonded with Lyric, complied with her treatment plan, and continued to test negative for drugs and alcohol. DCFS also offered Father a voluntary family maintenance plan, conditioned upon his enrollment in an outpatient drug program. DCFS never received proof of his enrollment.

In December 2014, Chloe died while under DCFS supervision due to her medical conditions. Mother was in compliance with her case plan, but had not reunified with Chloe. The juvenile court terminated jurisdiction in Chloe's dependency case in January 2015. In March 2015, DCFS closed the voluntary family maintenance case regarding Lyric. Mother maintains she relapsed in December 2015, on the one-year anniversary of Chloe's death.⁶

On January 13, 2016, after DCFS detained Lyric from Mother in this case, Mother checked herself into a six-month residential alcohol and drug treatment program. The program

⁵ According to Mother's February 2, 2016 interview with the dependency investigator in this case, however, she continued to use methamphetamine until September 2014.

⁶ Based on referrals DCFS received about Mother's conduct and comments while at shelters in May and June 2015, and discussions with relatives during the pendency of this case, DCFS believed Mother relapsed prior to December 2015.

accepted children, and informed DCFS it could accommodate Lyric.

On January 14, 2016, DCFS filed the dependency petition in this case, alleging Lyric was at risk of harm due to Mother's (count b-1) and Father's (count b-2) history of substance abuse. At the detention hearing the same day, Mother denied the allegations in the petition. The juvenile court detained Lyric from Mother and Father, ordered reunification services for both parents and monitored visitation for Mother.⁷

On February 2, 2016, a DCFS dependency investigator interviewed Mother at the treatment facility in preparation of the March 1, 2016 jurisdiction/disposition report. Mother initially told the investigator that "she and [F]ather were in a relationship and [were] working individually to address their addiction to drugs so they [could] be better parents to Lyric." Later, in the presence of her drug counselor, however, Mother told the investigator "she and [F]ather [were] not together and she [did] not have plans to reconcile with him." Mother explained that she did not want to be in a relationship with Father because "in the past [F]ather did not support or respect her choice to remain sober."

Mother also told the investigator that her counselor at the treatment facility had referred her for counseling and mental health services. Mother stated that she had begun counseling "to talk about the death of [her] daughter." She also stated that she had been diagnosed with bipolar disorder (at some undisclosed

⁷ The court ordered that Father, who did not appear at the detention hearing, could begin monitored visitation after he contacted DCFS.

time) and had recently visited a medical clinic which prescribed her “Trileptal, Trazadone and Respirdone [sic].”

Mother informed the investigator that she wanted Lyric placed with her at the residential treatment facility. Mother’s case manager at the facility told the investigator “that the staff at the program are all mandated reporters and will contact child protective services or law enforcement if they suspect a child is a victim of neglect.” The case manager also reported that Mother had tested clean since her enrollment and was “actively participating in services.” Mother was having three-hour, weekly, monitored visits with Lyric at the treatment facility.

In the March 1, 2016 jurisdiction/disposition report, DCFS declined to recommend to the juvenile court that Lyric be placed with Mother, explaining: “Mother has an extensive substance abuse history and is in the beginning stages of treatment. Mother has not yet stabilized her mental health needs or been thoroughly assessed for mental health treatment. Additionally, Mother was transient for the past year and during that time she was unable to meet the basic needs of her child. . . .” Before recommending placement with Mother, DCFS wanted to see Mother “address her addiction to drugs, stabilize her mental health and demonstrate an ability to care for herself prior to assuming the responsibility of caring for a child, especially a child of such a young age.” DCFS was unable to reach Father to interview him for the jurisdiction/disposition report.

On March 1, 2016, the juvenile court continued the jurisdiction/disposition hearing because Father was incarcerated (on an undisclosed charge) and had not yet been arraigned on the

dependency petition.⁸ The court ordered DCFS to “assess placement of the child with Mother in her residential program” and granted DCFS “discretion to place [the] child with Mother.”

On May 13, 2016, the date of the continued jurisdiction/disposition hearing, DCFS submitted a last minute information for the court. According to this report, the dependency investigator spoke with Mother’s counselor at the treatment facility on May 11, 2016. The counselor stated Mother admitted the week before that she had been in a relationship with Father since entering the facility on January 13, 2016, although she originally told the counselor “that she was not in a relationship with [F]ather because he was actively using drugs and would compromise her sobriety.” On May 10, 2016, Mother informed the counselor that Father “got loaded” the day before and “she was very upset about father’s inability to maintain his sobriety.” As stated in the last minute information, the counselor told the investigator “that although [M]other has been testing clean since admission, she [was] concerned about [M]other’s inability to be honest. [The counselor] believe[d] that [M]other’s inability to be truthful hinder[ed] her ability to fully grasp the concepts discussed in individual and group sessions.” The counselor also revealed that Mother was in “the process of completing an intake” for mental health services.

In the same May 13, 2016 last minute information for the court, DCFS also informed the juvenile court about Mother’s visitation with Lyric, based on a summary provided by the foster father. In his summary, he noted that Mother was often

⁸ Father was arraigned on April 8, 2016 and denied the allegations in the petition.

“overwhelmed and fatigued during visits.” He also noted that, on March 27, 2016, Mother told him “that she was not taking her medication as prescribed and disclosed that she struggle[d] with gaining weight and attribute[d] it to her sobriety and not smoking.”

DCFS again declined to recommend that Lyric be placed with Mother at the residential treatment facility, stating in the last minute information: “The Department believes that [M]other needs to complete her substance abuse treatment program and individual counseling prior to Lyric being returned to her care. This will allow [M]other to address the underlying cause of her addiction and her inability to be honest and forthcoming.”

At the May 13, 2016 jurisdiction/disposition hearing, Mother waived her rights and pleaded no contest to the following amended allegation in the petition (count b-1): “The child Lyric [C.]’s mother, T[L.], has a history of substance abuse and is a recent user of methamphetamine and marijuana, which renders the mother incapable of providing the child with regular care and supervision. On 1/11/16, the mother had a positive toxicology screen for amphetamine and marijuana. Remedial services have failed to resolve the family problems in that the mother resumed drug use despite the mother’s participation in a substance abuse rehabilitation program. The child’s sibling, Chloe L[.], was a prior dependent of the Juvenile Court due to the mother’s substance abuse. The mother’s substance abuse endangers the child’s physical health and safety, creates a detrimental home

environment and places the child at risk of harm.” The juvenile court found count b-1 to be true and sustained it.⁹

For the disposition portion of the hearing, the juvenile court admitted into evidence the January 14, 2016 detention report and the March 1, 2016 jurisdiction/disposition report. The court also admitted into evidence the following exhibits submitted by Mother: (1) a March 1, 2016 letter from Mother’s treatment program, stating Mother tested positive for methamphetamine and marijuana upon admission to the program on January 13, 2016, and tested negative on 10 subsequent tests (ex. A); (2) a February 10, 2016 letter from a hospital, stating Mother had actively participated in a grief recovery program for several weeks (ex. B); (3) a certificate of completion of the grief recovery program in which Mother participated from January 20 to February 24, 2016 (ex. C); (4) an April 21, 2016 letter from a clinic, stating Mother had completed an initial intake assessment for mental health services on March 9, 2016, was scheduled for a medical evaluation on June 2, 2016, had been diagnosed with bipolar disorder, stimulant use disorder in partial remission and alcohol use in sustained remission, and would participate in bimonthly individual therapy sessions “to work . . . on reducing symptoms associated with depression in the upcoming year” (ex. D); (5) a certificate of completion of 10 hours of anger management training on April 26, 2016 (ex. E); (6) a May 2016 medical examination form for Lyric, indicating Mother

⁹ Father did not appear at the May 13, 2016 jurisdiction/disposition hearing. The juvenile court found true and sustained count b-2 of the petition, as amended, regarding Father’s history of substance abuse.

had attended the appointment and the health care provider had instructed Mother on how to administer albuterol to Lyric through a nebulizer (ex. F); and (7) an undated letter from Mother's drug treatment sponsor, stating Mother attended recovery meetings with the sponsor at least three times per month and had completed four of the 12 steps to recovery (ex. G).

Mother testified during the disposition portion of the May 13, 2016 hearing, in support of her request that Lyric be placed with her at the residential treatment facility. In response to a question by her attorney about why she relapsed on the one-year anniversary of Chloe's death, Mother testified: "Well, I had stopped talking to my sponsor. I stopped going to meetings. I stopped taking my medication. And I just stopped working the program and using the tools that they had given me in the program." Mother believed she had acquired the tools to avoid another relapse. She maintained daily contact with her sponsor, attended eight recovery meetings per week (six inside the facility and two outside), and was "working the 12 steps" of Narcotics Anonymous and Alcoholics Anonymous (having completed the fourth step). In her prior recovery effort, she only completed step two. Mother stated that maintaining daily contact with her sponsor aided in her recovery effort because her sponsor "call[ed] [her] on [her] character defects and [her] bad behaviors" and held her "accountable."

Regarding her mental health, Mother testified that she was meeting with an outside therapist twice a month and taking her prescribed medications (Risperdal and Trileptal). She also attended weekly one-on-one sessions with her counselor at the residential treatment facility and participated in group sessions and educational classes, such as relapse prevention.

Mother stated that when she initially told her counselor at the facility in January 2016 that she “wasn’t planning on moving forward in a relationship with [Father],” she was being truthful.¹⁰ Then, Father contacted her in April 2016 when he was incarcerated and told her he wanted to change and reunify with Lyric. According to Mother, when he was released from jail, Father told her he planned to enter “a sober living environment.” Because she believed that Father “was clean and sober and going to do good,” Mother told her counselor that she planned to pursue a relationship with him. The counselor granted approval for Father to visit Mother at the facility conditioned upon him submitting to a drug test. Father did not visit because Mother learned that he had used drugs and she cut off her relationship with him. She also told her counselor about his drug use. Mother conceded that her decision to communicate with Father while in her treatment program was a “bad” one because he had not received drug treatment “and the chances of him changing were very slim.” Mother stated she did not intend to reunite with Father.

Mother testified that she wanted the juvenile court to place Lyric with her at the residential treatment facility. She stated that the staff there were “mandatory reporters” and would report her if she tested dirty or broke a rule. She also explained that she would not be permitted to leave the facility with Lyric unless she received approval and was accompanied by her sister. She

¹⁰ Two weeks later, outside the presence of her counselor, she told the dependency investigator that she did plan to continue a relationship with Father, according to the March 1, 2016 jurisdiction/disposition report.

informed the court that she was in compliance with all of her programs and her drug testing requirement. She also testified about her participation in the grief recovery program and the tools she had acquired for dealing with her grief.

During oral argument, attorneys for DCFS and Lyric urged the juvenile court to order Lyric removed from Mother's custody based on her lengthy history of substance abuse and the fact she was only in the beginning stage of recovery.

The juvenile court declared Lyric a dependent of the court and removed him from Mother's and Father's custody. He remained placed in foster care. The court acknowledged Mother's progress, but "want[ed] to see three more months at least of solid recovery" before considering placement with her. The court ordered reunification services and monitored visitation for both parents and granted DCFS discretion to allow overnight visits for Mother and Lyric at the facility.

DISCUSSION

Mother challenges the sufficiency of the evidence supporting the dispositional order removing Lyric from her custody.

A juvenile court may take a dependent child from the physical custody of his parent where "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).)

"A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a

potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.] [¶] Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue” to which “we apply the substantial evidence test.” (*In re N.M., supra*, 197 Cal.App.4th at p. 170.) Accordingly, “we review the evidence most favorably to the court’s order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion.” (*Id.* at p. 168.)

Substantial evidence supports the juvenile court’s decision to remove Lyric from Mother’s custody at the May 13, 2016 disposition hearing. She was only four months into her recovery after a lengthy history of substance abuse and a recent relapse. Her prior participation in an inpatient drug treatment program (in September 2014) proved unsuccessful. Just days before the disposition hearing, Mother broke off her relationship with Father, the person with whom she had abused drugs for years.

While Mother was communicating with Father from the treatment facility and making plans for him to visit her, he was still using.

At the time of the disposition hearing, Mother had not yet had a full medical evaluation to assess her mental health needs. She had only participated in an initial intake assessment. In the four months since she entered the residential treatment facility, Mother had started taking medication for her bipolar disorder, stopped taking the medication because she believed it caused her to gain weight, and then started taking the medication again. During monitored visits with Lyric at the facility, Mother often appeared overwhelmed and fatigued, according to the foster father.

Substantial evidence in the record demonstrates that Lyric's welfare required removal because of a substantial danger, or risk of danger, to his physical health if he were returned to Mother's custody, and there was no reasonable alternative to protect him. The record shows Mother was not at a place in her recovery or in her mental health treatment where she could care for a 21-month-old child. Mother hindered her recovery by communicating with Father and hiding the relationship from her counselor. She undermined her mental health by going on and off her medication. During monitored visitation with Lyric at the facility, she appeared overwhelmed and fatigued. It was reasonable for the juvenile court to allow 90 days for Mother's situation to stabilize before reevaluating Lyric's placement. Mother and the staff at the facility needed to focus on Mother's recovery and mental health before including a 21-month-old child in Mother's program.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.