

Filed 10/3/19 In re Trinity R. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re TRINITY R., et al.,
Persons Coming Under the
Juvenile Court Law.

B295686
(Los Angeles County
Super. Ct. No.
18CCJP06248A-B)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIELLE L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Philip L. Soto, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Danielle L. (mother) has suffered from alcohol addiction since the late 1990s, and despite periods of sobriety, always returned to alcohol. On August 22, 2018, she grabbed two knives and threatened to kill herself as her young daughters watched. The juvenile court declared the girls to be dependents of the court, and ultimately removed them from mother and placed them with their non-offending father in Arizona. Mother argues that substantial evidence did not support the court's removal finding. This argument lacks merit, so we affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother and Guillermo R. (father) have two children together—now 15-year-old Trinity and now 12-year-old Jada. Mother and father split up in 2011, and the girls have since lived with mother in California while father stayed in Arizona.

In August 2018, mother picked up two knives and threatened to slit her wrists as the girls and their maternal grandmother looked on. Mother was intoxicated at the time. This was just the latest incident arising from mother's longstanding battle with alcohol, which mother admits began when she was 15. Over the ensuing 20 years, mother has managed to have periods of sobriety, but each period ended in relapse where her "alcohol use worsened." As a consequence of her addiction, mother has on multiple occasions (and as recently as July 2018) driven the girls around while she was intoxicated, has shown up at school functions smelling of alcohol, and has

been unable to wake up to go to work or to take the girls to school. In the months leading up to the August 2018 incident, maternal grandmother said mother “has a definite drinking problem,” and the girls and maternal grandmother saw mother drinking “a lot,” “often” and “every day” or every other day. All the while, mother has minimized the severity and impact of her alcoholism: She initially denied ever drinking and driving with the children but subsequently admitted she saw nothing illegal with driving the girls around after having a single glass of wine, and initially denied the August 2018 incident was a suicide attempt but subsequently blamed it in part on a bump to the forehead she got earlier that day.

In September 2018, the Los Angeles Department of Children and Family Services (Department) filed a petition asking the juvenile court to assert dependency jurisdiction over Trinity and Jada on the grounds that (1) mother’s practice of driving with the “children as passengers” puts them “at risk of serious physical harm, damage and danger” (thereby making dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b)),¹ (2) mother’s “current abuse of alcohol” renders her “incapable of providing regular care of the children” and “places [them] . . . at risk of serious physical harm, damage and danger” (thereby making dependency jurisdiction appropriate under section 300, subdivision (b)), and (3) mother’s diagnosis of depression and suicide attempt also “render” her “unable to provide regular care” (thereby making dependency jurisdiction appropriate under section 300, subdivision (b)).

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In December 2018, the juvenile court sustained the allegations that mother's driving under the influence put the children at risk and, after interlineation, that mother's "history of abuse of alcohol" and a positive test for methamphetamine and amphetamines also put the children at risk.² The court dismissed the remaining allegation based on mother's depression. Rejecting mother's argument to the contrary, the court found that mother's "chronic, longstanding" alcoholism put the children at risk.

In late January 2019, the juvenile court held the dispositional hearing. The court removed both children from mother, finding mother's recent period of sobriety to be encouraging but that, given mother's history of sobriety followed by relapse and the "reasonable inference" that mother was remaining sober simply because "she wants to keep the children in California," the court had "no reason to believe that [mother] . . . will not relapse" again. The court noted that mother had completed a 60-day, in-patient alcohol program, but noted that mother had completed a 90-day alcohol program after sustaining a DUI conviction in 2013 that did not halt her continued alcoholism and that mother's current program counselor opined mother was making "slow progress" toward her treatment goals. The court put it succinctly: "This is not the first time [mother has] tried to beat this demon," but that she has not yet "beat[] it." Because father was a non-offending and non-custodial parent

² The Department filed a first amended petition with a separate, fourth allegation based on the positive methamphetamine and amphetamine test, but the Department subsequently dismissed that allegation and wove it into the previously alleged alcohol abuse allegation.

who was requesting custody of both children, the court noted how section 361.2 required that the court place the children with father unless doing so would be a “detriment” to them. Although Trinity and Jada had repeatedly expressed a “prefer[ence]” for staying in California with their maternal grandmother rather than moving to Arizona, the court found that this did not qualify as a legally cognizable “detriment.” The court thus issued an “exit order” awarding father physical custody of the children and awarding mother and father joint legal custody.

Mother filed this timely appeal.

DISCUSSION

In this appeal, mother does not challenge the trial court’s finding that it would not be detrimental to place Trinity and Jada with father under section 361.2; instead, she challenges the court’s precursor finding removing the girls from her custody. A juvenile court may remove a child from her parents only after finding, by clear and convincing evidence, that (1) “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if [she was] returned home,” and (2) “there are no reasonable means” short of removal “by which the [child’s] physical health can be protected.” (§ 361, subd. (c)(1).) We review a removal order for substantial evidence (*In re R.T.* (2012) 3 Cal.5th 622, 633), and in so doing view the record in the light most favorable to the juvenile court’s ruling (*In re John M.* (2017) 212 Cal.App.4th 1117, 1124). Although the courts remain divided over whether we are to conduct our substantial evidence review through the prism of the clear and convincing evidence standard (compare *In re Ashley F.* (2014) 225 Cal.App.4th 803, 809 [applying standard to substantial evidence review] with *In re J.S.*

(2014) 228 Cal.App.4th 1483, 1492-1493 [disregarding it on appeal]), we will sidestep this conflict by using the more parent-friendly lens of clear and convincing evidence.

Substantial evidence supports the juvenile court’s finding, by clear and convincing evidence, that Trinity and Jada would face “substantial danger to [their] physical health, safety protection or physical or emotional well-being” if they remained with mother and that no reasonable means short of removal could protect them. Substantial evidence supports the juvenile court’s finding that mother’s alcoholism poses a danger to the girls. For nearly two decades, mother has struggled with her alcoholism, and mother’s alcohol-induced conduct has repeatedly placed Trinity and Jada at risk of physical and emotional harm—she had repeatedly driven the girls around in her car while drunk, and in August 2018 she threatened to kill herself in front of the girls. Such acts undoubtedly pose a “substantial danger” to the girls’ “physical health, safety, protection, or physical or emotional well-being.” (§ 361, subd. (c); see *Gikas v. Zolin* (1993) 6 Cal.4th 841, 860 (dis. opn. of Mosk, J.) [“the effects of drunk driving are cruel indeed”], italics omitted.) And substantial evidence supports the juvenile court’s finding that mother’s 20-year struggle with alcohol abuse (and the dangers it poses) had not gone away just because mother had recently enjoyed another short period of sobriety while making “slow progress” fighting her addiction. (See, e.g., *In re J.C.* (2014) 233 Cal.App.4th 1, 7 [seven months of sobriety insufficient to show parent was not at risk of relapse]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 [“Given the severity of [mother’s] drug problem the court could reasonably find her [three months of] sobriety . . . was not particularly compelling”]; *In re Clifton B.* (2000) 81 Cal.App.4th

415, 423-424 [200 days of sobriety was insufficient to demonstrate that parent would suffer no further relapses].)

Mother's sole remaining argument is that there was a "reasonable means short of removal" to assure the girls' safety—namely, placing the girls with the maternal grandmother. Mother proposed this alternative to the juvenile court, but the juvenile court rejected it as not eliminating the risk to the girls. This finding was supported by substantial evidence: Placing the girls with the maternal grandmother would not eliminate the danger posed by mother's alcoholism or the likelihood of another relapse. Indeed, the girls were living with maternal grandmother when mother showed up drunk and threatened to slit her own wrists. This was not a viable alternative.

DISPOSITION

The juvenile court's orders removing Trinity and Jada from mother's custody are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ