Filed 2/21/12 In re A.T. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A.T. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.W., Defendant and Appellant.	B234411 (Los Angeles County Super. Ct. No. CK81685)

APPEAL from orders of the Superior Court of Los Angeles County, Amy Pellman, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

L.W. (mother) appeals orders awarding sole legal and physical custody of two of her children, A.T. and N.P., to their respective fathers, denying mother family reunification services and terminating jurisdiction. (Welf. & Inst. Code, § 361.2, subds. (a) & (b).)[1] Mother contends the juvenile court erred in refusing to grant mother family reunification services with respect to these children and in terminating jurisdiction. We find these contentions lack merit and affirm the orders of the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

1. *Detention.*

Mother and her four children came to the attention of the Department of Children and Family Services (the Department) on March 23, 2010, based on a referral alleging severe neglect and physical abuse of three-year-old K.W. Mother adopted K.W. as an infant. Mother's other children, S.W., A.T. and N.P., then ages 16, 12 and 3 years, respectively, are her biological children.

K.W. was born full term at an appropriate weight but had been a client of the Failure to Thrive Clinic since April of 2008. When mother took K.W. to his regularly scheduled appointment at the clinic on March 23, 2010, mother reported the child's appetite had not changed and he was eating regularly. However, K.W. had lost two and a half pounds since his previous visit on January 26, 2010, he weighed 21 pounds, and the child vomited after eating crackers and juice. K.W. made statements such as, "Help me, feed me." K.W. also had bruising on his face and a black eye.

The child was admitted to the pediatric intensive care unit where it was concluded he suffered from chronic non-organic failure to thrive due to malnutrition and neglect. K.W. showed signs of starvation, severe dehydration and hypothermia. The child also exhibited symptoms of refeeding syndrome, a condition whereby the body goes into a form of shock when food is reintroduced after a period of starvation. Medical personnel

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

opined that, had the child not arrived at the Failure to Thrive Clinic on March 23, 2010, he might have died from starvation and dehydration in a matter of days.

Mother's 16-year-old child, S.W., told the social worker K.W. "eats a lot. He eats breakfast, a snack, lunch and then dinner." Eleven-year-old A.T. told the social worker mother and S.W. fed K.W. and he "eats a lot." Both children said the bruises on K.W. were caused by falls. Mother claimed K.W. had a tendency to overeat and stated the child ate "at least three times a day." Mother attributed K.W.'s recent weight loss to his dislike of the vanilla Pediasure the clinic had been providing.

The social worker opined the weight loss had been caused by K.W.'s removal from day care, where he had access to food, approximately two weeks before the referral. K.W.'s childcare provider indicated K.W. "was like a dog guarding his food." He ate everything on his plate and would not allow it to be taken until he was done.

On March 24, 2010, it was reported that K.W. drank 4 ½ cans of Pediasure, ate cookies and pizza, appeared more alert and had increased strength. He gained 1.9 pounds in the first day in the hospital.

On March 25, 2010, a second referral alleged emotional abuse and general neglect of K.W. The reporter stated mother leaves K.W. in his crib all day, the child eats his own feces, and mother adopted K.W. only for the money.

All four children were detained. K.W. remained in the hospital and the other three children were placed with A.T.'s father, Mr. T.

At the detention hearing on March 30, 2010, the juvenile court released S.W. to mother over the Department's objection. A.T. and N.P. were released to Mr. T.

2. *Social reports filed in advance of the jurisdiction hearing.*

A social report prepared for April 28, 2010, recommended that mother receive family maintenance services with respect to S.W. The Department recommended mother not receive family reunification services with respect to A.T., N.P. or K.W. pursuant to section 361.5, subdivision (b)(5). The social worker noted S.W., A.T. and N.P. appeared to be healthy and they denied physical abuse.

On April 28, 2010, Mr. P. appeared and requested custody of N.P. On May 5, 2010, after a favorable evaluation of Mr. P.'s home, N.P. was released to Mr. P. The Department recommended that jurisdiction be terminated as to A.T. and N.P. with a custody order granting their respective father's sole legal and physical custody.

Mr. T. told a Multidisciplinary Assessment Team (MAT) evaluator that, while N.P. was in his care, N.P. would ask for mother and was excited to see mother at visits. Mr. P. said N.P. would ask for mother and was tearful because she missed her mother.

K.W. had gained weight in foster care and was "doing really well socially and developmentally."

3. *Arrest of mother*.

On June 28, 2010, mother was arrested and charged with willfully causing or permitting a child to be placed in a situation where his or her health is endangered with an allegation that mother personally inflicted great bodily injury on a child under the age of five years. (Pen. Code, §§ 273a, subd. (a), 12022.7, subd. (d).) The probation officer recommended that, if convicted, mother should be imprisoned.

Mother's arrest resulted in S.W. being detained. S.W. eventually was placed in the home of her father's ex-girlfriend as a nonrelated extended family member.

On August 17, 2010, the juvenile court ordered S.W., A.T. and N.P. to have at least monthly visitation with mother while she remained in custody and sibling visits at least twice a month to be arranged by their respective caretakers.

4. *Jurisdiction hearing*.

On May 13, 2011, mother submitted a waiver of rights and the juvenile court found K.W. at a risk of harm within the meaning of section 300, subdivision (e) based on mother's underfeeding the child. The juvenile court further found mother's conduct placed K.W.'s siblings, S.W., A.T. and N.P., at risk of harm within the meaning of section 300, subdivision (j).

The juvenile court declared K.W. a dependent child and found, by clear and convincing evidence pursuant to section 361.5, subdivision (b)(14), that mother was not interested in receiving family reunification services or having K.W. returned to her.

5. *Disposition hearing with respect to S.W., A.T. and N.P.*

A supplemental report filed for the disposition hearing indicated mother had earned approximately 12 certificates while in custody.

On June 13, 2011, at a contested disposition hearing, the Department asked the juvenile court to terminate jurisdiction as to A.T. and N.P. and grant their respective father's sole legal and physical custody, citing section 361.2, subdivision (b). The attorney for S.W. and A.T. objected to terminating jurisdiction as to N.P. assertedly because S.W. and A.T. had not been getting visits with N.P. Counsel asked that any family law order include sibling visitation.

Mother's counsel asserted such an order would be difficult to enforce and requested family reunification services with respect to A.T. and N.P. Counsel noted mother had been the custodial parent of the children, they were closely bonded to mother, and the children's ties to each other likely would be severed if mother were denied reunification. Counsel indicated mother had not yet gone to trial on her criminal case and thus could not anticipate how long she might remain in custody. Further, the Department agreed mother should receive family reunification services with respect to S.W. Mother's counsel asked that the order be extended to include A.T. and N.P. to preserve the sibling relationship.

Counsel for Mr. P. pointed out that N.P. had been in Mr. P.'s care for more than a year and requested termination of jurisdiction with a family law order. Counsel for Mr. T. joined in the request.

The juvenile court indicated its tentative decision was to terminate jurisdiction but to stay the order pending mediation attended by all parties to determine whether a sibling visitation agreement could be reached. During the colloquy that followed, counsel for the Department indicated she would advise the Department to conduct a team decision making meeting (TDM) but wondered whether a pending TDM was a sufficient legal reason not to close the case. The juvenile court responded, "I'm going to have to close it today and I'll stay . . . the termination [of jurisdiction]."

The juvenile court then declared the children dependents, found by clear and convincing evidence there was substantial danger if the children were returned to mother and there were no reasonable means by which to protect the children absent removal from mother's custody. The juvenile court ordered S.W. placed with any approved relative or nonrelative extended family member, released A.T. and N.P. to the sole legal and physical custody of their respective fathers and granted mother monitored visitation a minimum of once per month. The juvenile court noted mother could seek modification of the visitation order in family court upon her release from custody.

The juvenile court indicated it would stay termination of jurisdiction as to A.T. and N.P. for a month pending mediation or a TDM regarding sibling visitation. The juvenile court granted mother family reunification services with respect to S.W.

Later that day, the matter was recalled when Mr. P. appeared. Counsel for Mr. P. indicated approximately 15 sibling visits had occurred since N.P. had been placed with Mr. P. Mr. P. also had facilitated visits between N.P. and mother in custody. Counsel for Mr. P. indicated Mr. P. was committed to sibling visitation and wanted the sibling relationships to continue.

Upon receiving these assurances, the juvenile court rescinded the earlier order for mediation and/or a TDM regarding sibling visitation. The juvenile court stayed the order terminating jurisdiction for receipt of family law orders. The minute order states the juvenile court found jurisdiction no longer was needed because the conditions justifying jurisdiction no longer existed.

On June 17, 2011, the juvenile court received the family law orders and lifted the stay of termination of jurisdiction.

CONTENTIONS

Mother contends substantial evidence did not support the juvenile court's decision to terminate jurisdiction and it was in the best interests of A.T. and N.P. to continue jurisdiction and to provide mother family reunification services under section 361.2, subdivision (b)(3). Mother further contends the juvenile court failed to analyze whether

there was a need for ongoing supervision and failed to make written or oral findings as required by section 361.2, subdivision (c).

DISCUSSION

1. *Legal principles.*

A dependent child may not be taken from the physical custody of the parent with whom the child resided at the time the dependency petition was filed unless the juvenile court finds, by clear and convincing evidence, there is substantial risk of harm to the well being of the child if he or she were returned home. (§ 361, subd. (c)(1).)

When a juvenile court orders a child removed from a custodial parent, it must then determine whether there is a noncustodial parent who desires custody of the child. Section 361.2, provides: "If [the noncustodial] parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) A juvenile court's ruling under section 361.2, subdivision (a) that a child should not be placed with a noncustodial, nonoffending parent requires a finding of detriment by clear and convincing evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

If the juvenile court places the child with the previously noncustodial parent, it then "decides whether there is a need for ongoing supervision. If there is no such need, the court terminates jurisdiction and grants that parent sole legal and physical custody." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1135; § 361.2, subd. (b)(1).)

If the juvenile court retains jurisdiction it may (1) provide reunification services to the parent from whom the child was removed, (2) provide services solely to the parent assuming physical custody to allow that parent to retain later custody without court supervision, or (3) provide services to both parents and, in a later review hearing under section 366, determine which parent, if either, will have custody of the child. (§ 361.2, subd. (b)(3).)

The juvenile court's discretion to terminate jurisdiction or continue its supervision is very broad and the standard of review is abuse of discretion. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.)

Section 361.2, subdivision (c) requires the juvenile court to make findings, either orally or in writing, as to the basis for its determination under section 361.2, subdivisions (a) and (b).

2. *No abuse of discretion appears in the termination of jurisdiction*.

Applying the foregoing principles, because there was no evidence of detriment to the children in the care of their previously noncustodial fathers, the juvenile court properly granted their requests for custody of the children. (§ 361.2, subd. (a).) Mother does not contend otherwise.

Rather, mother claims the juvenile court failed to consider continuing jurisdiction and providing mother family reunification services pursuant to section 361.2, subdivision (b)(3). Mother argues this result was in the best interests of the children because mother had earned certificates in custody, the children were bonded to her and A.T. feared she would not have visitation with N.P. Mother notes A.T. and N.P. were never harmed in mother's care and providing mother family reunification services and continuing jurisdiction would ensure sibling visitation.

Also, the juvenile court failed to make findings as to why it was terminating jurisdiction as required by section 361.2, subdivision (c) except to state: "I'm going to have to close it today." Mother argues the statement in the juvenile court's minute order, "that jurisdiction is no longer needed in this matter because the conditions no longer exist to justify the court maintaining jurisdiction," is a finding that is required under section 364, not section 361.2. (See *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450-1451.)

Mother concludes that, had the juvenile court proceeded properly, it would have realized it could order reunifications services for mother with A.T. and N.P. under section 361.2, subdivision (b)(3). Mother requests reversal of the juvenile court's orders and remand to permit it to make the findings required by section 361.2, subdivision (c).

Mother's arguments are not persuasive.

Initially, as noted by the respondent, had mother not waived her right to reunification services with respect to K.W., the juvenile court likely would have denied her services under section 361.5, subdivision (b)(5) because the dependency petition as to K.W. was sustained within the meaning of section 300, subdivision (e). (See *Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 163-164.) A parent who has been denied services as to one child pursuant to section 361.5, subdivision (b)(5), may be denied services with respect to the child's siblings. (§ 361.5, subd. (b)(7).) Indeed, the juvenile court may not order services in such a case unless it finds, by clear and convincing evidence, that services are in the best interest of the child. (§ 361.5, subd. (c).) Given mother's treatment of K.W. in the presence of A.T. and N.P., a finding by clear and convincing evidence that services would be in their best interests was unlikely.

However, putting aside the possibility the juvenile court could have denied family reunification services on this statutory basis, no abuse of discretion appears in the juvenile court's ruling.

Mother's assertion the juvenile court failed to consider providing family reunification services under section 361.2, subdivision (b)(3) is untenable because the juvenile court granted mother services with respect to S.W. Thus, the juvenile court was aware that provision of family reunification services as to A.T. and N.P. was an option. Indeed, counsel for the Department cited section 361.2, subdivision (b) at the disposition hearing in urging the juvenile court to terminate jurisdiction.

Moreover, substantial evidence supports the juvenile court's denial of family reunification services as to A.T. and N.P. Mother had chronically underfed K.W. to the point that, had the child not been taken to be Failure to Thrive Clinic on March 23, 2010, medical personnel opined the child would have died of starvation and dehydration within days. This abuse occurred in the presence of A.T. and N.P. The children had been in the care of their respective fathers for more than a year and there was no suggestion either Mr. T. or Mr. P. required supervision or services. The sibling visitation issue was resolved by agreement of the parties and the juvenile court's order for monitored

visitation insured continued contact with mother. Further, mother could seek modification of the visitation order in family court upon her release from custody.

Given these facts, the juvenile court reasonably concluded it was appropriate to terminate jurisdiction under section 361.2, subdivision (b)(1) and deny mother reunification services on the basis that both children had been placed with a responsible parent and there was no need for continuing jurisdiction.

Finally, any failure to articulate reasons for proceeding under section 361.2, subdivision (b)(1), rather than subdivision (b)(3), must be seen as harmless. None of the cases that have reversed orders under section 361.2 and remanded to permit the juvenile court to make the findings required by section 361.2, subdivision (c) involve placement of the dependent child with a nonoffending parent. (See *In re V.F.* (2007) 157 Cal.App.4th 962; *In re Marquis D.* (1995) 38 Cal.App.4th 1813.)

In *Marquis D., supra,* 38 Cal.App.4th 1813, the juvenile court refused to place six siblings in the care of the nonoffending father and removed the children from the custody of both parents pursuant to section 361, subdivision (b), a section that did not apply to the father. *In re Marquis D* explained it could not determine from the record if the juvenile court had considered whether placement of the children with the father would be detrimental to them within the meaning of section 361.2, subdivision (a), and it questioned whether the evidence supported a finding of detriment. (*In re Marquis D., supra,* at pp. 1824-1827.) *Marquis D.* declined to imply a finding of detriment in the care of the noncustodial parent and remanded the case to the juvenile court with directions to consider section 361.2, subdivision (a), and to make the required findings.

Similarly, the juvenile court in *In re V.F., supra,* 157 Cal.App.4th 962, did not consider whether placement with the noncustodial parent would be detrimental to the children under section 361.2, subdivision (a). *In re V.F.* noted that, while the record before it arguably supported a finding of detriment under section 361.2, "the better practice is to remand the matter to the trial court where that court has not considered the facts within the appropriate statutory provision." (*In re V.F., supra,* 157 Cal.App.4th at p. 973.)

Here, A.T. and N.P. were placed with their respective fathers. Where the statutory directive for placement with the nonoffending parent is followed, the only remaining issue is whether jurisdiction should be terminated. Based on the record in this case, there is no reasonable probability that, had the trial court made express findings as required by section 361.2, subdivision (c), it would not have terminated jurisdiction. Thus, remand for an express statement of reasons would constitute an idle act.

In sum, given that A.T. and N.P. had been placed with their respective fathers and there were no concerns regarding their care, the juvenile court did not abuse its discretion in ordering termination of jurisdiction with a family law order for custody and visitation.

DISPOSITION

The orders of the juvenile court are affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.