Filed 12/1/15 In re J.F. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.F., Jr., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B263233 (Super. Ct. No. J070117) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. J.F., Sr., et al., Defendants and Appellants.	

J.F., Sr. ("Father") and F.G. ("Mother") appeal orders of the juvenile court terminating their parental rights to their son J.F., Jr. (sometimes hereafter "the child"), a minor child coming under the juvenile court law. (Welf. & Inst. Code, § 366.26.)[1] We conclude, among other things, that the juvenile court did not abuse its discretion by denying Mother's section 388 petition without an evidentiary hearing and terminating the parents' parental rights. We affirm.

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

FACTS

J.F., Jr. was born in June 2014 in Nevada. He was "diagnosed as a critically ill infant" who "experienced seizures." When he was discharged from the hospital in July, Mother and Father were advised the child had to return to the hospital for "medical follow-ups with neurology and physical therapy." The parents did not take the child back to the hospital for his scheduled appointment.

On July 31, 2014, the Clark County Nevada Juvenile Court "took emergency jurisdiction" over the child. It ultimately determined that the Ventura County Human Services Agency (HSA) was the agency that should "retrieve the infant." HSA took the child.

On August 5, 2014, HSA filed a juvenile dependency petition in the Ventura County superior court. (§ 300, subds. (b)(1) & (j).) HSA alleged, among other things: 1) Mother has "a history of substance abuse including but not limited to methamphetamine[] and marijuana"; 2) Mother has "a history of an abusive relationship with the father"; 3) Father "assaulted" Mother and was arrested for domestic violence, but Mother "continues to remain in a relationship with him," which creates a "substantial risk to this infant"; and 4) Father has a history of substance abuse including the use of cocaine.

The petition also alleged that in 2012 Mother tested positive for methamphetamine while pregnant with "the child's half sibling [A.R.]." HSA took jurisdiction of A.R., offered Mother "Voluntary Services," but Mother "failed to benefit" from those services. In addition, Mother's parental rights to another older sibling were recently terminated by the juvenile court.

The juvenile court found J.F., Jr. came "within Section 300 of the Welfare and Institutions Code" and he could not remain in the home of the parents.

On October 14, 2014, the juvenile court ordered family reunification services with the child to be bypassed for both parents. (§ 361.5, subd. (b)(1), (10), (11).) The court found, among other things: 1) J.F., Jr.'s older sibling had been declared a dependent child of the juvenile court in 2013; 2) Mother and Father were offered family

reunification services for that sibling in September 2013; 3) those services were terminated in March 2014; and 4) Mother's and Father's parental rights to that older child were terminated in June 2014.

On March 24, 2015, Mother filed a section 388 petition to change the order bypassing family reunification services. The juvenile court denied that petition without ordering an evidentiary hearing. It said, "[M]other has not met her burdens of establishing a prima facie that there's any substantial change of circumstances" and her request to change the bypass order "is not in this child's best interest."

On April 2, 2015, at a section 366.26 hearing, the juvenile court terminated the parental rights of Mother and Father. It found "the minor is adoptable and there are no exceptions."

DISCUSSION

The 388 Petition

The parents contend the juvenile court abused its discretion by denying Mother's section 388 petition without holding an evidentiary hearing. We disagree.

Section 388, subdivision (a) allows a parent to petition to change or modify a previous order of the juvenile court. (*In re Andrew L.* (2004) 122 Cal.App.4th 178, 190.) The burden is on the parent to show "'there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child.'" (*Ibid.*) "'The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.'" (*Ibid.*)

A section 388 petitioner must make a "prima facie" showing to be entitled to an evidentiary hearing on the petition. (*In re J.P.* (2014) 229 Cal.App.4th 108, 127.)

The juvenile court could reasonably infer Mother did not meet her burden. The section 388 petition was signed by Mother's attorney. It contains only a few conclusory statements. There is an "attachment" to the petition entitled "Mother's Statement," a two-page document containing Mother's claims of new evidence. It has a place for Mother's signature, but Mother did not sign it. The court could reasonably

consider the unexplained absence of Mother's signature in determining the sufficiency of her claims and her petition.

But even on the merits, the result does not change. In Mother's unsigned statement are several conclusory statements: "I have made poor decisions in the past regarding my drug use and lifestyle. I am not that person anymore." "I am prepared to do whatever it takes to deal with any special needs that [J.F., Jr.] may have." "I know I am capable of being a good mother . . . ." But a section 388 petition may not be based on conclusory assertions. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

A factor the parent should consider in a section 388 petition alleging changes is "'the reason the change was not made before.'" (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) Mother said, "I have a room that I am renting and a car. My intent is to have a bigger place as soon as I save enough money." She "*recently* began working part-time as a caregiver." (Italics added)

But the juvenile court could reasonably find Mother did not adequately explain why she had not taken such steps earlier. Mother did not provide sufficient facts describing her ability to take care of this child, her home environment, its safety, her employment status, or facts about child care while working. Nor was she able to describe any history of successful parental care she had provided to her other children. Given the history of domestic violence, she did not specify how she would prevent a repetition of such incidents. Mother also claimed she changed her lifestyle two years ago when she stopped using drugs and that she loved her child. But she did not provide a reasonable justification for not taking this "critically ill infant" for his scheduled medical appointment in July 2014. Nor did she explain how the alleged change assisted her in providing proper care for this child's two older siblings, or why HSA had to intervene to protect those children.

The parents claim the section 388 petition had attachments that showed evidence of changed circumstances because of Mother's participation in drug rehabilitation and parenting programs. There was a letter dated January 25, 2015, from Jim Given of the "New Start for Moms" program where he said Mother "completed the

main program and has been transferred to After Care." He said, "After Care is designed to help Clients focus on issues that they may face in adjusting to a sober lifestyle." Given noted Mother "will attend 1x per week until completion." There was a letter from a psychologist stating that Mother "has been attending therapy at A New Start for Moms, since October 10, 2014." Mother attached a certificate from the New Start For Moms program showing she reached a "Parenting Level III" on January 28, 2015. There was also a letter from the Coalition for Family Harmony indicating that Mother began group therapy on domestic violence on January 7, 2015.

These were positive steps. But there was no showing that Mother had successfully completed the After Care program, psychological counseling or the group sessions. The psychologist's letter contains only a single sentence about attending sessions without any indication of her progress or problems. Given said that, as of January 25, 2015, Mother tested negative on all her drug tests. But he did not specify the number of tests or the dates she had taken them. That omission is significant because Mother had a long history of substance abuse.

HSA notes these were only recent efforts by Mother to change a long pattern of neglect of her children due to her substance abuse. The juvenile court could reasonably find that to be the case. In the introduction to Mother's statement, Mother said she is providing a summary of "the *changes I have made* in my life *since my services . . . . were bypassed*." (Italics added) But that bypass order was made in October 2014. "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., supra,* 193 Cal.App.4th at p. 1512.)

But even had Mother made the required showing of new circumstances, the juvenile court could reasonably find she did not show changing the court's order would be in the best interests of the child. "In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case." (*In re J.P., supra*, 229 Cal.App.4th at p. 127.)

On October 14, 2014, the juvenile court ordered reunification services with the child to be bypassed for both parents. In that order the court highlighted a pattern of Mother's neglect of her children. It found Mother has "a history of substance abuse including but not limited to methamphetamine[] and marijuana" and she failed "to address her history of drug use." In 2012, Mother tested positive for methamphetamine and marijuana while pregnant with the child's half-sibling, [A.R.]" Mother was offered "Voluntary Services" by HSA involving that half-sibling, but Mother "failed to benefit from the services offered" because of her "ongoing substance abuse." The court also found that another sibling of this child was declared a dependent of the juvenile court in 2013 because he tested "positive for methamphetamine[] and marijuana at the time of birth." Mother was offered family reunification services with that sibling on September 18, 2013; those services were terminated on March 3, 2014. In June 2014, Mother's parental rights were terminated to that sibling child. Although the cause is unclear, HSA notes that J.F., Jr. also tested positive for drugs at birth.

HSA said, "[M]other has nine children, none of whom are in her physical custody." In addition to substance abuse, Mother has a history of "domestic violence between her and the father." HSA also said Mother's recent efforts to make progress on her substance abuse problem do not support a change in the court's orders. The agency noted that given her history and past failures in this area, "there is concern that the mother will not be consistent in her recovery."

"[T]he disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion." (*In re D.R., supra,* 193 Cal.App.4th at p. 1512.) HSA notes the child has spent "only about two weeks of his life in Mother's custody."

HSA social workers said: 1) "there is no significant parent-child relationship" between Mother and Father and the child; 2) "[t]he child was placed with prospective adoptive parents shortly after birth, where he continues to reside"; 3) he is in a safe and stable environment"; 4) "the child's basic needs are being met"; 5) the

"prospective adoptive parents are committed to providing him with permanency"; and 6) the "child also is developing a relationship with his birth sibling."

HSA also noted that the child "appears to be indifferent to the parents." The social workers said, "While the child responds to the parents' attention with smiles [during visits], the child demonstrates the same response" with the social workers.

Mother and Father have not shown that a change to the court order would be in the best interests of the child.

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant J.F., Sr.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant F.G.

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