Filed 7/10/17 In re J.C. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 J.C., et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B281501 (Super. Ct. Nos. 1506315, 1506316) (Santa Barbara County)
G.V., Petitioner, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Real Party in Interest.	

G.V. (mother), the mother of minors J.C. and A.M., seeks extraordinary writ relief from the juvenile court's order bypassing family reunification services and setting the matter for

a permanency planning hearing. (Welf. & Inst. Code, § 366.26[1]; Cal. Rules of Court, rules 8.452, 8.456.) Mother contends (1) the evidence is insufficient to support the court's findings; (2) her request for substitute counsel was erroneously denied; (3) she received ineffective assistance of counsel; and (4) her appointed attorney and the juvenile court judge who presided over the matter had conflicts of interest. We deny the petition.

FACTS AND PROCEDURAL HISTORY

Mother has a lengthy child welfare history. Her two eldest children, D.M. and E.D., were removed from her custody in 2004 after she was arrested for being under the influence of a controlled substance. Her parental rights to D.M. and E.D. were terminated in 2005 and 2006, respectively.

J.C. was born in December 2009. In April 2013, Santa Barbara County Child Welfare Services (CWS) received a report that "mother gets high almost every day on methamphetamines, and possibl[y] cocaine, in her home." In September 2013, CWS received the first of numerous reports that J.C. was being physically abused. J.C. begged not to be sent home to mother after school and revealed bruises on his leg and a scar on his arm. In November 2015, J.C. had visible bruises on the back of his neck and said mother had hit him with a boot for refusing to put on his pants.

A.M. was born in July 2016. Less than three weeks before A.M.'s birth, mother testified positive for methamphetamines. CWS subsequently received numerous additional reports that J.C. was being physically abused. Each time CWS attempted to investigate, mother either did not answer

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

the door, cursed at the social workers, or forwarded her telephone calls to an inactive number.

In November 2016, J.C. told a social worker that mother had repeatedly slammed him on the floor. He had a bruise on his forehead and a swollen bump with a scratch mark on the side of his head. Mother admitted she had chased J.C. down the stairs and hit and pushed him, which caused him to hit his head on the kitchen table and floor. J.C. also said mother had scratched him all over his stomach.

The next day, CWS filed a section 300 petition as to J.C. and A.M. alleging failure to protect, no provision for support, and abuse of a sibling.[2] The children were detained and placed with their maternal grandparents.

Attorney Jessica Martinez was appointed to represent mother. At the conclusion of the December 2016 detention hearing, the court ordered that J.C. and A.M. remain in out-of-home care, granted mother four hours of supervised weekly visitation, and ordered her to submit to drug testing.

CWS initially recommended that the allegations of the section 300 petition be found true and that mother be provided family reunification services. CWS subsequently recommended that services be bypassed on the ground that mother's parental rights had been terminated as to J.C. and A.M.'s half-siblings D.M. and E.D. (§ 361.5, subds. (b)(10), (b)(11).) CWS offered that mother had not made reasonable efforts to address the issues leading to J.C. and A.M.'s removal. She recently tested positive for alcohol and ignored the social

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[2] The whereabouts of J.C. and A.M.'s fathers, H.C. and F.M., respectively, were alleged to be unknown. Neither father is a party to this appeal.

worker's repeated requests that she begin drug and alcohol treatment. Mother also delayed her participation in parenting classes and therapy and continued to demonstrate an inability to control her anger when interacting with CWS and other service providers. One of her therapists reported that mother's behaviors were indicative of substance abuse.

Prior to the contested jurisdiction and disposition hearing, mother requested that substitute counsel be appointed to replace Martinez. Following a *Marsden*[3] hearing, the court denied mother's request.

Mother testified on her own behalf at the jurisdiction and disposition hearing. She had refused to submit to drug testing because "my previous history has told me and other people have told me . . . that if I'm not court-ordered, that I should not test, if I don't have to." She identified methamphetamine as her "drug of choice" yet claimed she had "been clean and sober" for "about 12 years." She also indicated that she takes several prescribed medications to treat her bipolar disorder and depression. She acknowledged missing or arriving late to several of her therapy appointments. She denied admitting to the social worker that she hit and pushed J.C., and instead claimed she merely grabbed J.C. by his legs from underneath a table.

Mother's social worker testified among other things that the dependency petition as to J.C. and A.M.'s half-siblings alleged neglect but did not contain any allegations of physical abuse by mother. A.M.'s father told the social worker that mother was staying up all hours of the night and that he suspected she was using drugs.

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[3] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

At the conclusion of the hearing, the court found the allegations of the operative petition true, declared J.C. and A.M. dependents of the court, and bypassed reunification services. The court found mother had failed to protect the children due to her substance abuse and mental health issues. In making that finding, the court rejected Martinez's assertion that the instant matter and the prior dependency involving J.C. and A.M.'s half-sibling were "apples and oranges" such that a bypass of services was improper. The court further found that "mother comes across as a very poor historian" and that "[h]er credibility is not good, as far as what has happened."

The court set the matter for a section 366.26 hearing and advised mother of her right to seek writ relief. After mother timely filed a petition, CWS filed an answer requesting that the petition be summarily denied on the ground it failed to comply with rule 8.452 of the California Rules of Court (rule 8.452). With this court's permission, mother subsequently filed an amended petition and CWS filed a supplemental answer. Because mother's petition alleges that her request for substitute counsel was erroneously denied, we granted CWS's application for a copy of the confidential transcript of the *Marsden* hearing.

DISCUSSION

Sufficiency of Mother's Amended Petition

CWS contends that mother's amended petition should be summarily denied because it does not comply with the requirements set forth in rule 8.452. Pursuant to that rule, mother's petition should include a "summary of the grounds of the petition" (rule 8.452(a)(1)(D) and be accompanied by a memorandum that includes (1) "a summary of the significant facts" (rule 8.452(b)(1)), (2) a statement of "each point under a separate heading or subheading summarizing the point and

support[ing] each point by argument and citation of authority" (rule 8.452(b)(2)), and (3) support for "any reference to a matter in the record by a citation to the record." (Rule 8.452(b)(3).) Although CWS challenged mother's first petition on the same ground and we granted mother leave to file an amended petition, CWS asserts that the amended petition is also deficient.

We do not dispute that mother's amended petition fails to comply with several of the requirements of rule 8.452. Nevertheless, her self-styled "declaration" is sufficient to apprise us of the basis and nature of her arguments. In light of the mandate to liberally construe writ petitions (rule 8.452(a)(1)) and because mother is acting in pro. per., we reach the merits of the petition despite its deficiencies. (See *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 955-956 [the determination whether to address the merits of a writ petition that fails to comply with the applicable rules of court is a matter of discretion].)

Sufficiency of the Evidence

Mother contends the evidence is insufficient to support the juvenile court's findings. We review those findings "under the substantial evidence standard. We must affirm the court's findings unless, after reviewing the entire record and resolving all conflicts and drawing all reasonable inferences in favor of the order, we determine there is no substantial evidence to support them. Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re J.C.* (2014) 233 Cal.App.4th 1, 5.)

Jurisdiction was asserted in this case under subdivisions (b) and (j) of section 300. The former subdivision applies when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to

adequately supervise or protect the child." (§ 300, subd. (b)(1).) The latter subdivision applies where the child's sibling or half-sibling has been neglected or abused as provided in subdivision (b), and there is a substantial risk that the child will also be neglected or abused. (*Id.*, subd. (a).) In making this determination, the court can consider the parent's past conduct if there is reason to believe that conduct will continue. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

The record is plainly sufficient to support the court's jurisdictional findings. Mother's assertions to the contrary either disregard the supporting evidence or rely on alleged facts for which there is no evidentiary support.

The evidence is also sufficient to support the court's decision to bypass reunification services. Services were bypassed under section 361.5, subdivisions (b)(10) and (11). Under these subdivisions, services may be denied when reunification services or parental rights have been terminated in earlier proceedings involving a sibling or half sibling, and the parent "has not subsequently made a reasonable effort to treat the problems that led to removal" of the sibling or half sibling. (§ 361.5, subd. (b)(10) & (11).) In making this finding, the court found—contrary to counsel's assertion that the prior and current dependencies were "apples and oranges"—the cases were in fact "oranges and oranges. You can call it different things, but they're both under the failure to protect and it's due to substance abuse and/or mental health, a combination of both."

In challenging this finding, mother merely offers without evidentiary support that "drug treatment was never a factor in this case." She was expected to participate in drug and alcohol treatment, yet made no meaningful effort to do so until the eve of the jurisdictional and dispositional hearing. Moreover,

she claimed to have 12 years of sobriety yet tested positive for methamphetamines shortly before A.M.'s birth. She also failed to participate in drug and alcohol treatment in the prior dependency. The court thus reasonably found that mother had failed to make reasonable efforts to address the issues that led to the removal of J.C. and A.M.'s half-siblings, such that a bypass of services was warranted.

Marsden *Request; Ineffective Assistance of Counsel*

Mother contends the court erred in denying her request for substitute counsel. She also claims that Martinez provided ineffective assistance. Neither claim has merit.

An indigent parent has a statutory and due process right to competent counsel in dependency proceedings. (§§ 317, subd. (b), 317.5, subd. (a); *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1152-1153.) An exhaustive *Marsden* hearing is not required; it is only necessary that the juvenile court "make some inquiry into the nature of the complaints against the attorney." (*In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13, italics omitted.) Substitute counsel should be appointed only when the court finds, in the exercise of its discretion, that the defendant has shown either that counsel is not providing adequate representation or that there is such an irreconcilable conflict between the parent and counsel that ineffective representation is likely to result. (See *People v. Smith* (1993) 6 Cal.4th 684, 696.)

At the *Marsden* hearing, mother claimed that Martinez had only asked her three questions, "talk[ed] down at [her]," and "did not follow up with any . . . paperwork" after mother identified documents she believed "were very pertinent to this case." Mother also claimed Martinez "was cutting me off and was really short with me" and told mother "we should just give up now and just fight for visitation."

Martinez responded that she had met with mother for over half an hour and asked her more than three questions. Martinez said she had discussed all of the relevant aspects of the case and outlined the numerous issues that were discussed. During the meeting, Martinez received information from mother that required Martinez to advise her that the case would be an "uphill battle." Martinez added that "[n]ever, in my career, have I ever told someone to give up, because that is not my decision to make." In response, mother "used some foul language" and indicated that she thought Martinez "was giving up." Martinez told mother, "I will go to trial with you. I will do whatever it is that you would like to do, but you need to know the consequences of what happens if we lose and what our chances are." At that point, mother became upset and "used some language that I don't think anybody should be spoken to like that and all the way out the door. Then she said I was fired; that's how our conversation ended."

After hearing from both mother and Martinez, the court found there were no grounds to remove Martinez as counsel. The court told mother, "I don't think you've been fully cooperative with your attorney. I think if I switch attorneys, they're going to be in the same position. You don't want to hear what they're saying. I understand that."

After mother stated her intent to hire an attorney, Martinez said, "[S]ince it sounds like I'm not being relieved, I will continue to ask clients to leave that speak to me the way I was spoken to, the name-calling." The court asked Martinez what mother had called her, and Martinez replied, "She called me a fucking bitch, a dumb fucking bitch, and then used the 'C' word." Mother replied, "I did call her a fucking bitch. I don't think I used the 'C' word. Then I told her she was fired." The court said

"I tend to believe Ms. Martinez on that issue, just on the way you're presenting yourself." Mother then admitted, "I did call her that."

The court did not abuse its discretion in denying mother's request for substitute counsel. Mother's assertions to the contrary are largely based on evidence outside the record. For example, mother offers that Martinez "failed to get the documentation from the Social Security Administration," which purportedly would have demonstrated that J.C. "is considered disabled" due to autism. Many of mother's additional assertions conflict with what Martinez said at the hearing. The court was entitled to find Martinez more credible and accept her explanations as legitimate. (*People v. Smith*, *supra*, 6 Cal.4th at p. 696.)

Mother fares no better in claiming that Martinez provided ineffective assistance. "Under the standard test for a claim of ineffective assistance of counsel, [a parent] is required to demonstrate both that counsel's representation fell below an objective standard of reasonableness and resulting prejudice. [Citation.] A violation of the right to effective counsel is reviewed under the test of harmless error. [Citation.] 'Thus the parent must demonstrate that it is "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."' [Citation.]" (*In re N.M.* (2008) 161 Cal.App.4th 253, 270.)

Even if mother had proven the alleged inadequacy of Martinez's representation, she has not demonstrated prejudice. Mother claims there was additional evidence that would have been beneficial to her case, but none of that purported evidence would have undermined the result. As CWS correctly notes, many of the documents mother attached to her petition are not

part of the record and are actually "harmful to Mother's case." Moreover, the record demonstrates that Martinez vigorously advocated for a different result at the jurisdictional and dispositional hearing. The fact that her efforts were unsuccessful does not equate with a finding of constitutionally ineffective assistance.

Conflict of Interest

Mother claims Martinez had a conflict of interest in representing her because Martinez "has a personal relationship with [mother's] sister and family." She claims the juvenile court judge also had "a conflict of interest and a bias to [her] case" because he allegedly "was the presiding judge in [her] previous children case [*sic*]." Because mother offers no evidentiary or legal support for these claims, they are forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

G.V., in pro per, for Petitioner.

Michael C. Gizzoni, County Counsel, County of Santa Barbara, Ashley E. Flood, Deputy County Counsel, for Real Party in Interest.