

Filed 7/26/18 In re T.M. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re T.M., a Person Coming Under
the Juvenile Court Law.

B284090
(Los Angeles County
Super. Ct. No. DK01141)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Crystal R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Teresa Sullivan, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Crystal R., mother of five-year-old T.M., appeals from the juvenile court's order granting a petition pursuant to Welfare and Institutions Code section 388.¹ Crystal contends the juvenile court abused its discretion in placing T.M. with T.M.'s paternal grandmother, Deborah B., because, among other reasons, Deborah lived too far away to facilitate Crystal's visitation with T.M. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Orange County Juvenile Court Proceedings*

In June 2014 the Orange County Social Services Agency filed a non-detain, section 300 petition on behalf of then 15-month-old T.M., alleging, among other things, that Crystal's mental health problems, habit of leaving T.M. unattended, and history of domestic violence with T.M.'s father put T.M. at substantial risk of serious physical harm.² After sustaining the

¹ Statutory references are to the Welfare and Institutions Code.

² T.M.'s father's whereabouts remained unknown until much later in this case, when he appeared in custody. His mother

petition, the Orange County Juvenile Court removed T.M. from her father and placed her with Crystal under the Agency's supervision. In October 2014 the Agency reported that Crystal—who was not compliant with her domestic violence housing program, had stopped taking the medication prescribed for her mental health issues, and stated she “was feeling overwhelmed”—had agreed to voluntarily place T.M. with Deborah for 60 days.³

For the January 2015 six-month review hearing under section 364, the Agency reported T.M. was back in Crystal's care, with regular telephone contact and visitation with Deborah. The Agency also reported that Deborah was “a great support” to Crystal and T.M. and that T.M. appeared “to be bonded with” Deborah. The juvenile court found continued jurisdiction was necessary and ordered T.M. to remain placed with Crystal.

For the 12-month review hearing, scheduled for July 2015, the Agency reported Crystal was not participating in her counseling and psychiatric services and had gone more than two months without taking her psychotropic medication. On multiple occasions Crystal had also allowed T.M. to stay “more than a few days” in a relative's home without properly notifying the Agency, including allowing T.M. to go with Deborah to San Jose, where Deborah now lived. The Agency further reported Crystal and

Deborah, however, was present at the initial hearing on the petition.

³ Deborah lived in Valencia, California, at the time, and Crystal, whose address was confidential, was considering moving to Inglewood, California.

T.M. were now living in Los Angeles County, and it therefore moved to transfer the case to the Los Angeles County Juvenile Court. The court granted the motion, and the Los Angeles County Juvenile Court accepted jurisdiction of the case and rescheduled the 12-month review hearing for October 2015.

B. *The Los Angeles County Juvenile Court Proceedings*

For the October 2015 review hearing the Los Angeles County Department of Children and Family Services reported Crystal was in partial compliance with court-ordered treatment programs, currently employed, and in need of childcare services in order to keep her job. As a result, T.M. was staying in San Jose with Deborah during the week and returning to Los Angeles to spend the weekends with Crystal. The juvenile court found continued jurisdiction was necessary and left T.M. placed with Crystal.

For the 18-month review hearing in January 2016, the Department reported Deborah had recently expressed concerns Crystal was leaving T.M. with her and not calling to find out how T.M. was doing, even though Crystal had recently lost her job and stated to a Department social worker she had “more time to spend with her daughter now that she is not working.” Deborah agreed that, if Crystal was no longer working, Crystal could resume full-time care of T.M. with the Department’s assistance. The juvenile court found continued jurisdiction was necessary and left T.M. placed with Crystal.

In February 2016 the Department reported that T.M. was no longer staying with Deborah, Crystal had moved out of her previous residence in Inglewood, and T.M., Crystal, and Crystal’s boyfriend were now living together at another residence in

Los Angeles “on [a] temporary basis.” The Department further reported Crystal was in partial compliance with her case plan objectives. Deeming the report a “385 petition,”⁴ the juvenile court detained T.M. from Crystal, placed her with Deborah, and ordered visitation for Crystal three times a week for two hours each visit.⁵ The court also ordered the Department to “submit [a] proper report/387 petition” within three days.

On March 3, 2016 the Department filed a supplemental petition under section 387 alleging Crystal’s noncompliance with court-ordered services and her erratic behavior put T.M. at risk of physical harm. The Department reported that Crystal’s sister, D.C., who lived in San Bernardino County, stated she was interested in being a caregiver for T.M., but that Deborah wanted T.M. to continue living with her because any other relative “would be a complete stranger to [T.M].” Deborah also stated, however, she did not feel comfortable with the court-ordered visitation schedule. The Department also reported Crystal’s former foster mother, Angela W., was willing to transport Crystal to San Jose to visit T.M. “if and when needed.”

After initially setting the supplemental petition for hearing in April 2016, the juvenile court continued it to May 2016. In the meantime the Department reported it had placed T.M. in a foster home in Los Angeles County because Deborah was unable to

⁴ Crystal maintains the juvenile court’s minute order “incorrectly describes the report as a ‘385’ petition rather than a section 387 petition.”

⁵ It is not clear what prompted this response to the Department’s report, which did not make any recommendation about detaining T.M. or changing the placement order then in effect.

facilitate Crystal's visitation with T.M. "due to distance." The Department also reported it was assessing a "paternal grandcousin," Daisy H., who lived in Palmdale (in Los Angeles County), as a possible placement for T.M. On May 27, 2016 the juvenile court granted the Department's request to dismiss the supplemental petition, returned T.M. to Crystal's care under the Department's supervision, and ordered family maintenance services to continue.

On September 22, 2016, however, the Department detained T.M. and placed her with Daisy. The Department filed a second supplemental petition under section 387, alleging Crystal's noncompliance with court-ordered mental health and family preservation services put T.M. at risk of serious physical harm. The Department reported that its social worker experienced repeated difficulty in contacting Crystal and in conducting both scheduled and unannounced visits to assess T.M. and Crystal's home and that Crystal's family preservation worker expressed concerns about T.M.'s living environment. Deborah reported that Crystal was not returning her calls to schedule visits with T.M.⁶ and that, when Deborah visited Crystal's apartment unannounced, it was not clean, there were at least three cats and "roaches running around," and T.M.'s clothes were dirty. The juvenile court ordered T.M. to remain placed with Daisy, granted Crystal three monitored, two-hour visits per week, and set the petition for hearing on November 22, 2016.

On November 10, 2016 the Department reported Crystal failed to keep her scheduled appointments with her social worker and refused to set up a schedule to start her monitored visits

⁶ The juvenile court had granted Deborah's request for unmonitored visits with T.M.

with T.M. The Department also reported Crystal sent Daisy threatening text messages and had spoken with T.M. on the telephone only twice since T.M. was detained.

On November 22, 2016 Deborah filed a section 388 petition to have T.M. returned to her home in San Jose and a de facto parent request.⁷ In support of the petition Deborah argued that, even though T.M. had been removed from her care because the distance between Los Angeles and San Jose made Crystal's visitation with T.M. difficult, Crystal had not visited T.M. during the two months T.M. lived in Los Angeles County with Daisy. Deborah further stated that T.M. had lived with her "on and off since birth," she continued to speak with T.M. on the phone almost nightly, T.M. expressed her desire to return and live with Deborah, and, in the event Crystal did not reunify with T.M., Deborah was "committed to providing permanency for [T.M.] in the home she has grown up in for the majority of her life." The juvenile court set Deborah's 388 petition and de facto parent request for hearing on January 9, 2017 and continued the hearing on the Department's supplemental petition to that date.

⁷ "A person becomes a de facto parent by application to the court when he or she has participated in the day-to-day care and rearing of the child over an extended period of time. [Citations.] As a de facto parent, the person becomes a party and is permitted to participate in the dependency proceedings to assert and protect his or her own "interest in the companionship, care, custody and management" of that child.' [Citation.] Because of the close contact with and interest in the child, participation of de facto parents in the proceedings helps the court in making determinations with regard to the minor's future." (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751-752; accord, *In re E.R.* (2017) 18 Cal.App.5th 891, 894.)

On January 9, 2017 the Department reported that on November 28, 2016 Crystal visited with T.M. for the first time since T.M.'s placement with Daisy. Crystal arrived 20 minutes late for the visit and brought her boyfriend, whom T.M. "would not go anywhere near." Crystal failed to show up for the four visits scheduled in December 2016. The Department also stated it supported Deborah's section 388 petition, contending that returning T.M. to Deborah's care was in T.M.'s best interests. The Department reported it observed T.M. had "a close bond" with Deborah and opined Deborah could provide "a stable and loving environment" for T.M. The juvenile court granted the Department's request for a continuance of the hearing on the pending matters and gave permission for T.M. to reside with Deborah in the interim "on an extended visit."

On February 27, 2017 the juvenile court held a hearing on the Department's section 387 petition, Deborah's section 388 petition, and Deborah's request for de facto parent status. The Department reported that, although it gave Crystal money to purchase a round-trip bus ticket to visit T.M. in San Jose, Crystal had still not visited T.M. since November 28, 2016. The juvenile court sustained the section 387 petition, citing, among other things, Crystal's "inability to regulate her behavior," leaving T.M. unattended, and "inability to adequately supervise and safely parent" T.M. Finding there was substantial danger to T.M. if returned to Crystal's home, the court removed T.M. from Crystal and ordered suitable placement by the Department with monitored, semiweekly visitation and family reunification services for Crystal.

The juvenile court then addressed Deborah's section 388 petition and de facto parent request, which counsel for T.M.

supported because Deborah “seems to be the only source of stability in this child’s life.” Counsel for Crystal argued the Department should “look into local family members . . . for placement” and expressed concern that T.M. would be “located in San Jose.” The juvenile court granted Deborah’s section 388 petition and request for de facto parent status.⁸ The court noted that, during T.M.’s placement in Los Angeles County, “it was [Deborah] that was communicating extensively with the caregiver and the child.” Crystal timely appealed.

⁸ The juvenile court ordered the Department to reimburse Crystal for her expenses incurred in traveling to visit T.M., upon proof that she “has in fact gone up and visited.”

DISCUSSION

Crystal's notice of appeal stated she contested "all jurisdictional and dispositional findings of [February 27, 2017]," as well as the juvenile court's orders granting Deborah's de facto parent request and section 388 petition. In her briefs on appeal, however, Crystal challenges only the juvenile court's placement of T.M. with Deborah, suggesting the court should have instead placed her with Daisy or D.C., Crystal's sister, who lived in San Bernardino. Treating all other issues as forfeited (see *In re S.A.* (2010) 182 Cal.App.4th 1128, 1138 ["[p]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's . . . issue as [forfeited]"]; *In re J.N.* (2006) 138 Cal.App.4th 450, 459, fn. 5 [issues not raised in appellant's opening brief are forfeited]), we conclude the juvenile court did not abuse its discretion in placing T.M. with Deborah.

A. *Applicable Law and Standard of Review*

Under section 388, subdivision (a)(1), any person having an interest in a child who is a dependent of the juvenile court may, upon a change of circumstance or new evidence, petition the court for a hearing to modify a previous order of the court. The juvenile court may modify the order if the interested person shows, by a preponderance of the evidence, that there is a "changed circumstance or new evidence and that modification would promote the child's best interests." (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685; see *In re J.P.* (2017) 15 Cal.App.5th 789, 800 ["[t]he standard for evaluating the merits of a section 388 petition is the best interests of the child"].) Factors relevant

to evaluating a child's best interest under section 388 are "(1) the seriousness of the problem that led to the dependency and the reason for any continuation of that problem; (2) the strength of the child's bond with his or her new caretakers compared with the strength of the child's bond with the parent; and (3) the degree to which the problem leading to the dependency may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224.) "[A] primary consideration in determining the child's best interests is the goal of assuring stability and continuity." (*In re J.P.*, at p. 800; see *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

In addition, section 361.3, subdivision (a), provides that, "[i]n any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." Section 361.3, subdivision (a), also provides a nonexhaustive list of factors the Department and the juvenile court must consider in determining whether placement with a relative is appropriate, including "[t]he best interest of the child"; "[t]he wishes of the parent, the relative, and child, if appropriate"; "[t]he nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful"; and the relative's ability to, among other things, "[p]rovide a safe, secure, and stable environment for the child," "[p]rovide a home and the necessities of life for the child," "[f]acilitate visitation with the child's other relatives," and "[f]acilitate court-ordered reunification efforts with the parents."

We review a juvenile court’s ruling on a section 388 petition, as well as its placement decisions generally, for abuse of discretion. (See *In re S.K.* (2018) 22 Cal.App.5th 29, 36 “[w]e review a juvenile court’s placement decisions for abuse of discretion”]; *In re A.R.* (2015) 235 Cal.App.4th 1102, 1116-1117 “[a] petition for modification [under section 388] is ‘committed to the sound discretion of the juvenile court, and the trial court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established”].) “““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.””” (*In re A.R.*, at p. 1117; see *In re Maya L.* (2014) 232 Cal.App.4th 81, 102 “[w]hen applying the deferential abuse of discretion standard, ‘the trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious”].)

B. *The Juvenile Court Did Not Abuse Its Discretion in Placing T.M. with Deborah*

The parties do not dispute there was a sufficient change in circumstances to support Deborah’s petition.⁹ These included

⁹ Deborah’s petition sought modification of the juvenile court order that “replaced [T.M.] from my care,” which, according to the petition, the court issued on April 2, 2016. Although neither party raises the issue, that date appears to be a mistake; there is no April 2, 2016 order in the record. There is an April 26, 2016 order, but that order placed T.M. with Deborah pending the next hearing and, in any event, was superseded by the May 27, 2016 order returning T.M. to Crystal’s care. The relevant order, consistent with the parties’ arguments on appeal, appears to be

Crystal's failure to visit or maintain contact with T.M. during T.M.'s placement with Daisy, as well as the facts that supported the juvenile court's (unchallenged) determinations to sustain the Department's section 387 petition and remove T.M. from Crystal.

And the record supports the juvenile court's determination that placing T.M. with Deborah promoted T.M.'s best interest. Crystal concedes, and the evidence shows, T.M. and Deborah "have a close relationship and are clearly bonded." T.M. had lived with Deborah on and off since her birth, spoke with Deborah almost nightly during T.M.'s placement with Daisy, and stated she wanted to live with Deborah. Deborah maintained an active presence throughout the dependency proceeding, beginning with her appearance at the initial hearing on the petition in Orange County Juvenile Court, and expressed her commitment to provide a permanent home for T.M. in the event reunification efforts failed. This evidence supports the juvenile court's finding that placing T.M. with Deborah served the goal of assuring "stability and continuity" for T.M, a "primary consideration" in determining T.M.'s best interests. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 17.)

Crystal argues the placement was an abuse of discretion because the distance from Los Angeles to San Jose "interfered with Crystal's visitation of [T.M.]" and therefore did not "facilitate [T.M.'s] reunification with Crystal." It is true that "[i]t

the juvenile court's September 27, 2016 order placing T.M. with Daisy pending the hearing on the Department's (second) supplemental petition. Crystal does not suggest the juvenile court erred in granting Deborah's section 388 petition because the removal order the court made upon sustaining the supplemental petition superseded the order Deborah sought to modify.

is difficult . . . to exaggerate the importance of reunification in the dependency system” and that an appropriate reunification plan “must include visitation.” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) “Along with the goal of reunification,” however, “the statutory framework related to dependency also emphasizes the importance of stable, permanent placements of the minors involved.” (*Id.* at p. 679; see *id.* at p. 680 “[i]t is that principle—the minors’ best interests—which underlies the decision the court must make under section 361.3”].) In cases like this one, where the juvenile court’s placement decision “is a difficult and sensitive one,” the court “must balance the right of the parent to attempt reunification with the minor’s interest in a beneficial placement.” (*Id.* at p. 680.) Especially in light of the strong, undisputed evidence of the stability and continuity provided by T.M.’s placement with Deborah, the balance struck by the juvenile court was not an abuse of discretion.

This is particularly true given that the record supports a reasonable inference the distance from Los Angeles to San Jose did not interfere with Crystal’s visitation efforts; it is difficult to interfere with efforts that are not made. From September 22, 2016—when the Department detained T.M. and initially placed her with Daisy—to the date the juvenile court ruled on Deborah’s section 388 petition, a period of more than five months, Crystal visited T.M. only once. And for the first three and a half months of that time, T.M. was in Los Angeles County. Crystal does not cite any evidence suggesting the distance to San Jose dissuaded her from making visitation efforts she was otherwise prepared to begin.

Those facts distinguish this case from *Luke L.*, *supra*, 44 Cal.App.4th 670, on which Crystal principally relies.¹⁰ In that case the court held the juvenile court abused its discretion in placing two siblings with their aunt and uncle in Los Angeles County when reunification efforts with the mother, who lived in Northern California, were ongoing. (*Id.* at pp. 680-681.) In determining, “under all of the circumstances presented,” that “the relative placement preference [had to] give way to the pursuit of reunification,” the court noted the mother had “attempted to achieve reunification with the minors by visiting them regularly.” (*Id.* at pp. 680-681.) This included “attend[ing] nearly all of the scheduled visits with the minors, ‘even when her only transportation has been to ride across town on her bicycle.’” (*Id.* at p. 679.) Such circumstances are not present here.

Crystal suggests T.M.’s placement with Deborah was also an abuse of discretion because Crystal and Deborah’s “poor relationship” would not facilitate reunification efforts. This argument incorrectly assumes again that reunification is the juvenile court’s only or overriding concern. And, again, Crystal has not established her factual premise: She cites Deborah’s complaint that Crystal was not returning her calls to schedule visits with T.M., as well as Deborah’s report that Crystal was not maintaining a clean home environment for T.M., but those facts hardly demonstrate a “poor relationship” (between Crystal and Deborah) that would obstruct reunification efforts.

¹⁰ The other case on which Crystal relies, *In re Liliana S.* (2004) 115 Cal.App.4th 585, is not particularly instructive because it affirmed the juvenile court’s placement order, and on multiple grounds. (*Id.* at p. 589-590.)

Crystal also argues the placement was an abuse of discretion because it was “contrary to her wishes.” A parent’s wishes are a relevant factor in considering appropriate placement under section 361.3, subdivision (a)(2), but it is only one of many relevant factors set forth in the statute. Crystal cites no authority that would require Crystal’s placement preferences to override consideration of all the other factors weighing in favor of T.M.’s placement with Deborah.

Finally, Crystal has not demonstrated the juvenile court abused its discretion by not placing T.M. with Daisy or with D.C. In fact, Crystal concedes Daisy is not, as Deborah is, a relative entitled to preferential consideration under section 361.3. (See § 361.3, subd. (c)(2) [defining “relative” for purposes of the statute].) And the only fact Crystal cites favoring T.M.’s placement with D.C. is that D.C. once stated “she was interested” in being a caregiver for T.M.

DISPOSITION

The juvenile court's February 27, 2017 findings and orders sustaining the Department's supplemental petition and granting Deborah's section 388 petition and de facto parent request, including the juvenile court's order placing T.M. with Deborah, are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.