Filed 2/24/12 In re S.O. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.O., a Person Coming Under the Juvenile Court Law.	B235134 (Los Angeles County Super. Ct. No. CK87061)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SABRINA O., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Veronica MacBeth, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

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Sabrina O. (mother) appeals the dispositional order of the juvenile court with respect to her daughter, S.O. Finding no error, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

At the time of initial contact with the Department of Children and Family Services (DCFS), mother, then 17 years old, lived with her paternal grandparents, who had been appointed her legal guardians in 1998 and with whom she had resided since the age of two; also living in the home were mother's 20-month-old daughter S.O. and her 15-year-old sister. Mother was in her last semester of high school at an alternative school for teenage mothers and mothers-to-be. In March of last year, she learned that she was again pregnant; upset about this news, she did not return home, or notify her grandparents of her whereabouts, for six days.

Lawrence O. (grandfather) called DCFS to report that mother had not returned home. He was concerned for his granddaughter, believing that her boyfriend used drugs and was a bad influence. Grandfather did not report, and DCFS did not uncover, any harm suffered by the minor S.O. as a result of mother's absence. To the contrary, the social worker opined that grandfather (S.O.'s great-grandfather), in whose care mother had left her daughter, was an appropriate caretaker for the baby.

On March 14, 2011, DCFS detained S.O., placing her with a relative, Lynette R. On March 17, DCFS filed a Welfare and Institutions Code[1] section 300 petition, alleging that S.O. was at risk as a result of mother leaving her in grandfather's care for six days without making an appropriate plan for her care and supervision.[2] The juvenile court ordered S.O. detained. S.O. remained in Lynette R.'s home until late May, when she was replaced in the home of her maternal great-uncle and great-aunt, M. and E.O., where she

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[1] Further statutory references are to this code.

[2] The petition also alleged under section 300, subdivisions (b) and (g) that Manuel G., S.O.'s alleged father, failed to provide support. Manuel G. is not a party to this appeal.

currently resides. The court also granted mother extensive visitation and ordered that she participate in parenting classes and individual counseling.

The juvenile court conducted the jurisdictional hearing on April 28, 2011. At that time, mother reported that she had not commenced individual counseling because it was not available, although she remained on a waiting list. Mother signed a waiver of rights, waiving her right to trial and submitting the petition on the basis of the reports and other documents submitted to the court.[3] Mother's evidence included the following: a letter from her teacher praising mother's values and accomplishments in school; verification of mother's attendance and participation in parenting classes; her most recent report card in which she received A's in all of her classes; a certificate attesting that she was awarded first prize in an LA Youth Essay Contest, together with a copy of the winning essay; and a letter from mother in which she acknowledged that she had exercised poor judgment in staying away from home, a mistake she would not repeat. Based upon the documentary evidence, the juvenile court sustained the amended petition which read, as to mother, as follows: "On 03/09/2011, the child, [S.O.]'s mother, Sabrina O[.], left the child with the child's maternal great grandfather, Lawrence O[.], for six days without making an appropriate plan for the child's ongoing care [and] supervision, ... The mother's whereabouts were unknown to the maternal great grandfather. On prior occasions, the mother left the child with the maternal great grandfather without making an appropriate plan for the child's ongoing care and supervision. Such failure to make an appropriate plan for the child's care and supervision. [*sic*]" The court again ordered counseling for mother, indicating that she should not be placed on a waiting list. At this point in time mother was visiting with S.O. for approximately 18 hours each week.

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[3] In a footnote to his opening brief, mother's appellate counsel states that, "had the parties not agreed to an amended petition, an argument could have been made that the juvenile court should never have taken jurisdiction." In her waiver of rights, mother did not submit to the court's jurisdiction, but agreed that the juvenile court could decide whether or not to sustain the petition based on the documentary evidence, including the social worker's reports. If those reports did not contain evidence sufficient to invoke jurisdiction, then the juvenile court erred in taking jurisdiction of S.O.

In the report prepared for the June 3, 2011 disposition hearing, DCFS reported that mother had completed a parenting program and was scheduled to graduate from high school in two weeks' time. Mother continued to visit S.O. four times per week.

On May 27, 2011, S.O. had been placed with E. and M.O. The O.s lived in Riverside County, some 60 miles away from mother. Mother testified that if the juvenile court returned S.O. to her care, she would reside with this aunt and uncle, who had expressed to DCFS their willingness to welcome mother into the home and assist her in assuming the responsibilities of parenthood.

Mother was the sole witness at the disposition hearing on June 3, 2011. She testified that she wanted her daughter returned to her care, so that they could both live with E. and M.O. She believed that the O.s' community was a better environment for raising her child. Mother had investigated educational opportunities near the O.s' home, and had submitted enrollment forms at the local community college. She was scheduled to commence her first counseling session the following week.

Mother had continued to see her boyfriend, the father of the child she was carrying, despite the court's previous warnings to refrain from doing so. Mother talked to her boyfriend about taking parenting classes, which he agreed to do. Mother stated her willingness to follow any court order, including not permitting her boyfriend to be around S.O. Mother had not seen her boyfriend use drugs, but testified that he had abused drugs in the past. He was, however, being drug tested at his current employment. The boyfriend had his own apartment and wanted to take responsibility for his child after it was born.

During counsel's closing arguments, the court remarked that mother had "to put her feelings aside about the boyfriend and take care of S[.] and I am not seeing that in the evidence presented." Prior to placing the child with mother, the court wanted mother "to be in individual counseling for a while." The court continued: "I want to know that S[.] is safe and that she is placed with somebody who will be safe and then to gradually as mother shows more maturity and showing that she is taking care of her own affairs, and that's what I mean by going to school, by getting a job, if she can. [¶] Then I will be more

willing to ease her into having more and more responsibility for S[.] but based upon what I have before me, I don't think that it's appropriate to place the child with a person [who] has this history that I have read about."

The court ordered the minor placed in the home of M. and E.O. Mother was to have unmonitored visits inside the home and monitored visits outside the home. The court found that DCFS had made reasonable efforts to prevent detention and eliminate the need for removal. It also permitted mother to reside in the O. home with her daughter.

Mother timely appealed the disposition order.

DISCUSSION

A child may not be removed "from the physical custody of his or her parents . . ." unless, based upon clear and convincing evidence, there is "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 [could] be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1); *In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695.) In deciding whether to remove a child from parental custody, the juvenile court is required to determine if reasonable efforts were made to prevent or eliminate the need for removal. (§ 361, subd. (d); *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171.) "A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor 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." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

On appeal, we review the dispositional order to determine if there is any substantial evidence, contradicted or not, to support the conclusion of the factfinder. (*In*

re Kristin H. (1996) 46 Cal.App.4th 1635, 1654; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) Substantial evidence is that which is "reasonable in nature, credible, and of solid value. . . ." (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1065, quoting *Estate of Teed* (1952) 112 Cal.App.2d 638, 644.) '"The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record."' (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, quoting *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.)

Mother concedes that the jurisdictional findings are prima facie evidence that the child cannot safely remain in the home (§ 361, subd. (c)(1)), and that in determining whether removal is warranted, the court may consider the parent's past conduct as well as her present circumstances. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) She argues, however, that the court's finding that DCFS made reasonable efforts to prevent detention and eliminate the need for removal was not supported by substantial evidence. This is so, mother contends, because the court stated that it would not return S.O. to her until she had received individual counseling, but that the counseling referrals which DCFS made had waiting lists, such that mother could not obtain the required counseling before the detention hearing. However, as respondent argues, there is no evidence that the fact that mother was placed on a waiting list for counseling services was the result of a lack of effort by DCFS. Thus, the court's finding that DCFS made reasonable efforts to prevent S.O.'s detention was supported by substantial evidence.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J. MOSK, J.