Filed 2/14/17 In re Julissa G. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JULISSA G., a Person Coming Under the Juvenile Court Law.	B275188 (Los Angeles County Super. Ct. No. DK09809)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CINDY F., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Cindy F., the mother of seven-year-old Julissa G., appeals from the juvenile court's January 22, 2016 orders terminating dependency jurisdiction and awarding sole legal and physical custody of Julissa to her father, Uriel G., pursuant to Welfare and Institutions Code section 362.4[1] with Cindy's visitation to remain monitored. Cindy contends the court abused its discretion in terminating jurisdiction because there had been no change in circumstances since the prior hearing at which the court had ordered continued jurisdiction with services to Cindy. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Jurisdiction Findings and Disposition Order*

Julissa was declared a dependent child of the juvenile court pursuant to section 300, subdivisions (a) and (b), based on Cindy's violent conduct toward Uriel, including slashing the tires of his car and pointing a gun at his property, to which Julissa had been exposed. At the disposition hearing on May 19, 2015 Julissa was removed from Cindy's care and custody and placed with Uriel with a home-of-parent order. Enhancement services, including anger management and parenting classes, were ordered for Cindy; family maintenance services were ordered for Uriel. Cindy's visitation was to be monitored by a monitor approved by the Los Angeles County Department of Children and

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[1] Statutory references are to this code.

Family Services. Cindy's boyfriend, Pedro J., was prohibited from any contact with Julissa or Uriel. Cindy filed a notice of appeal on July 9, 2015.

2. *The Initial Section 364 Review Hearing*

At the section 364 review hearing on November 17, 2015, the Department recommended termination of jurisdiction with a family law order of joint legal custody, sole physical custody to Uriel and continued monitored visitation for Cindy. Counsel for Uriel and Julissa joined in that recommendation. Counsel for Cindy reminded the court its jurisdiction findings and disposition order had been appealed and requested that the case remain open until the appellate process had been completed. In response the Department argued the court was required to close a case under section 364 if there were no safety risks to the child and suggested Cindy's counsel simply place on the record his reservation of all appealable issues. During the hearing the court and counsel discussed the fact that Cindy had a positive drug test on November 4, 2015 and, contrary to the court's earlier no-contact order, had permitted Pedro J. to speak to Julissa by telephone.

The court decided the case should remain open: "I agree with Mother's counsel to the extent that we should let the appeal process be completed. . . . I think prudence dictates that we go over another six months." The court also stated it would be inclined to modify Cindy's visitation to unmonitored if she completed her drug program and if Pedro J. had no further contact with Julissa, "directly or indirectly." Over the Department's and Uriel's objection, the court scheduled a further section 364 review hearing for May 17, 2016.

3. *The Subsequent Hearings*

Two weeks later, on November 30, 2015, the court placed the case on its calendar and, with counsel but no parties present, explained, "We went over these issues at our judges' training meeting last week after I did this case . . . . There's no risk. We can close the case [notwithstanding the pending appeal]. It should be closed. Mother's counsel can make sure to notify the court at the hearing that they are not waiving any appeal rights. And, otherwise, there's no reason why it shouldn't be closed because the risk has been resolved." Cindy's counsel objected that there had not been adequate notice of the hearing and also argued, "We are between one 364 and another . . . . [The court does not] have any real power to do anything between unless somebody files a 388. . . . I don't think the court has the power to close it today without a 388. We are between hearings."

In response to Cindy's position, the court directed the Department to provide notice to the parents and suggested it prepare a section 388 petition to modify the prior court order continuing jurisdiction that stated "the changed circumstances is there's no risk, and it's in the best interest of the child[] to close with a family law order." Cindy's counsel again objected, arguing "there's nothing new here except that the court went to a meeting and they said, 'Gee, you could close it on appeal.'" The court replied, "I also have a right to reconsider my own decisions." The court set the matter for further hearing on January 22, 2016.

On January 15, 2016 the Department filed a report captioned "388 Hearing," but no section 388 petition had been filed by any party. The report indicated it was responding to two questions: "Has there been a change of circumstances causing the Court to reconsider its recommendation on 11/17/2015 to

continue [f]amily [m]aintenance services until 5/16/2015?" and "What is the position of DCFS regarding this case?" In response to the first question the Department identified as a changed circumstance that Julissa was no longer at risk of emotional neglect by Cindy because Julissa continued to reside with Uriel. In response to the second question the Department asked the court to change the order and terminate jurisdiction.

At the hearing on January 22, 2016 the Department explained it was responding to the November 30, 2015 "walk on" of the case by the court and the court's indication it wanted to reconsider its November 17, 2015 decision to continue jurisdiction with services for an additional six months. The Department, Uriel and Julissa all asked the court to terminate jurisdiction with a custody order. Cindy objected, contending there had been no change of circumstance since the November 17, 2015 hearing and the court had no new information that would justify reconsideration of the order made at that hearing. The court responded that it always has inherent power to reconsider its previous rulings. The court terminated dependency jurisdiction and awarded sole legal and physical custody of Julissa to Uriel with Cindy's visitation to remain monitored and no contact to occur between Pedro J. and Julissa.

Cindy filed a timely notice of appeal.[2]

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[2] On May 2, 2016 we dismissed Cindy's earlier appeal from the jurisdiction findings and disposition order as moot because the juvenile court had terminated its jurisdiction with a family law exit order on January 22, 2016. We explained, "[A]ny reversal of the court's jurisdiction finding and disposition order would not affect the status of the case as it moves from

DISCUSSION

Section 364, subdivision (a), requires the juvenile court to schedule a review hearing at least every six months for a dependent child who has not been removed from the physical custody of his or her parent or guardian. At that hearing dependency jurisdiction must be terminated unless the conditions that created the need for supervision still exist or are likely to exist if supervision is discontinued: "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. . . . ." (§ 364, subd. (c); see *In re Shannon M.* (2013) 221 Cal.App.4th 282, 290-291 [section 364, subdivision (c), establishes a "statutory presumption in favor of terminating jurisdiction and returning the children to the parents' care without court supervision"].)

Section 385 authorizes the court to modify or set aside any of its orders in a dependency proceeding subject only to proper notice being given to the social worker, the child (or child's counsel) and the parents or guardians of the child, as required by section 386.[3] (See *In re G.B.* (2014) 227 Cal.App.4th 1147, 1160

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dependency to family law. Accordingly, this court is unable to grant any effective relief even if we were to find reversible error."

[3] Section 385 provides, "Any order made by the court in the case of any person subject to its jurisdiction may at any time be

["[a] juvenile court has the authority to change, modify, or set aside a previous order sua sponte if it decides that a previous order was 'erroneously, inadvertently or improvidently granted'"]; *Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 110, 116 [same]; see generally *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096-1097.)

That is precisely what occurred in this case. The juvenile court on November 17, 2015 should have terminated its jurisdiction over Julissa, as recommended by the Department, and would have done so but for its mistaken belief that the then-pending appeal from the disposition order required that the case remain open. By November 30, 2015 the court realized its error and stated its intent to set aside its November 17, 2015 order and terminate dependency jurisdiction. Counsel for Cindy objected that no proper notice had been given. The court agreed and directed the Department to provide notice. Nothing more was required for the court to reconsider its order at the January 22, 2016 hearing and, absent any evidence of continued risk to Julissa, to terminate jurisdiction at that time with an appropriate exit order under section 362.4. (See *In re Aurora P.*

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changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article."

Section 386 provides, "No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers, or otherwise, unless prior notice of the application therefor has been given by the judge or the clerk of the court to the social worker and to the child's counsel of record, or, if there is no counsel of record, to the child and his or her parent or guardian."

(2015) 241 Cal.App.4th 1142, 1155-1156 ["[U]nder section 364 (c), the juvenile court must terminate dependency jurisdiction unless either the parent, the guardian, the child, or the social services agency establishes by a preponderance of the evidence that the conditions justifying assumption of jurisdiction exist or will exist if supervision is withdrawn. Thus, in the absence of a contrary showing at the review hearing, termination of dependency jurisdiction will be the 'default result.'"].)

To be sure, the court suggested that notice of its intent to modify the order setting a further review hearing be given in connection with a section 388 petition to modify the November 17, 2015 order. As Cindy asserted below and argues again on appeal, section 388 places on the petitioning party the burden of demonstrating a change in circumstances or presenting new evidence to justify modifying the earlier order. And there was neither a change in circumstance nor new evidence developed between November 17, 2015 and either November 30, 2015 or January 22, 2016: On all those dates Julissa was safe, living with Uriel; and continued dependency jurisdiction was unnecessary. But no section 388 petition had been filed; none was decided. Any error in the court's suggested use of section 388 as a vehicle for providing proper notice, rather than referring to sections 385 and 386, was plainly harmless. (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 354 [when order authorized by dependency statutes and justified by court's findings, court's citation to incorrect statute is harmless error]; *In re Julien H.* (2016) 3 Cal.App.5th 1084, 1090 [same]; see *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303 [court's order in dependency proceedings, like judgments in other cases, cannot be reversed "'unless its error was prejudicial, i.e., "'it is reasonably probable

that a result more favorable to the appealing party would have been reached in the absence of error"""].)

DISPOSITION

The juvenile court's orders are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.