

Filed 6/25/18 J.C. v. Superior Court CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

J.C.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

LOS ANGELES DEPARTMENT  
OF CHILDREN AND FAMILY  
SERVICES et al.,

Real Parties in Interest.

No. B287276

(Los Angeles Super. Ct. No.  
DK15833A)

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Kim Nguyen, Judge. Denied.  
J.C., in pro per., for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

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Petitioner J.C. (mother), in propria persona, seeks extraordinary writ review of the juvenile court's order setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her daughter, N.D (born January 2016). We conclude substantial evidence supports the court's finding that return of N.D. to mother's custody would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The petition is denied.

## **FACTUAL AND PROCEDURAL HISTORY**

On February 11, 2016, the Los Angeles County Department of Children and Family Services (Department) initiated dependency proceedings on behalf of N.D. The Department received a referral alleging general neglect of N.D. by mother, and also alleging general neglect and emotional abuse by Earl D. (father). The reporting party

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

stated mother was heard screaming in the kitchen and father punched mother several times in her face. Father also poured a pot of bleach and water over mother's head. N.D. was in her car seat in the living room at the time. When father ran out of the apartment, mother ran after him. Father again punched mother several times in her face. When mother called the police, father fled the scene. The reporting party stated that mother's eyes were blood-shot due to father pouring the mixture of bleach and water over her head. The Department detained N.D. and placed her in the home of mother's friend, Myra.

On February 16, 2016, a social worker interviewed mother about the incident with father. Mother denied father punched her, and stated he only poured water over her head. She admitted father broke her cell phone when she was calling the police. When the social worker separately spoke with father, he stated that "mother was exaggerating and she needs my help." Father also denied ever hitting mother. He did admit that both he and mother argue and do push each other, but "that is it."

On March 1, 2016, the Department filed a dependency petition pursuant to section 300, subdivisions (a) and (b). The petition alleged mother and father have a history of engaging in violent altercations in N.D.'s presence. On February 11, 2016, father repeatedly struck mother's face with his fists, inflicting redness to mother's face. Father also poured a pot of water containing Lysol cleaner over the mother's head, inflicting pain in mother's eyes. Father then

threw mother's cell phone onto the asphalt in order to prevent mother from contacting law enforcement. On prior occasions, father struck mother and parents have pushed each other. The petition further alleged mother failed to protect N.D. by allowing father to reside in the home and to have unlimited access to N.D. Such violent conduct on the part of father against mother and mother's failure to protect N.D. places the child at risk of serious physical harm.

At the detention hearing, the juvenile court found a prima facie case for detaining N.D. and showing that N.D. is a person described by section 300, subdivisions (a) and (b). N.D. was ordered detained and to remain with her current placement. The Department was directed to provide N.D. and parents with family reunification services, work out a safety plan for mother, and make unannounced visits. The court ordered monitored visits for mother, giving the Department discretion to liberalize visits. On March 8, 2016, the court granted a temporary restraining order against father for mother and N.D.'s protection.

On May 2, 2016, Myra informed a social worker that mother has been living in her home. She stated she was not able to protect N.D. from mother as mother intimidated her. Myra added that mother would take N.D. out for extended periods of time and Myra suspected mother is taking N.D. to see father. The Department removed N.D. from Myra's care based on her inability to protect N.D. from further exposure to violence. On May 24, 2016, the court issued a permanent restraining order for one year against father for mother's

protection.<sup>2</sup> The court ordered father to stay away from and have no contact with mother. In addition, father could not take any action to get mother's address or location.

On June 28, 2016, a social worker interviewed Daveed, who shares a child (Jaylen) with mother. He reported that mother was still in a relationship with father. Daveed showed the social worker a photograph of mother with father that was recently posted on the internet. He also stated that mother claimed she was pregnant with father's baby.

At the July 1, 2016 adjudication hearing, mother entered a plea of no contest, and the dependency petition was sustained on all counts. Mother was ordered to have monitored visits with N.D. for a minimum of two to three times a week, two to three hours each visit, with a Department approved monitor. Mother was also ordered to participate in individual counseling, parenting classes, and a domestic violence support group.

Mother attended domestic violence classes at a domestic violence shelter from July 12 to July 28, 2016. The shelter kicked mother out of the program because she was difficult, unpleasant, and because of her possible involvement in human trafficking. On July 29, 2016, it was reported that mother's initial visits with N.D. were inconsistent, and she would leave her visits early. By August 30, 2016, mother became more consistent in her visits with N.D. and was staying for the entirety of each visit. In September 2016, however, mother only visited N.D.

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<sup>2</sup> N.D. was not listed as a protected person.

two times; mother explained to the social worker that she was looking for housing for the family and that had made it difficult for her to come to the visits. In October 2016, mother visited N.D. twice, and the visits had gone well. During the month of November 2016, the Department liberalized mother's visits to unmonitored visits, due to her compliance with the court orders and her progress in her court ordered case plan.

in December 2016, mother gave birth to her son, A.D. Mother had hidden her pregnancy from the Department, and the Department only became aware of the pregnancy a few days after A.D.'s birth. Mother told the Department A.D. was father's son, but stated she had not been in contact with him since N.D. was detained in March 2016. Mother initially denied father had come to visit her in the hospital. However, once the social worker mentioned that there was surveillance video, mother admitted father had visited her. Mother stated that she posted the information about A.D.'s birth on her Facebook webpage.

In the six-month status review report, the Department stated mother has been working consistently to complete her court ordered case plan. Mother had completed at least two parenting classes, become gainfully employed full-time, and was going to community college. She also obtained appropriate housing for herself and N.D. Mother had not completed a full course of domestic violence classes and still needed to participate in a domestic violence support group. The Department recommended that mother's reunification

services be terminated and that the court reorder visits for mother to be monitored. The Department found mother was not truthful with the Department regarding significant issues that affected N.D.'s safety, "specifically her attempt to hide her recent pregnancy of her son from [the Department] . . . , her failure to adhere to and enforce the permanent restraining order against the father as ordered by [the] Court and her lying to [the Department] once she was confronted."

At a January 26, 2017 progress hearing, the court ordered the Department to continue providing family reunification services, but ordered mother's visits with N.D. to be monitored at the Department's office. In a status review report, the Department reported that although mother was presently participating in counseling, she was not participating in parenting and domestic violence classes. "Due to the presenting [*sic*] problem of domestic violence, it was assessed that it is critical for the mother to complete a domestic violence program for victims in order to address the concerns that brought this case to the court's attention."

The court held a six-month status review hearing on March 20, 2017. (§ 366.21, subd. (e).) The court ordered continued reunification services and gave the Department discretion to liberalize mother's visitation to unmonitored day visits. The court found "that the extent of progress the mother has made in the last period of review toward alleviating or mitigating the causes necessitating placement in foster care has been minimal."

In the 12-month status review report, mother told the social worker that she had been participating in counseling and receiving mental health services. Mother said she was seeing her psychiatrist on a monthly basis. Mother also reported she completed 10 out of 12 parenting classes, but “paused” her classes in order to complete her domestic violence program. On March 27, 2017, mother started attending domestic violence classes, and by April 19, 2017, mother completed four classes. The Department found, “Due to the presenting [*sic*] problem of domestic violence, it was assessed that it is critical for the mother to complete a domestic violence program for victims in order to address the concerns that brought this case to the court’s attention.”

The court held a 12-month status review hearing on April 25, 2017. (§ 366.21, subd. (f).) The court ordered continued reunification services, and the Department was given discretion to liberalize mother’s visits to overnights. The court found “mother has made good progress in the last period of review toward alleviating or mitigating the causes necessitating placement in foster care.”

On May 2, 2017, the Department reported that mother does not make it to all of her visits with N.D. When mother shows up for her visits, she will leave N.D. in the care of the staff when “she needs to use the bathroom, or wants to go across the street for a few minutes.” On July 11, 2017, a social worker spoke with mother regarding her domestic violence classes. Mother stated that she attends weekly classes and has attended 9 out of 13 classes in the program.



Mother said she should complete the domestic violence classes by mid-August. From February 2017 through July 2017, the Department reported that mother had attended only 28 out of the 46 unmonitored visits. At a July 20, 2017 progress hearing, the Department was given discretion to liberalize mother's visits to unmonitored in a neutral setting as well as overnight visits.

In its 18-month status review report, the Department confirmed that mother had completed her domestic violence services as well as her parenting classes. Mother reported that she has recently changed her mental health provider and reported that she sees her therapist on an ongoing basis. It was reported that mother did not adhere to the current visitation schedule as there were days she would cancel a visit and there were days she would decide to show up.

In a last minute information for the court, the Department reported that mother was arrested after a physical altercation with Daveed at her apartment on October 12, 2017. Earlier that day, Daveed dropped their son Jaylen off at mother's apartment. Daveed later returned to deliver some food to his son. When mother answered the door, Daveed observed a pair of men's pants and shoes on the floor. Daveed stated that if she and another man were in the apartment together, he was going to take Jaylen home with him. Mother replied, "You aren't taking nobody. Peanut! Come and blow his head off." An altercation ensued between mother and Daveed. Daveed ended up leaving with his son and calling the police. Daveed later spoke to a social

worker and stated that he saw father peak his head around the door when mother said, “come and blow his head off.” The police report indicated that father was in the apartment when the officers initially contacted mother, but he refused to give any statements or to get involved.

When the social worker spoke with mother, she claimed that Daveed “entered her home without any warning and socked her in the mouth in front of their son.” When Daveed told Jaylen to come to him, mother stated she grabbed Daveed by the shirt in self-defense and used her hands on his chest to push him out of her home. When asked if there was anyone else who witnessed this altercation, she stated that her friends were present, a brother and sister, but they did not witness the exchange because they were both in the bedroom. When the social worker asked mother the whereabouts of father, she stated, “I don’t know where he is. He doesn’t know where I am. Why do you guys keep asking me that? I haven’t seen him since he was in the hospital after [A.D.] was born.” The social worker informed mother that father put her current address as his own when he renewed his driver’s license in March 2017. Mother responded that father “got it off of Facebook.” Mother then stated, “Well, as of March 26th, the restraining order was no longer in effect. So, he could come over to my home for an hour or two, or even overnight, and it would not be against the Court’s orders. So I can see him whenever.”

The Department found that the safety concerns for N.D. remained unresolved. “Mother has been evasive as to what other adults were in her home, particularly [father]. [F]ather . . . was restrained from contact with the mother, but it appears that mother violated the restraining order . . . and possibly during her unmonitored visits with [N.D.] and [A.D.]. When mother later stated that the restraining order had expired, so she was free to allow [father] to visit in her home, even overnight, she demonstrated no understanding of the dynamics of domestic violence and risk of harm to her children.” The Department recommended termination of reunification services for mother.

The court held a contested 18-month status review hearing on December 7, 2017. (§ 366.22.) Mother’s counsel called Pauline Davis, a social worker from the Department, to testify. Davis testified that in the latest report she recommended to terminate family reunification services. Her basis for the recommendation was the Department’s concern that father, the domestic violence perpetrator, was living in mother’s home. Davis testified that the October 12, 2017 police report stated father was in mother’s home. Davis also “had been hearing from Jaylen for months that a person by the name of Peanut was in the home every time he went to visit.” In addition, father had reported to the Department of Motor Vehicles that mother’s address was his own. Davis further testified it was not clear whether or not mother was in weekly counseling because she could not get an answer from mother about the name of the therapist.

Davis then testified to her assessment in the last minute information for the court, where she indicated safety concerns for N.D. She explained that N.D. had been in the presence of parents fighting back in 2016, and mother appeared to have an ongoing relationship with father who had not done anything as to his case plan. There was no reason for the Department to believe that father's behavior or mentality has changed. Davis testified that she would like for mother to be more truthful with the Department and demonstrate that she can protect N.D. from father.

Mother took the stand and testified that she is enrolled in individual counseling and Davis has contact information of her current therapist. Mother provided Davis with a confirmation of enrollment in individual therapy and signed a release of authorization to speak to her therapist. Mother testified she sees her therapist twice a week every other week. Mother believed that Davis misplaced her enrollment letter of individual counseling and her therapist's letters to the Department. Mother also admitted for the first time that she saw father on March 25, 2017, in addition to seeing him at the hospital in December 2016 and at her apartment on October 12, 2017. When questioned about her meeting with father on March 25, 2017, mother stated that they met outside her apartment and had a quick talk about their children. Mother believed the restraining order had expired prior to that date.

Mother then denied telling Davis that father was not in her apartment on October 12, 2017. Mother explained that

father was at her apartment to talk to him about the kids, “[h]e wasn’t there on no friendly basis.” She had contacted father through Facebook to come to her apartment. She stated that the restraining order was not in place at that date. Mother testified that two female friends were also in her apartment, along with father. Mother denied father was living at her apartment. Mother said she is “done with relationships,” that she is focusing on graduating school and starting over with her kids. If N.D. was returned to her care and the court ordered a stay away order between her and father, she would abide by it. And if father came to her apartment, mother would call 911.

After all the parties rested and gave their closing arguments, the juvenile court issued its ruling. The court stated it did not find mother’s testimony credible and “[t]here are just so many inconsistencies that weigh against credibility.” The court explained mother said she had not seen father since the hospital in December 2016, but today mother said she saw father in March 2017. Furthermore, there are inconsistencies as to who was in mother’s apartment at the time of the October 12, 2017 incident. The court noted mother’s testimony as to the issue of individual counseling lacked credibility.

The court was “tremendously concern[ed]” that mother invited father over to her apartment while Jaylen was in her care. The court also expressed concern that mother repeatedly turned to father for support. The court found that mother’s actions demonstrated “a lack of insight into the

dynamics of domestic violence of separating the perpetrator from one's life." The court did not believe N.D. could safely be returned to mother's care with a safety plan in place. The court stated there are no assurances that mother will keep father away from N.D., as she did not keep him away from Jaylen. The court terminated family reunification services based on its credibility findings and viewing the totality of the evidence. The court then set the matter for a section 366.26 hearing for April 5, 2018.

On December 12, 2017, mother timely filed a notice of intent to file a writ petition. (Cal. Rules of Court, rule 8.450.) On March 29, 2018, this court granted mother's immediate stay request based on the juvenile court's failure to timely compile the record for the writ proceeding. On April 26, 2018, mother filed a petition for extraordinary relief challenging the order setting the section 366.26 hearing. After an order to show cause was issued before this court, the Department filed a response on May 10, 2018.

## **DISCUSSION**

Mother contends the juvenile court erred in not returning N.D. to her custody.<sup>3</sup> We disagree.

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<sup>3</sup> In her petition, mother alternatively argues the court erred in not placing N.D. with a family member. However, the entire focus of the contested hearing at issue was whether N.D. should be returned to mother or referred for

Section 366.22, provides that within 18 months after a dependent child was originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child's status. At the hearing, "the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a)(1).) We review the juvenile court's detriment finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) This means, among other things, that we must uphold the decision of the juvenile court even if substantial evidence might also support a different conclusion. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57 [under substantial evidence analysis "[m]ere support for a contrary conclusion is not enough to defeat the finding"].)

Substantial evidence supports the juvenile court's finding of detriment if N.D. were to be returned to mother's custody. The Department removed N.D. from mother because of the ongoing domestic violence by father against mother. The court found that father punched mother multiple times in the face and poured liquid cleaner over her head. Although the domestic violence was ongoing, mother continued to allow father to live in her apartment with N.D.

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permanency planning. Therefore, we will not address this contention.

The Department does not dispute that mother has substantially complied with her court ordered case plan. “Compliance with the reunification plan is certainly a pertinent consideration at the section 366.22 hearing; however, it is not the sole concern before the dependency court judge. [Citations.]” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704.) “The court shall review and consider the social worker’s report and recommendations . . . [and] the efforts or progress, or both, demonstrated by the parent.” (§ 366.22, subd. (a)(1).) Here, the juvenile court found that mother has yet to achieve the type of insight necessary to keep N.D. safe from father. Mother invited father to come to the hospital in December 2016, and then again to meet outside her apartment in March 2017. Both instances occurred while the permanent restraining order against father was in place. Then, on October 12, 2017, mother invited father over to her apartment when her other child, Jaylen, was present.

Mother testified at the contested hearing that she would abide by a stay away order between her and father if N.D. was returned her care. Nevertheless, the juvenile court specifically found that mother was not credible in her testimony. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52 [it is not this court’s role to second guess the trial court’s credibility determination].) In her petition, mother contends that the Department is untrustworthy and not truthful in its reports. The juvenile court found otherwise. (See *ibid.*) There is ample record evidence of mother not being



forthright with the Department about her continued contact with father. Mother hid her pregnancy and subsequent birth of her younger child from the Department. She also initially denied seeing father at the hospital in December 2016. It was not until the social worker told her there was surveillance video that mother finally admitted father visited her. Mother denied father was present on October 12, 2017, and only admitted that fact at the contested hearing. The court and the Department first discovered that mother met with father in March 2017 by mother's own admission at the hearing. Ultimately, mother has consistently failed to stay away from father during the entirety of the dependency proceedings.

We therefore conclude that substantial evidence supports the juvenile court's finding that the return of N.D. to mother's custody would create a substantial risk of detriment to the child.

## DISPOSITION

Mother's petition for extraordinary relief is denied, and the stay previously imposed by this court is lifted. This opinion is final forthwith as to this court. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.\*

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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.