

Filed 3/21/17 In re Y.M. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.M.,

Defendant and Appellant.

B271062

(Los Angeles County
Super. Ct. No. CK67160)

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Referee. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and John C. Savittieri, Deputy County
Counsel for Plaintiff and Respondent.

Devin Faye Meepos for the Minor.

I. INTRODUCTION

The mother, I.M., appeals from a January 20, 2016 order denying her Welfare and Institutions Code¹ section 388 petition. She contends the juvenile court abused its discretion in summarily denying her section 388 petition. We affirm the order.

II. PROCEDURAL HISTORY

On June 28, 2013, the Los Angeles County Department of Children and Family Services filed a section 300 petition on behalf of 12-year-old Y.M. pursuant to section 300, subdivisions (b) and (c). Count b-1 of the petition alleges: the child was hospitalized in a psychiatric facility on May 30 and June 17, 2013; the mother was unable to provide appropriate care and supervise the child's mental and emotional problems; this thereby endangered the child's physical health and safety; the mother has physically and emotionally abused the child; the child has been sexually abused by the maternal grandmother's boyfriend; and the child has been physically abused by the

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

mother's partner. The child was detained and placed in shelter care.

At the January 7, 2014 jurisdiction and disposition hearing, the juvenile court sustained the allegations in amended count b-1 and dismissed the other counts. Amended count b-1 of the petition alleges: "The [mother] is unable to provide appropriate parental care and supervision of the child due to the child's mental and emotional problems which have resulted in altercations between the mother and the child on more than [one] occasion. The child was hospitalized in a psychiatric facility on 6/17/2013 and 5/30/[2013]. The mother's inability to provide appropriate parental care and supervision of the child and resulting physical altercations endangers the child's physical health and safety and places the child at risk of harm and damage."

The juvenile court ordered the department to provide reunification services to the mother. The mother was ordered to attend: parenting classes for adolescents with mental health issues; sexual abuse awareness counseling; and individual counseling with a licensed therapist to address case issues. The department was ordered to evaluate placement of the child in a lower level of care including with the maternal grandmother. In addition, the department was ordered to initiate an interstate compact evaluation of the child and the mother, who lived in Arlington, Texas.

On July 8, 2014, the department recommended termination of the mother's family reunification services. The department reported the mother failed to complete the home assessment under The Interstate Compact on the Placement of Children. This was a prerequisite for placement of the child with the

mother in Texas. The mother wanted the child placed with the maternal grandmother.

At the July 8, 2014 six-month review hearing, the juvenile court ordered the department to provide further reunification services to the mother. The juvenile court found the mother was in partial compliance with her case plan. The department was granted discretion to allow the maternal grandmother to have overnight visits with the child.

At the March 25, 2015 12-month review hearing, the juvenile court terminated family reunification services for the mother. The juvenile court found the mother made minimal progress toward alleviating or mitigating the causes necessitating foster care placement. The matter was set for a section 366.26 hearing with the goal of placement with a relative or non-related extended family member.

On May 4, 2015, the mother filed a section 388 petition. The modification petition requested the child be placed with the mother. On May 6, 2015, the mother filed a second section 388 petition. The mother requested reinstatement of family reunification services. The second modification petition also requested a court order placing the child with the mother in Oklahoma through The Interstate Compact on the Placement of Children. Both section 388 petitions were summarily denied on May 26, 2015.

At the July 23, 2015 section 366.26 hearing, the juvenile court ordered a planned permanent living arrangement as the child's permanent plan. At the September 25, 2015 post-permanent plan review hearing, the juvenile court found the child was not a proper subject for adoption and had no one willing to accept legal guardianship. The juvenile court found

appropriate the planned permanent living arrangement with Heritage Group Home with a specific goal of placement in a lower level care facility or with a relative. In addition, the juvenile court found the mother was not in compliance with her case plan. She had made minimal progress in the last period of review towards alleviating or mitigating the causes necessitating foster care placement.

On January 12, 2016, the mother filed a third section 388 petition that is the subject of this appeal. The mother requests the juvenile court vacate the order for planned permanent living arrangement. In addition, the third section 388 petition requests the child be placed in the mother's home. The section 388 petition alleges the mother has attended individual counseling, parenting classes and a program through the National Alliance on Mental Illness.

III. FACTS

The mother and child had previously lived in Texas. In April 2013, the mother made arrangements for the child to reside with the maternal grandmother in California. These arrangements were made after the mother and the child had a fight. On May 29, 2013, the child, who disclosed having visual and auditory hallucinations and suicidal thoughts, was hospitalized. The child was diagnosed with: psychotic disorder not otherwise specified; bipolar disorder with psychotic features; and impulse control disorder. The hospital recommended the child take three psychotropic drugs for her auditory hallucinations, aggression and mood swings. The child was not medicated during the hospitalization because the maternal

grandmother did not have legal guardianship rights and thus could not authorize such treatment. The child was discharged on June 5, 2013. The hospital could not discharge the child with psychotropic medication because the maternal grandmother was not the legal guardian. The mother indicated she did not have the means to have the child return to the mother's home in Arlington, Texas. A department social worker, Marisela Bustillo, explained why the child was in Los Angeles rather than Texas: "[The m]other reported that she cannot have her in Arlington and that is why she sent her to Los Angeles to get help she would not get in Arlington. [The m]other also reported she also has no means of getting the child back to Arlington."

On June 17, 2013, the child was hospitalized a second time after she threatened to cut her wrist. The hospital, referred to only as Exodus, would not allow the child to see a doctor. This was because the maternal grandmother did not have legal guardianship or custody of the child. Jeremy Quainbao, a psychiatric social worker, concluded the child had poor insight, boundaries and grandiose moods, was disruptive, talked back, challenged staff and minimized her behavior. The child was discharged on June 25, 2013. However, the child was hospitalized for a third time on June 26, 2013, after reporting suicidal thoughts. The maternal grandmother was appointed the child's temporary legal guardian on July 1, 2013. The child was then discharged on July 3, 2013, with psychotropic medication.

In August 2013, the child was placed in a foster home. The child threatened the foster mother. Also, the child refused to take her prescribed medication. As a result, the foster parents asked the child to leave their home. In September 2013, the child was placed in a group home, Dream Home Care, Inc. The group

home requested the child's removal. This occurred after the child punched a staff member, grabbed a knife, refused to follow staff's directives and fought with another foster child.

In the September 27, 2013 jurisdiction and disposition report, the social worker, Adelina Jaramillo, recommended the child remain for the present in foster care. Ms. Jaramillo recommended that the child remain in foster care until the department could initiate procedures to reunify the youngster with the mother in Texas. On November 4, 2013, another department social worker, Tika Smith, wrote that mother had stopped attending parenting classes. According to Ms. Smith, the mother explained the reasons for stopping the attendance at the parenting class as follows, "Because the people who teach the classes do not have children and thus do not know anything about parents." Further, the mother explained she would not consider attendance at counseling because she did not have any problems. The department no longer recommended reunification through The Interstate Compact on the Placement of Children because the mother continued to lack an understanding of the child's mental health problems.

The July 8, 2014 status report indicated the child had been placed five times. As of November 13, 2013, the child was placed at the Five Acres Group Home, a level 12 residential facility maintained by The Boy's and Girl's Aid Society of Los Angeles. The child was receiving individual therapy, psychiatric medication management, nursing staff supervision, case and cottage staff management and public school support. The goal was to move the child to a lower level of care with an appropriate D-rated home. The department's Website describes a D-rated facility thusly: "A 'D-rate' is a special funding category for foster

care providers who have received special training to provide care for children with special needs due to a mental health diagnosis. D-rate providers must complete a special training in order to be certified in this category. [¶] To be placed in a D-rate home, children must be assessed to meet criteria. In most cases, the initial referral for a D-rate assessment of a child is made by the CSW. After processing the referral, the initial assessments are completed by the Department of Mental Health (DMH). DMH contracts with private providers (psychologists) to go to the home and assess the child and the situation. The D-rate funding is effective only as long as the need exists.” (http://www.lacdcfs.org/katieA/D_RATE/index.html.) At school, the child did poorly on tests, failed to follow directions, missed class work and homework and was excessively tardy. The child was suspended several times for displaying oppositional defiant behavior, fighting, skipping classes and smoking marijuana. The Interstate Compact on the Placement of Children process to reunify the child with the mother in Texas could not be completed. This was because the mother failed to complete the home assessment. The mother still wanted the child placed with the maternal grandmother. The mother’s concern was that there were fewer services to assist the child in Arlington, Texas.

On January 23, 2015, Carol Spiegel was appointed the child’s court-appointed special advocate. On January 26, 2015, the child indicated she wanted to move from the Five Acres Group Home to a foster home. The mother was adamantly opposed to placement of the child in a D-rated foster home. The mother believed the child was safer in a group home. The mother continued to want the child placed with the maternal grandmother. The mother maintained California had more

resources to support the child than Texas or Oklahoma. The maternal grandmother supported the placement of the child in a foster home. The maternal grandmother worked and was unable to care for the child on a full time basis.

The May 1, 2015 special advocate's report indicates: Ms. Spiegel and the maternal grandmother held the child's educational rights; the child had been at the Five Acres Group Home facility for over 18 months; and the child's behavior had deteriorated over time. This was because the child was receiving mixed information from the mother and maternal grandmother regarding the youngster's future living arrangement. The child wanted to reside with the mother, the maternal grandmother or a sister who lived in Arizona. The maternal grandmother was unable to financially support the child and did not have a suitable place for the youngster. The maternal grandmother visited the child less frequently and no longer took the youngster outside the group home. Ms. Spiegel recommended the department investigate a lower level of placement, including relative placement, to allow the child to live in a home environment.

On September 19, 2015, the child was placed with a six-bed group home. The child was receiving specialized academic instruction through the Focus Point Academy, which provided small classes in a controlled environment. The child's teachers reported she was doing well in classes, was happy and smiling and had many friends at school. However, the child was not ready to mainstream to a traditional high school because of her continuing inability to maintain appropriate behavior. The child was glad the new group home was less restrictive. But the child still wanted to be placed with the mother, grandmother, sister or

any family member. The child continued to ask about her family members including her younger siblings who lived in Nebraska. The mother wanted the child back in Oklahoma. The mother moved to Oklahoma after a fire destroyed her home in Texas. The maternal grandmother could not financially support the child but was willing to take D-rated classes. This would allow the child to be placed with the maternal grandmother.

On January 12, 2016, the mother filed a section 388 petition requesting the juvenile court vacate the order for planned permanent living arrangement for the child. The mother also desired to reside with the child in Tulsa, Oklahoma. In support of her petition, the mother stated she was involved with rehabilitative programs including individual counseling, a National Alliance on Mental Health Illness program and parenting classes.

As evidence, the mother submitted a January 11, 2016 letter from Allison Korvick, a therapist from the Family and Children's Services of Oklahoma. Ms. Korvick stated the mother had completed a Parent Education Group course. The 12-week group sessions for non-offending parents were designed to address the needs of parents whose families have been affected by sexual abuse. Further, the mother completed a six-week parent skills development program in Tulsa, Oklahoma on November 5, 2015. In addition, the mother completed a 12-week course sponsored by the National Alliance on Mental Illness entitled "Family-to-Family Education Program" on September 22, 2015. The mother also attended a Parents in Partnership orientation class on May 5, 2015. And the mother attended a two-hour parenting course entitled "Understanding Your Child's Temperament" on March 13, 2014. Finally, a July 9, 2015 letter

from the Los Angeles Christian Health Center stated the mother attended five sessions of individual psychotherapy from May to June 2015. The psychotherapy sessions were design to address stress-related anxiety and depressed mood. Although treatment was terminated when the mother left Los Angeles, she was welcomed to come back for additional sessions.

IV. DISCUSSION

The mother argues the juvenile court erroneously *summarily* denied her modification petition. Section 388, subdivision (a)(1) states in part: “Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” The juvenile court may summarily deny the modification petition *ex parte* if it fails to allege the necessary facts specified in section 388. The parent need only make a *prima facie* showing to trigger the right to proceed with a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310; *In re J.P.* (2014) 229 Cal.App.4th 108, 127; *In re Edwards H.* (1996) 43 Cal.App.4th 584, 592.) A *prima facie* showing refers to facts that support a favorable decision if the parent’s evidence is credited. (*In re B.C.* (2011) 192 Cal.App.4th 129, 142; *In re Edwards H., supra*, 43 Cal.App.4th at p. 593.) The petition must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a); *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Marilyn H., supra*, 5 Cal.4th at p. 309.) In determining whether the petition makes the requisite showing,

the juvenile court may consider the entire factual and procedural history of the case. (*In re J.P.*, *supra*, 229 Cal.App.4th at p. 127; *In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.) A hearing is warranted if the petition presents evidence or alleges facts that a proceeding would promote the child's best interests. (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 415; *In re Jackson W.*, *supra*, 184 Cal.App.4th at p. 257.) We review an order denying a section 388 petition for an abuse of discretion. (*In re Jasmon O.*, *supra*, 8 Cal.4th at pp. 415-416; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317-318; *In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

The mother argues the juvenile court erred in summarily denying her section 388 petition without a hearing. The mother contends she made a *prima facie* showing of changed circumstances. The mother's January 7, 2014 case plan requires her to attend: parenting classes for adolescents with mental health issues; sexual abuse awareness counseling; and individual counseling with a licensed therapist to address case issues. The mother has made some progress with her case plan by attending various parenting classes. The mother completed: a 12-week parent education course that addressed the needs of non-offending parents whose families have been affected by sexual abuse; a 6-week parent skills development program; and a 12-week family education program sponsored by the National Alliance on Mental Illness. Further, the mother attended a Parents in Partnership orientation class and a two-hour parenting course entitled "Understanding Your Child's Temperament." However, the mother has not presented evidence nor alleged she participated in individual counseling to address *case* issues as ordered by the juvenile court. There is no evidence the Parent Education Group courses nor the National

Alliance on Mental Illness Program addressed case issues. The mother attended five sessions of individual psychotherapy from May to June 2015. But these therapy sessions only addressed the mother's stress-related anxiety and depressed mood. There is no allegation or evidence the counseling concerned the mother's care and supervision of a teenager with mental and emotional issues.

Furthermore, no prima facie showing has been made that it is in the child's best interest to be returned to the mother's custody. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 204; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808.) The mother argues it is in the child's best interest to be placed with a biological parent. In support of this contention, the mother relies on language in a Five Acres Group Home July 13, 2015 progress report prepared for a social worker, Renata Baptist. The report indicates the child was working through her abandonment and feelings of hurt from being separated from family members. The child's goal was to be back with her biological family. However, that same Five Acres Group Home report also states the child was comfortable living in a foster home. The report recommends, "Due to [the child's] challenges with respecting authority and ADHD a 6 bed group home, an ITFC or a D-rated foster home would probably be an appropriate step down from Five Acres at this time." The report adds: "[The child] requires a consistent structure and routine in order to maintain stability and flourish. [The child] will continue to benefit from ongoing behavioral support and consistent on going mental health services with psychiatric support upon her discharge."

And the section 388 petition does not explain how the mother will care and supervise the child in Tulsa, Oklahoma. The child was diagnosed with: a psychotic disorder not otherwise

specified; bipolar disorder with psychotic features; and impulse control disorder. As of September 19, 2015, the child was placed in a six-bed group home. The child indicated she was glad to move to a less restrictive group home. But the child still wanted to go back to the mother, maternal grandmother or sister. The child was receiving specialized academic instruction at the Focus Point Academy. The child was not ready to mainstream into a traditional high school because she was still unable to appropriately behave. At Focus Point Academy, the child's teachers reported she was doing well in classes, was happy and smiling and had many friends. But there is no evidence nor are there allegations the mother can provide proper care given the child's mental and emotional issues. No prima facie has been that the child's best interest would be served by placement with the mother. The juvenile court did not abuse its discretion in summarily denying the mother's section 388 petition.

V. DISPOSITION

The January 20, 2016 order denying the mother's section 388 petition is affirmed.

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TURNER, P. J.

We concur:

BAKER, J.

KIN, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.