Filed 2/20/18 In re P.R. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 P.R., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B284340 (Super. Ct. No. 17JV00234) (Santa Barbara County)
SANTA BARBARA CHILD PROTECTIVE SERVICES, Plaintiff and Respondent, v. Z.R., Defendant and Appellant.	

Z.R. (mother) appeals from jurisdiction and disposition orders entered after the juvenile court sustained a dependency petition and declared mother's newborn girl, P.R., a ward of the court. (Welf. & Inst. Code, § 300, subds. (b) & (g).)[1]

[1] All further section references are to the Welfare and Institutions Code unless otherwise stated.

Mother contends that the jurisdiction and disposition findings are not supported by the evidence. We affirm.

Facts and Procedural History

On May 8, 2017, law enforcement transported mother to Santa Barbara Cottage Hospital after she became combative and threatened to strangle residents at the Path Homeless Shelter. Mother was pregnant and threatened to leave the hospital and have her baby in the mountains. Concerned about the baby's safety, hospital staff moved up the date for mother's cesarean section and delivered P.R. on May 8, 2017.

After P.R. was born, mother argued with hospital staff, would not follow directions, refused counseling, and threw food at the nurses. On the evening of May 10, 2017, mother yelled at the shift nurse when P.R. was taken to the nursery. Mother was advised that it was not safe to co-sleep with P.R.

A day later, a public health nurse and two social workers visited mother to discuss P.R.'s care. Mother was "spiraling downward." The next day, mother was so irrational and aggressive that hospital security had to be called. Mother argued with hospital staff and left P.R. on a nursing pillow in a dangerous position that could cutoff the baby's air way.

Mother expressed homicidal ideations and was evaluated by a psychiatrist. Frustrated, mother wanted "'to go to the mountains to have [her] baby.'" The psychiatrist reported that mother was confabulating her medical history[2] and suffered

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[2] Medical records indicated that mother had a child in Oregon or Pennsylvania that was removed from her care. When asked about the Philadelphia birth, appellant said that she was treated for a seven pound seven ounce fibroid on her uterus that "looked like I was pregnant." Before P.R. was born, mother told a

from Borderline Personality Disorder "characterized by a disturbed sense of identity, splitting, impulsivity, uncontrollable emotional reactions that often seem disproportionate [to] the situation, unstable and chaotic interpersonal relationships, anxiety, anger, rage and even dissociation." Hospital staff was concerned about P.R.'s care after a pediatrician reported that P.R. had a Ventricular Septal Defect (i.e., a heart murmur) and referred the newborn baby to the UCLA Pediatric Cardiology Department.

The Santa Barbara County Child Welfare Services (CWS) filed a dependency petition for failure to protect (§ 300, subd. (b)(1)) and no provision for support (§ 300, subd. (g)). The petition alleged that P.R. was at substantial risk of harm due to mother's untreated mental illness and inability to care for the infant.

At the detention hearing, mother indicated that she had Native American Indian heritage but refused to provide family information or divulge the name of P.R.'s biological father. Mother told a social worker that if CWS wanted to take the baby, mother would "'take it federal and contact her tribe.'" The trial court found that P.R. was in substantial danger of physical harm and ordered P.R. detained.

Thereafter, mother filed a section 388 petition for the return of P.R. Attached to the petition were medical records

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doctor that she delivered a seven pound seven ounce boy (Angel) in Philadelphia after she was raped and pushed down a flight of stairs. Mother said that Angel was put in foster care "because the judge said that [mother] was 'mentally in a bad place' secondary to the rape and domestic violence."

stating that mother wanted to go to the woods or mountains and "'be one with nature, take time for herself, and breathe.'" Finding no changed circumstances, the trial court denied the petition and calendared the matter for a jurisdiction/disposition hearing. Mother told the court that she would not disclose her current address, the identity of P.R.'s biological father, or the Indian tribe to which her family was affiliated.

Contested Jurisdiction/Disposition Hearing

Before the jurisdiction/disposition hearing, mother again refused to provide information about her Native American Indian heritage. Mother said that she was raised in Philadelphia and "'I'm not giving you my family's information. I don't want them involved.'" Appellant told the case worker, "'Why don't you notice all 430 tribes? I'm not going to do you dirty work for you.'"

CWS reported that mother was unemployed, living with a friend, and had missed two weeks worth of supervised visits. The case worker recommended that P.R. be placed in a foster home and that reunification services be provided because mother lacked the parenting skills to provide P.R. a safe and stable home. During the hearing, mother denied that she had a borderline personality diagnosis, denied that she got into an altercation at the homeless shelter, and denied that P.R. had a heart condition. CWS Social Worker Jonathan Garcia confirmed that mother would not disclose her tribal affiliation, the identity of the biological father, where mother was living, or sign a release to review her mental health records. In a letter, mother's therapist, Connie Ratliffe, stated that she saw mother three times and that the sessions stopped in July 2017.

Sustaining the petition, the trial court declared P.R. a dependent of the court and ordered reunification services. The

court found that returning P.R. to mother at this point in time would cause a substantial danger to P.R.'s physical or emotional well-being.

Discussion

Mother argues that the evidence does not support the jurisdictional and dispositional findings. We review for substantial evidence, drawing all reasonable inferences in favor of the judgment. (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.) An appellate court has no power to judge the effect or value of the evidence, to reweigh the evidence, or to evaluate the credibility of witnesses. (*Ibid.*) Here the evidence shows that mother suffers from unresolved mental health issues and poses a serious risk of physical harm to P.R. "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. [Citations.]" (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

Dr. Danielle Lopez, a psychiatrist, diagnosed mother as suffering from borderline personality disorder manifested by uncontrollable emotional reactions, unstable and chaotic interpersonal relationships, anxiety, anger, rage, and dissociation. Hours before P.R. was born, mother threatened to harm residents at a homeless shelter and run off to the mountains. Mother "'wanted everyone to disappear'" and "'to go get her dog and . . . have her baby in a field.'" Social workers reported that mother was "spiraling downward" and could not care for herself or P.R. A case worker at Doctors Without Walls reported that appellant was easily angered and "'not connected to this pregnancy.'" Virtually everyone who came into contact with mother was concerned about P.R.'s safety. Those concerns were well founded. Mother told her therapist that P.R. was a twin and

that the second twin died in the first trimester after mother was physically abused by her ex- fiancé. Mother also claimed that the ex-fiancé continues to harass her.

The trial court reasonably concluded that mother's untreated mental condition and lack of insight posed a substantial risk of harm to P.R. Before P.R. was born, mother moved from Philadelphia to Utah, Utah to Colorado, Colorado to Oregon, Oregon to San Luis Obispo, and from San Luis Obispo to Santa Barbara. Mother was unemployed, living in a homeless shelter, and wanted to leave with the baby because there were few housing opportunities. It posed an imminent risk of harm to P.R. and mother had no plan to provide for P.R.'s on-going medical needs.

Less Restrictive Placement

Mother asserts that less restrictive alternatives could have been implemented without removing P.R. from her care and custody. (§ 361, subd. (c)(1).) "'A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.' [Citation.]" (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 83.) If these prongs are satisfied, removal is appropriate even if the parent is not dangerous and the minor has not yet been harmed. (*Ibid.*) "'The focus of the statue is on averting harm to the child.' [Citation.]" (*Ibid.*)

Removal was appropriate because mother suffers from untreated mental health issues and lacks the ability to provide P.R. a safe and stable home. Even in a supervised hospital setting, mother refused to follow medical directions and placed P.R. at risk. The trial court found that mother's subsequent efforts to seek services was a "start" but that P.R.'s

health and well-being required a removal at this time. Although the trial court must consider alternatives to removal, it has broad discretion in making a dispositional order. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.) No abuse of discretion occurred here.

Parenting Class

Mother contends that the trial court erred in ordering her to complete a parenting class because she had already attended a class.[3] Mother did not object to the disposition order, waiving the issue. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 641-642.) Waiver aside, mother makes no showing that the trial court abused its discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Section 362, subdivision (d) provides that the trial court may order a parent "to participate in a counseling or education program, including, but not limited to, a parent education and parenting program . . . ."

The evidence shows that mother had no experience caring for an infant, engaged in unsafe parenting practices while in the hospital, and disregarded medical directions for P.R.'s care. Mother claimed that she completed a parenting class, but could not verify who provided the class or when it was completed. The trial court advised mother that she would have to attend parenting classes, participate in a psychological evaluation, and follow all treatment recommendations. Mother agreed to do so and did not object to the case plan terms which included a parenting class. "A party may not assert theories on appeal

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[3] Mother could not recall who provided the parenting class and CWS was not able to verify that mother attended such a class.

which were not raised in the trial court. [Citation.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.)

ICWA

Mother argues that CWS failed to provide notice under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq) and California related statutes (§ 224 et seq.) before the jurisdiction/disposition hearing. When the trial court knows or has reason to know that an Indian child is involved, the party seeking to remove the Indian child from the custody of its parent must notify the parent and the Indian child's tribe of the pending proceedings and of their right to intervention. (25 U.S.C. § 1912, subd. (a); § 224.2, subd. (a)(4); *In re Abbigail A.* (2016) 1 Cal.5th 83, 91.) "If the parent, Indian custodian or tribe cannot be determined, notice must be given to the Bureau of Indian Affairs (BIA). [Citation.]" (*Ibid.*)

CWS served ICWA notice on the BIA and the United States Secretary of Interior on September 11, 2017, while the appeal was pending. We have taken judicial notice that sixty days passed with no response from the BIA and that, on December 6, 2017, the trial court found that ICWA does not apply. (§ 224.3, subd. (e)(3); see *In re Z.N.* (2009) 181 Cal.App.4th 282, 299-300 [judicial notice may be taken of post-judgment records to assess lack of prejudice from ICWA error].) Remanding the matter back to redo the ICWA notice would be an empty formality and a waste of scarce judicial resources. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402.) There is no information in mother's dependency file that mother or her family has Indian ancestry. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1530 [alleged deficiencies in an ICWA notice are harmless if dependent child is not an Indian child].) Delaying the jurisdiction and

disposition orders "for an empty exercise with a preordained outcome, especially where that exercise does nothing concrete to further the purposes of ICWA" would be an exercise in futility. (*In re E.W.*, *supra*, at p. 402.)

Mother's remaining arguments have been considered and warrant no further discussion.

Disposition

The judgment (jurisdiction and disposition orders) are affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jean M. Dandona, 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, Ashley E. Flood, Deputy Counsel, for Plaintiff and Respondent.