Filed 10/14/14 In re K. R. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K. R., A Person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MARIO R. et al., Defendants and Appellants.	B254576 (Los Angeles County Super. Ct. No. CK76110)

APPEAL from an order of the Superior Court of Los Angeles County, Margaret Henry, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant Mario R.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant Jennifer M.

John F. Krattli, Office of the County Counsel, Dawyn R. Harrison, Assistant County Counsel and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Jennifer M. (Mother) and Mario R. (Father) appeal the juvenile court order denying their petitions for modification brought under Welfare and Institutions Code section 388 seeking reinstatement of reunification services.[1] Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is the mother of two children, K. R., born in 2013, and Jacob, born in 2008.[2] Father is the father of K.[3] The children were detained by the Department of Children and Family Services (DCFS) in March 2013, after K. was born prematurely testing positive for marijuana.[4] K. was placed in a foster home. At the detention hearing, the court instructed DCFS to provide both parents immediate referrals to individual counseling, parenting classes and substance abuse programs.

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

2 This appeal does not directly involve Jacob or his father. However, the petition and all proceedings until the final hearing concerned both children, and matters pertaining to Jacob will be discussed in this context.

3 The record does not reflect that the court found Father to be K.'s presumed father. However, Father filled out a Statement Regarding Parentage, claiming to be the father, and was treated as a presumed father throughout the proceedings. We do not base our analysis on Father's lack of presumed father status.

4 Mother and Jacob were involved in a prior dependency proceeding after Jacob was born testing positive for marijuana in 2008. The proceeding was initiated after a voluntary family maintenance attempt failed. Jurisdiction was terminated in March 2010, and Jacob was returned to Mother's care.

In April 2013, the court sustained the following allegations in support of jurisdiction under subdivision (b) (failure to protect): (1) Mother used marijuana during her pregnancy and K. "was born suffering from a detrimental condition consisting of a positive toxicology screen for marijuana"; and (2) Mother and Father had a history of illicit drug use and were current users of marijuana, which rendered them incapable of providing regular care for the children. The court specifically found that Mother had used marijuana to the point of inebriation while Jacob was under her care and supervision, and that Father used marijuana in Jacob's presence.[5] The court also found jurisdiction appropriate under subdivision (j) (abuse of sibling) based on the fact that Jacob had been adjudged a dependent of the juvenile court in a prior proceeding.

The court ordered reunification services. Mother was required to participate in a substance abuse program with aftercare and random drug testing, to undergo individual and conjoint counseling, and to complete a parenting class. Subsequently, she was ordered to drug test weekly. Father was required to participate in a substance abuse program with aftercare and random drug testing, to undergo individual counseling, and to complete a parenting class.

In the months that followed the jurisdictional/dispositional hearing, Mother tested positive for methamphetamines, ecstasy and marijuana, and missed multiple tests. She was discharged from one outpatient substance abuse program, and was performing unsatisfactorily at a second. She did not enroll in individual counseling, and did not maintain regular contact with DCFS. The caseworker

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[5] Between 2007 and 2010, Father had two arrests and one conviction for possession of marijuana, and a conviction for driving under the influence of marijuana.

encouraged her to enroll in an inpatient program, and provided her with multiple referrals. Father did not participate in any services.[6]

On October 25, 2013, the court terminated both parents' reunification services and set a section 366.26 hearing for February 20, 2014. The court found Mother and Father had visited regularly, but had not made significant progress in resolving the problems that led to the removal of the children, and had not demonstrated the capacity and ability to complete the objectives of the treatment plan or to provide for the children's safety, protection, or physical and emotional health.

After the termination of reunification services at the six-month review hearing, Father enrolled in a substance abuse program and began attending therapy sessions. He completed a parenting class in January 2014, as well as a dozen drug and alcohol education sessions and relapse prevention sessions. He underwent seven therapy sessions. Mother enrolled in an inpatient substance abuse program on October 31, 2013, was discharged on November 6, 2013 for breaking program rules, and enrolled in an outpatient program in January 2014. She appeared to be making progress after her reenrollment. She was also undergoing weekly therapy.

In the meantime, K.'s foster parents had been providing her with a safe, stable and appropriate home and an excellent level of care. The foster parents' home study was completed and they expressed a commitment to adopting her.[7]

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[6] Mother reported that Father had said "'You got yourself into this, you're grown, you get yourself out of it,'" and that he did not want to be "'dragged' into this "when she was the one who smoked marijuana while pregnant."

[7] Jacob was also in a safe and stable home with his grandmother, and had adjusted to being in her home. The grandmother was willing to adopt him and provide a permanent home. Jacob reported he did not want to go back to Mother and liked living with his grandmother.

In December 2013, Mother and Father filed section 388 petitions, seeking reinstatement of their reunification services. The court granted an evidentiary hearing, scheduling it the same day as the section 366.26 hearing. DCFS recommended against granting the petitions, observing that although the case had been open eleven months, Mother and Father had only recently enrolled in services and neither had completed a drug program. Counsel for the minors joined DCFS in opposing the section 388 petitions.

At the February 20, 2014 hearing, Father testified he had not yet completed his substance abuse program but had three or four more months to complete.[8] His individual counseling program was also unfinished, requiring a few more months to complete. Father further testified he had substance tested twice a month for approximately four months, and had not tested positive during that time. Mother testified she had begun a parenting class and would conclude it in another month. She had been in an inpatient substance abuse program for 45 days, and an outpatient program for a month. She had last used drugs on October 29, 2013.

The court denied the petitions, stating that although Father had enrolled in the requisite programs, his situation had not yet changed, that Mother had no history of being in compliance with a program or of being clean, and that 45 days in an inpatient program was insufficient to treat Mother's level of drug addiction. The court also found it would not be in K.'s best interest to grant either petition, in view of the fact that she had lived with the foster parents nearly all her life.[9] The court terminated parental rights over K. Mother and Father appealed.

DISCUSSION

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[8] The February 20 hearing was limited to consideration of the section 388 petitions as they applied to K., and termination of parental rights over K..

[9] K. had been placed with the foster parents when she was one month old, after her release from the hospital.

Under section 388, a parent or other interested person may petition the court to change, modify or set aside a previous order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) "The petitioner has the burden to show a change of circumstances or new evidence and [that] the proposed modification is in the child's best interests" or that "the child's welfare requires the modification sought." (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; accord, *In re J.C.* (2014) 226 Cal.App.4th 503, 525; see Rules of Court, rule 5.570(i).) Appellate courts review the grant or denial of a petition for modification for abuse of discretion. (*In re B.D.*, *supra*, at p. 1228.)

The changed circumstances requirement of section 388 "must be viewed in the context of the dependency proceedings as a whole. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) "The fact that the parent 'makes relatively last-minute (albeit genuine) changes' does not automatically tip the scale in the parent's favor." (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512, quoting *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530.) "In evaluating whether the petitioner has met his or her burden to show changed circumstances, the trial court should consider: '(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.'" (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1228, italics omitted, quoting *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.)

A section 388 petition may be filed and heard at any time, up to and including the time of the section 366.26 hearing. (*In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 308-309.) However, once reunification services are terminated, the focus shifts from reunification to the child's need for permanency and stability, and a presumption arises that "continued care [under the dependency system] is in the

best interest of the child." (*Id.* at pp. 309-310.) "[I]n order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate." (*Id*. at p. 308; see § 352, subd. (a) [juvenile court required to "give substantial weight to a minor's need for prompt resolution of her or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements"].) In the case of a child under the age of three, the limitation could be as little as six months where the parents "fail[] to participate regularly and make substantive progress in a court-ordered treatment plan . . . ." (§ 366.21, subd. (e).)

Here, Mother and Father made no progress at all in resolving the problems that led to the detention and assertion of jurisdiction during the more than six months that followed the detention and jurisdictional/dispositional hearings. Indeed, by her own admission Mother was still using drugs after the six-month review hearing. By the time of the hearing on the section 388 petitions, Mother had barely started to obtain treatment for her longstanding drug abuse problem and had made only minimal progress. Given her history of relapses, and in particular, her failure to maintain a drug-free lifestyle after the termination of the 2008 proceeding, her showing was insufficient to establish genuine changed circumstances. Father had made more substantial progress, but he, too, had a longstanding drug problem as evidenced by his multiple arrests and convictions, and his efforts came too late. He had not completed the substance abuse program or the counseling requirement by the time of the hearing. Nor had he demonstrated that he could maintain sobriety over the long haul needed to raise a child. In the meantime, K. had been living with the prospective adoptive parents who were providing excellent care and were prepared to provide her a safe and stable home. Under these circumstances, the court did not abuse its discretion in finding it was

in K.'s best interests to deny appellants' petitions for modification. (See *In re Casey D*. (1999) 70 Cal.App.4th 38, 47 ["A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]"].)

DISPOSITION

The order denying the petitions for modification is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.