Filed 3/8/18 In re M.M. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.M. et al, Persons Coming Under the Juvenile Court Law.	2d Juv. No. B285395 (Super. Ct. Nos. 17JV00289, 17JV00290, 17JV00291) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. V.A., Defendant and Appellant.	

V.A. (Mother) appeals jurisdictional findings and dispositional orders made by the juvenile court involving Mother's children M.M., R.M. and R.M., minors coming under the juvenile court law. (Welf. & Inst. Code, § 300, subds. (b)(1) &

(g).)[1] We conclude, among other things, that the juvenile court did not err in requiring Mother to participate in substance abuse treatment. We affirm.

FACTS

On June 19, 2017, the Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition alleging that Mother "admitted to abusing illegal substances," including methamphetamines, "rendering her unable to supervise and provide care for the children." CWS said two of her children took marijuana to school resulting in their suspension. Mother advised a social worker that "she is not providing adequate care or supervision for her children and is dealing with post traumatic stress disorder and depression."

CWS sought a "protective custody warrant" to remove the children from Mother's custody. CWS said Mother has an "extensive Child Welfare History which includes allegations of neglect, emotional abuse, and physical abuse." It noted that Mother has "24 referrals that date from 2007 to the present."

At the detention hearing the juvenile court found "the children come under Section 300" and out-of-home placement was necessary for the children's welfare and health.

In July 2017, CWS filed a jurisdiction/disposition report recommending that Mother receive family reunification services and be ordered to participate in a case plan. A component of that case plan required Mother to "participate in an impatient or outpatient drug treatment program."

At an August 10, 2017, pretrial conference, Mother's counsel advised the juvenile court that Mother intended to waive

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[1] All statutory references are to the Welfare and Institutions Code.

reunification services. Later her counsel told the court that Mother had changed her mind. Mother said, "I'm tired of this. I'll sign the waiver."

Mother's counsel said Mother had "issues" with "some of the services" in her case plan.

At the jurisdiction/disposition hearing, Mother testified she told CWS that she wanted to place her "kids out of [her] care for six months" in a guardianship. She said she was willing to submit to "drug tests" and parts of her case plan. Mother agreed with CWS that she would enter a "detox" program. She said, "I went to detox, and I stayed for five days, and I left there on July 14th. And from July 14th till today, I've been sober." Mother was asked if she was "willing to do a drug program." Mother said, "I would like to know why I have to . . . . I've never been convicted of nothing that has to do with drugs. . . . I have had a drug problem twice in my life. Two periods from 2005 to 2007 I used drugs. [T]hat was when me and my kids' father split. . . . [F]rom 2015 to 2017, I used. And that was due again to me and my kids' father splitting the second time."

The juvenile court ruled substance abuse treatment was a component of her reunification services case plan.

DISCUSSION

Requiring Mother to Participate in Substance Abuse Treatment

Mother contends that because she waived her right to reunification services under section 361.5, subdivision (b)(14)(A) and (B), the juvenile court lacked authority to require her to participate in substance abuse treatment.

CWS points out that Mother objected to the drug treatment requirements of her case plan. But that does not constitute a waiver of reunification services.

Section 361.5, subdivision (b)(14)(A) and (B) sets forth the requirements for a parent to waive reunification services: 1) the parent must advise the court that he or she "does not wish to receive" reunification services (*id.*, subsection (A)); 2) the parent must "execute a waiver of services form" (*id.*, subsection (B)); and 3) there must be a finding that the parent "knowingly and intelligently waived the right to services" (*ibid.*).

Mother concedes she did not execute a written waiver of reunification services. At the contested jurisdiction/disposition hearing, the juvenile court could reasonably infer that Mother did not object to reunification services in general. Her objection was only to one component of her case plan-substance abuse treatment.

Mother testified about elements of her reunification services case plan that were acceptable to her. She was asked, "So the parenting education *and your case plan, that's not a problem*?" (Italics added.) Mother: "No, that's not a problem." Question: "The counseling is not a problem?" Mother: "Not a problem." Question: "Are you willing to do a substance abuse program?" Mother: "I don't feel that I need it, no. *I'm willing to [do] drug tests whenever*, but as far as the sit down and talk about drugs for a couple of hours out of my day, when I could be doing something more productive, I'd rather do something else." (Italics added.) As CWS notes, from the "I don't feel that I need it" remark, the juvenile court could reasonably find she was in denial about her need to address her substance abuse problem.

The juvenile court could also reasonably infer Mother had not made a knowing and intelligent waiver of these services. At the August 10th pretrial conference, Mother took inconsistent positions about whether she would waive reunification services. Her counsel initially told the court that Mother planned to sign "a

waiver of services." But a short time later her counsel told the court "there's since been a change of plans." Later at that hearing, Mother said, "I'll sign the waiver. *I've been asking CWS for help for two whole years* before I even got in a bad situation. They waited until I sunk myself to offer me help. *I'm tired of this.* I'll sign the waiver." (Italics added.) At the end of the jurisdiction/disposition hearing, Mother indicated a case plan "minus" substance abuse classes would be acceptable. The court could reasonably infer Mother's wavering positions showed she had not made a knowing and intelligent waiver.

"'"The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion."'" (*In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.) It is well established that "a juvenile court has the power to order a parent to participate in substance abuse treatment as part of a reunification plan." (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1224.)

Here the juvenile court found Mother needed substance abuse treatment. It noted she had gone into a "detox" facility, but did not complete that treatment. It said her substance abuse problem "affected" the children. These findings are supported by the record.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J. TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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

Michael C. Ghizzoni, County Counsel, Christopher E. Dawood, Deputy Counsel, for Plaintiff and Respondent.