Filed 10/23/12 In re Brooke B. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re BROOKE B., A Person Coming Under the Juvenile Court Law.	B243225
DARA H., et al., Petitioners, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real-Party-in-Interest.	(Los Angeles County Super. Ct. No. CK58014)

PETITIONS for extraordinary writ relief from an order of the Superior Court of Los Angeles County, Anthony Trendacosta, Juvenile Court Referee. Denied.

Dara H. et al., in pro. per., for Petitioners.

Office of the County Counsel, John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Real Party in Interest.

Dara H. (mother) and Bryan B. (father), each separately and in propria persona petitioned the court seeking extraordinary writ relief from an order entered on July 31, 2012. For convenience, we address both petitions in this single opinion. Both mother and father contend that the trial court erred in terminating their respective reunification services and setting the Welfare and Institutions Code[1] section 366.26[2] hearing. For reasons explained below, we shall deny the petitions.

FACTUAL AND PROCEDURAL BACKGROUND[3]

The Department of Children and Family Services (DCFS) filed a section 300 petition on January 3, 2011 on behalf of Brooke B., born in May of 2003. Among other things, the petition alleged that mother was a current substance abuser (methamphetamine) with a substance-abuse history spanning over 24 years and that she suffered from mental and emotional problems rendering her incapable of providing proper care for Brooke. Mother also had a significant prior history of DCFS involvement with both Brooke and her older half-sister, Amber H.[4] Brooke was detained with an extended family member as a result. An amended petition was filed on February 14, 2011 adding the allegation that father had an unresolved anger management problem and a history of failing to comply with court orders that he

---

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

[2] Section 366.26 provides, inter alia, the procedures for conducting hearings to terminate parental rights, determine adoption of, or guardianship of, children adjudged dependent children of juvenile court. Pursuant to section 366.26, subdivision (*l*), an order setting such a hearing is not appealable unless "(A) A petition for extraordinary writ review was filed in a timely manner[; ¶] (B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record[; ¶ and] (C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits."

[3] The factual and procedural background is drawn from the record, which includes a two-volume Clerk's Transcript and a one-volume Reporter's Transcript.

[4] Amber is now an adult and is not a party to this writ proceeding.

participate in domestic violence counseling and parenting classes. The parents pled no contest to the amended petition's allegations and the trial court sustained the petition on March 30, 2011. Both parents were offered reunification services and visitation. Brooke was placed in the care of her maternal grandparents, where she continues to reside.

Mother was ordered to submit to a psychological assessment and to participate in individual counseling, parenting classes and substance abuse counseling and testing. DCFS reported in its Status Review Report filed on March 16, 2012 that mother's visitation with Brooke was sporadic and that mother was neither stable nor responding to treatment. Additionally, the evidence showed that mother's progress in counseling was not moving forward, that she failed to show for seven drug tests, and that she did not complete her parenting classes. At the contested hearing on May 2, 2012, at which mother did not appear, DCFS reported that mother failed to show up for another drug test and had completed only two counseling sessions. The trial court terminated mother's reunification services, finding that she was not in compliance with the court-ordered case plan. DCFS was ordered to continue providing reunification services to father and to allow father unmonitored overnight visits with Brooke.

At the contested 18-month hearing held on July 31, 2012, father testified that he had complied with all court-ordered programs but he could not recall the name of the facility at which he completed the programs and no certificate of completion was produced. He also stated that if Brooke were returned to his custody, he would "put her first." DCFS had previously sought to end overnight visits between father and Brooke in June because Brooke's therapist[5] explained in a letter dated June 5, 2012 that Brooke had increased symptoms of anxiety and post-traumatic stress disorder (PTSD) after such visits. The letter from the therapist was entered into evidence with no objections.[6]

---

[5] The author of the letter was Rachael Berg, M.A. Ms. Berg was a psychology extern working for the Department of Mental Health. Her work with Brooke was supervised by Larisa Litvinov, Ph.D., the supervising Clinical Psychologist.

[6] Father was present and represented by counsel.

DCFS also reported that Brooke continued to express distress over the recurring conflicts, including verbal abuse and physical violence, between her parents. The trial court found that father was in compliance with his case plan, but determined that returning Brooke to father would create a risk of detriment to her well-being. The trial court's determination was based primarily on the letter from Brooke's therapist and father's history of violent outbursts, indicating that he had not made substantial progress and lacked insight into the issues that brought Brooke under the court's jurisdiction. The trial court terminated father's reunification services and set the matter for a section 366.26 hearing on November 27, 2012 to select and implement a permanent plan for Brooke.

Both parents filed notices of their intent to file writ petitions on August 6, 2012.

CONTENTIONS

Mother contends that because she did not attend the hearing at which her reunification services were terminated, the evidence of her certificates of completion for "programs and counseling" were not "added to the file." Father contends that the DCFS status reports and the letter written by Brooke's therapist entered into evidence at the 18-month hearing were false.

DISCUSSION

1. *Mother's Petition for Extraordinary Writ Fails to Substantively Address a Specific Material Issue*

In her petition, submitted on Judicial Council form JV-825, mother challenges the order made on July 31, 2012 (at the 18-month hearing) on the basis that she did not attend the hearing and thus evidence of her completion of "programs and counseling" were not "added to the file." She asserts that her certificates of completion showed that she complied with her case plan. She contends that the trial court erred on the ground that her "rights [were] terminated."

Among other things, California Rules of Court, rule 8.452 requires that the petition include a summary of the grounds of the petition and be accompanied by a memorandum that (1) provides a summary of the significant facts (limited to matters in the record); (2) states each point under a separate heading or subheading, supported by argument and citation to authority; and (3) supports any reference to a matter in the record with a citation to the record, with an explanation of the significance of that portion of the record and a reference to any disputed aspects of the record. (Cal. Rules of Court, rule 8.452, subds. (a)(1)(D), (a)(2), (b).) Although the rule provides that the petition must be liberally construed (Cal. Rules of Court, rule 8.452, subd. (a)(1)), the memorandum "must, at a minimum, adequately inform the court of the issues presented, point out the factual support for them in the record, and offer argument and authorities that will assist the court in resolving the contested issues." (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583 (*Glen C.*).) Mother's petition does not meet even these minimal requirements.

As mother's parental rights have not yet been terminated, we assume that she seeks our review of the trial court's termination of her reunification services. However, such termination occurred by an order dated May 2, 2012, which was a separately appealable order. (§ 395; see also Cal. Rules of Court, rules 5.540, subd. (c), 8.104, subd. (a), (e).) Mother was present at the hearing on July 31, 2012, but was absent from the hearing on May 2, 2012, consistent with her assertion above. Although mother's petition was timely with respect to the July 31, 2012 order setting the permanency planning hearing, the issue it addresses relates not to the July 31, 2012 order but to the May 2, 2012 order. As a result, it fails to substantively address the specific order for which the petition was filed and thus raises no arguable issues.

We note that California Rules of Court, rule 8.452, subdivision (h)(1), provides that "[a]bsent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion." But mother's total failure to comply with rule 8.452 constitutes exceptional circumstances excusing us from deciding the petition on the merits. (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1512 [concluding that

the failure to tender and substantively address specific material issues constitutes an exceptional circumstance excusing review and determination on the merits].) Therefore, we will summarily deny her petition.

2. *Substantial Evidence Supports the Trial Court's Finding that Brooke's Return to Father's Custody would Place her at Risk of Detriment*

Although father's petition, like mother's, includes no memorandum of points and authorities and does not strictly follow the requirements of California Rules of Court, rule 8.452, it contains sufficient information that substantively addresses a specific material issue regarding the July 31, 2012 order. This, along with the record, allows us to liberally construe the petition as challenging the trial court's termination of father's reunification services based on the finding that Brooke's return to his custody would place her at risk of detriment because he failed to make substantial progress in court-ordered programs. (See Cal. Rules of Court, rule 8.452, subd. (a)(1) ["The petition must be liberally construed . . ."].) As we find that it meets the minimal requirements set forth in *Glen C.*, we exercise our discretion and reach the merits. (*Glen C. v. Superior Court*, *supra*, 78 Cal.App.4th at p. 583; see also *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157-158; *Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005; *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 955-956 [stating that a petitioner who fails to " ' "present argument and authority on each point made" . . . may, in the court's discretion, be deemed to have abandoned his appeal. . . . [and the court] may order dismissal' "]; *Joyce G. v. Superior Court*, *supra*, 38 Cal.App.4th at p. 1514.)

Section 366.22, subdivision (a), states, in relevant part, "The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be

detrimental." We review a trial court's findings pursuant to section 366.22, subdivision (a), for substantial evidence. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1345.) "In the presence of substantial evidence, appellate justices are without the power to reweigh conflicting evidence and alter [the trial] court['s] determination. [Citation.]" (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

"In deciding whether it would be detrimental to return a child, the easy cases are ones where there is a clear failure by the parent to comply with material aspects of the service plan. . . . [¶] The harder cases are, like the one before us, where the parent *has* complied with the service plan, but for some reason has not convinced a psychologist or social worker that it would be safe to return the child to the parent. The problem is not, as it were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling, therapy or parenting classes are doing any good). These are sensitive cases, fraught with emotional overtones, because they invariably deal with an evaluation of the *personality, character and attitudes* of the parent." (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) Nonetheless, despite a parent's general compliance with a court-ordered case plan, reasonable and specific psychological evaluations can serve as credible evidence sufficient to sustain a finding of detriment. (*Id.*, at p. 1750.)

The record contains evidence objectively demonstrating the detriment that Brooke was at risk of suffering. The letter from Brooke's therapist stated that Brooke had been attending weekly therapy sessions since November of 2011 with the treatment goal of decreasing her "somatic anxiety symptoms (e.g. nausea and headaches) and PTSD symptoms (e.g., nightmares, hypervigilance, hyperarousal, and avoidance)." As of the date of the letter (June 5, 2012), Brooke's symptoms had continued and had recently become more intense. For example, Brooke had an acute anxiety attack following an overnight visit with father. Her symptoms included rapid heart rate and nausea severe enough that she missed school the following Monday. DCFS reported that Brooke continues to be subjected to frequent and unresolved verbal aggression and

domestic disputes between mother and father. The therapist noted that Brooke had consistently expressed her distress regarding such parental conflict, which she had displayed in therapy sessions in several different ways including: "[(1)] frequent play themes of unresolved conflict[; (2)] psychomotor tension during and fatigue at the end of [the] session[; (3)] avoidance of feeling expression[; and (4)] excessive guilt and worry about her parents." The therapist continued, stating, "In the last month, Brooke has become increasingly avoidant of feelings and sources of stress, a sign of increased anxiety." Brooke expressed her desire for reassurance from her therapist that the child will continue to have a stable home with her maternal grandparents. The letter concluded by stating that it was the opinion of the "therapist and Dr. Litvinov that Brooke has emotional safety and predictability in [her maternal grandparents'] home, and that, if she returns to her parents' care with the level of parental conflict that regularly occurs, it is highly likely that Brooke's anxiety will increase significantly and that she would require intensive individual treatment." This letter did not contain mere general statements; rather, the therapist had explained, with specificity, how Brooke would be harmed if she were returned to father's custody at that point in time.

Additionally, the record supports the finding that father had failed to make substantial progress in the court-ordered programs. Early in the dependency proceedings, father harassed the DCFS social worker by leaving threatening and racially charged voicemail messages to the extent that she found it necessary to file a crime report with the Torrance Police Department. Later, father stated that he was willing to attend counseling with Brooke's therapist to gain a better understanding of Brooke's anxiety but, on July 17, 2012, "he 'changed his mind, he participated in classes previously and asked how many more hoops he had to jump through.' " Both father and mother had continued to see each other and continued to be verbally abusive over the phone. Father continued his disruptive and oppositional conduct even at the July 31, 2012 hearing when he shouted out in open court interrupting DCFS's counsel's arguments. Therefore, we find that the record contains evidence sufficient to support the trial court's finding that father failed to make sufficient progress in his court-ordered

plan. And the trial court did not err in determining that Brooke should not be returned to father's custody and in terminating father's reunification services.[7]

---

[7] We are troubled by the circumstances surrounding the incidents involved in this case. Although there is a strong public policy against protracted litigation in dependency cases, we have the discretion to stay the section 366.26 hearing when an exceptional showing of good cause has been made. (*In re Brandy R.* (2007) 150 Cal.App.4th 607, 611; Cal. Rules of Court, rule 8.452, subd. (f).) Based on the oral arguments before us, we find that such a showing has been made here. The stay will allow father a more reasonable period of time to coordinate with his attorney in the preparation and filing of a section 388 petition with the trial court. We express no opinion regarding changes in the factual circumstances of this case since the July 31, 2012 hearing; however, we note that father may need to demonstrate a change in his relationships with the maternal grandparents and the mother, a change in his daughter's therapeutic progress, and a change in his overall attitude regarding the dependency process. We urge father to take advantage of this last opportunity, to move past any bad feelings, and to focus on his future of having a consistent and positive relationship with his daughter. Should father's attorney no longer be available, father should file a request with this court seeking the appointment of another attorney. In the event that father files a section 388 petition prior to the date of the section 366.26 hearing, as stayed by this court, the trial court shall not conduct such hearing until after it rules on the section 388 petition.

DISPOSITION

Mother's petition is summarily denied. Father's petition is denied. The section 366.26 hearing is hereby stayed for 60 days beyond its presently scheduled date. (Cal. Rules of Court, rule 8.452, subd. (f).) Upon filing, this opinion is final immediately as to this court. (Cal. Rules of Court, rule 8.490, subd. (b)(3).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.