Filed 10/30/13 In re M.P. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re M. P. et al., Persons Coming Under the Juvenile Court Law.	B245359 (Los Angeles County Super. Ct. No. CK85748)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. STEPHANIE L., Defendant and Appellant; JONATHAN P., Real Party in Interest and Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Donna Levin, Juvenile Court Referee. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

Karen B. Stalter, under appointment by the Court of Appeal, for Real Party in Interest and Respondent.

No appearance for Plaintiff and Respondent.

Stephanie L. (Mother) appeals from a juvenile court order granting custody of her daughters to their father Jonathan P. and terminating dependency jurisdiction. The court did not abuse its discretion. Jonathan P. is a nonoffending parent and no concerns were raised about his parental fitness. By contrast, Mother expressed homicidal threats against her children, but refuses to use psychotropic medications and was not truthful with her therapists, making it doubtful that reunification services could succeed.

FACTS

When this proceeding began, Mother was 23 years old. Two of her three children are the subjects of this appeal: M. (born in 2009) and Kierra (born in 2011) (collectively, the children). At age 15, Mother became pregnant with her oldest child, J. Jonathan P. (Father) is the presumed father of the two younger children and DNA tests show that he is the biological father of Kierra.

In a prior dependency case, in 2011, the court sustained allegations that Mother failed to protect J. from sexual abuse by Mother's teenage brother, placing M. at risk of harm. Mother was ordered to participate in counseling and take psychotropic medications. She initially complied with the disposition, but became noncompliant once the children were returned to her. In 2009, Mother told her father that "she wanted to throw the baby J. off of a hotel balcony." Mother was eight months pregnant with M. and not receiving prenatal care. The 2009 referral resulted in a voluntary family maintenance case.

In July 2012, Mother telephoned the Department of Children and Family Services (DCFS), telling a social worker "that she was in crisis [and] feels like her whole world is collapsing down on her." Mother had been diagnosed with a mental health disorder and regretted that she did not seek treatment. Mother "felt depressed and uncomfortable and like something bad is about to happen." The social worker urged Mother to obtain emergency medical care. Mother admitted herself to a hospital, where she was found to be "irritable, suicidal with [a] plan and intent to run in front of [a] train/hurt her baby [and] could not contract for the [children's] safety." The hospital report notes that Mother has prior psychiatric hospitalizations and a history of noncompliance.

DCFS received a call from the hospital regarding Mother, who was about to be released. "The hospital was concerned for the safety of the children while in the care of their mother. While hospitalized, mother stated that she often gets frustrated by her children and gets the urge to put her hands around their necks and strangle them. Mother said that she has been able to control her urges and has not hurt her children. Mother also told the hospital staff that she wondered what it would be like to kill someone by putting her thumb through their throat. Mother also stated she was depressed and had an urge to throw her child over the balcony. Mother also spoke about being suicidal by running in front of a train." While hospitalized, Mother was diagnosed with major depression disorder and alcohol dependence.

Upon hearing that Mother "has desires to put her hands around her children's throats and squeeze" an emergency referral was generated, even though Mother "made no mention[] of actually hurting her children." A social worker met with Mother, who did not remember telling hospital staff that she wanted to strangle the children "because she was heavily intoxicated by alcohol and could not recall what she said when she was at the hospital." Mother was discharged from the hospital, but "was thinking of not taking her meds" because they made her sleepy and unfocussed.

The maternal grandmother (MGM) was aware of Mother's hospitalization, but appeared to minimize Mother's condition. Mother told the social worker "that she was feeling a lot of anxiety [and] does not know if she could care for her kids." Because she was feeling unwell, Mother wished to leave the children with the MGM. Mother denied having thoughts of hurting herself or the children. When asked if she was using drugs, Mother replied, "I can't tell you because you're my social worker and not my best friend," and refused on-demand drug testing. Father expressed concerns about Mother's mental health and ability to care for the children. He has regular contact with the children and is willing to care for them.

On July 26, 2012, DCFS and the police went to detain the children at the home of the MGM with a removal warrant. Mother "became very verbally aggressive and was yelling" at the social worker. When the police were unable to find Kierra, they informed

Mother that harboring a child could lead to arrest. Mother responded, "Leave my house." M. was released into Father's care. Mother relinquished Kierra the following day. DCFS assessed the risk to the children in Mother's care as "very high."

DCFS filed a petition on behalf of the children, alleging that Mother has mental and emotional problems that render her incapable of providing regular care and supervision. Mother refuses to take prescribed psychotropic medications. The petition also alleged that Mother abuses alcohol. Mother denied the allegations. On July 31, 2012, the court found a prima facie case for detaining the children from Mother, and released them to Father as a nonoffending parent. Mother was authorized to have monitored visits three times weekly.

A jurisdiction/disposition report was filed in September 2012. Mother denied threatening to harm the children, noting that "I had a few drinks so I don't remember what I said" at the hospital. She instructed hospital staff "to disregard whatever I said because I was drunk." The maternal grandfather noticed that Mother "has been getting progressively worse" in the last year. The MGM stated that Mother "does not take care of her children. She is more like a visitor that comes by to see her children on the weekend." The MGM added that Mother "doesn't have a problem with alcohol" but becomes easily intoxicated. Mother does not drink when she is with the children. Father believes that Mother has mental health issues. He is excited to have custody of the children. Mother believes that she did nothing wrong and that the children should not have been detained.

On September 12, 2012, Mother pleaded no contest to the petition. The court sustained an allegation that Mother has mental and emotional problems that render her incapable of providing the children with regular care and supervision; she had thoughts of harming the children, was intoxicated, and was hospitalized for evaluation and treatment; she failed to take prescribed psychotropic medications; and her mental and emotional problems endanger the children. The court dismissed an allegation that Mother abuses alcohol. The disposition was continued to determine whether Mother was compliant with

her medication and counseling, so that the children could live with her in the home of the maternal grandparents.

In a report on October 18, 2012, DCFS stated that Mother was given a list of referrals for walk-in counseling and psychiatric mental health care services when she was released from the hospital on July 20, 2012. As of October 3, 2012, Mother had not used these services. Mother had run out of one prescribed medication and had only five days left of another. The social worker advised Mother where to get her prescriptions refilled. Mother did not remember that the court specified a need for a psychiatrist, only a counselor; however, the social worker reminded Mother that only a psychiatrist can prescribe drugs. Mother made future appointments with a counselor and a psychiatrist. DCFS noted that Mother has a history of complying with court orders until the children are returned to her care, then stops taking her medications. DCFS advised against giving Mother custody of the children until she receives mental health services.

During an evaluation, Mother told a psychiatrist that "there was nothing wrong with her and she did not need any medication." Mother advised the psychiatrist that she was admitted to the hospital because she was drunk and "said some things under the influence of alcohol that she really didn't mean to say." According to Mother, the psychiatrist "could see that she was not depressed and did not feel that she needed any psychiatric medication at this time." Mother thought that since the petition was "dropped at the last hearing [ ] she doesn't see why she should have to participate in any mental health services." The social worker reminded Mother that the petition was sustained, not dropped. Mother's new psychiatrist did not return calls from the social worker.

In a session with a counselor, Mother minimized her hospitalization. According to Mother, the counselor "was not willing to accept her case because she did not see anything wrong" with Mother. Mother "has continually stated that she does not have a mental health condition and therefore does not have to participate in any mental health services." Her refusal to acknowledge any mental health issues and noncompliance with psychotropic medications place the children at risk of harm.

A contested disposition hearing was conducted on October 18, 2012. Mother testified that she has twice seen a psychiatrist. She is not taking any medication because the psychiatrist "felt that I did not need it and should not prescribe it." Mother ran out of medicine 30 days before the hearing. She would agree to continue with therapy, take prescribed medications, and live with her parents as a condition of having the children returned to her custody.

On cross-examination, Mother did not recall telling her new psychiatrist that she had urges to choke the children and throw her son off of a balcony; that she wondered what it would be like to kill someone by putting a thumb through their throat; or that she wanted to run in front of a train. Mother told the psychiatrist that she was hospitalized "due to me being intoxicated." At trial, Mother continued to ascribe her hospitalization to intoxication.

DCFS and the children's attorney asked the court not to place the children with Mother. She denies any mental health issues and has not made progress in counseling to ensure the children's safety. Father informed the court that he lives with his mother, who helps him care for the children.

Over Mother's objections, the court directed the preparation of a family law order giving Father sole legal and physical custody of the children, noting that Mother is "a danger to these children" and that neither Father nor the children require services from DCFS. Mother is authorized to have supervised visitation once a week for one hour. After Mother stormed out of the courtroom, the court declared the children to be dependents of the court, and found that there is a substantial danger if they were returned to Mother's custody. The court found that Father is the children's parent, he desires custody, and placing the children with him is not detrimental to their safety, protection and physical and emotional well-being. On October 25, 2012, the court signed a custody and visitation order and terminated its jurisdiction over the children. Mother appeals from the disposition.

DISCUSSION

Appeal is taken from the disposition. (Welf. & Inst. Code, § 395.)[1] Mother contends that the court erred by terminating its jurisdiction and by denying reunification, because she was making efforts to obtain services. An order terminating juvenile court jurisdiction is reviewed for an abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) Judicial discretion is abused if the trial court exceeds the limits of legal discretion and the bounds of reason with an arbitrary, capricious or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

When a child is removed from parental custody, "the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that 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 fit parent seeking custody under section 361.2 is presumptively entitled to it, to effectuate the legislative preference for placing a child—safely—with a nonoffending, noncustodial parent. (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1292.) A presumed father may assume immediate custody under section 361.2. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 454; *In re A.J.* (2013) 214 Cal.App.4th 525, 536.)

Father is a nonoffending presumed father. Though the children lived with Mother, Father had regular contact with them and is willing to take custody. In July 2012, DCFS detained the children from Mother and placed them with Father, who was excited to have custody. After DCFS placed the children with Father, Mother pleaded no contest to the petition, then delayed in obtaining mental health treatment. When she finally sought treatment in October, she was not forthcoming with the psychiatrist or her counselor

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

about the reason for her hospitalization. She did not tell them that she had suicidal and homicidal ideation, only that she had been intoxicated.

Once the court determines that a nonoffending, noncustodial parent desires custody, "it then considers whether placement with the parent would be detrimental to the child. If no detriment exists, the court orders placement of the child with that parent." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) At disposition, the court found that Mother is "a danger to these children." Father indicated that he lives with his mother, who helps him care for the children. The court found that placing the children with Father is not detrimental to their safety, protection or well-being.

After placing the children with Father, the court had several options. First, it could give Father legal and physical custody, provide reasonable visitation for Mother, and terminate its jurisdiction. Second, it could give Father custody subject to juvenile court jurisdiction and require a DCFS home visit, after considering "any concerns that have been raised by the child's current caregiver regarding [Father]." Third, it could give Father custody subject to juvenile court supervision and order reunification services for one or both parents. (§ 361.2, subd. (b)(1)-(3).)

The court must decide "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. If there is a need for ongoing supervision, the court is to continue its jurisdiction." (*In re Austin P.*, *supra*, 118 Cal.App.4th at p. 1135.) For example, the father in *In re A.J.* lived in Hawaii and was not aware of his daughter's existence until a year after she was born. Though they had no relationship, he felt remorseful about his lack of contact and resolved to be a good parent in the future. (214 Cal.App.4th at pp. 528-529.) In this situation, the court did not abuse its discretion by giving him custody and terminating jurisdiction. (*Id*. at pp. 535-540. Compare *In re Austin P.*, *supra*, 118 Cal.App.4th at p. 1134 [father had "sporadic contact" with his son over 10 years, and there was doubt whether the boy—who required counseling services—would be adequately protected in his father's care].) Here, Father is in a good position: he had

regular contact with the children, and there is no evidence that he or the children require counseling or supervision.

When the record shows no "'protective issue'" concerning the children's safety that warrants the need for continuing juvenile court supervision, the court does not abuse its discretion by terminating its jurisdiction. (*In re A.J., supra*, 214 Cal.App.4th at p. 537.) Mother does not cite evidence showing that concerns were raised about Father's parental fitness. The paternal grandmother is present in the home and is watching over the children. The children lived with Father from July 2012 until the disposition hearing in October 2012. Nothing in the record suggests that there were problems during this three-month period before jurisdiction terminated.

Mother reasons that because she received reunification services with her eight-year-old son J., she should receive reunification services with her daughters. While family reunification services are generally offered when a dependent child is removed from parental physical custody, reunification services are not appropriate in every case. (*In re Ethan C.* (2012) 54 Cal.4th 610, 626.) In this instance, J.'s father vanished, whereas his sisters had regular contact with respondent. Section 361.2 did not apply to J. because no noncustodial parent was available to take care of him.

After her hospitalization, Mother was too anxious to care for the children and would not disclose whether she was using drugs. The MGM described Mother as someone who "does not take care of her children. She is more like a visitor that comes by to see her children on the weekend." The maternal grandfather described Mother as "getting progressively worse" over the past year. Despite her difficulties, Mother informed her new psychiatrist and counselor that she was perfectly fine and did not need medication or treatment. She was not truthful about the reasons for her hospitalization. Given Mother's absolute denial that anything was wrong, it is difficult to see the benefit of offering reunification services with the children.

The juvenile court decides whether reunification services are in the child's best interests. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229.) To determine whether reunification is in a child's best interests, a parent must demonstrate current ability to

parent; the court also considers parental fitness and history; the seriousness of the problem that led to the dependency; the strength of the parent-child bond; and the child's need for stability and continuity. A best interest finding requires a showing that reunification services are likely to succeed. (*Id.* at p. 1228; *In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116; *In re A.G.* (2012) 207 Cal.App.4th 276, 281.) In this case, no showing was made that Mother has a current ability to parent the children, and the problem that led to the dependency—Mother's threat to kill the children—is very grave. Mother made homicidal threats in the past, but did not comply with court orders to obtain treatment and use prescribed medications after she secured custody. The court could reasonably find that reunification services are not likely to succeed.

"[W]here a child has a fit parent who is willing to assume custody, there is no need for state involvement unless placement with that parent would create a substantial risk of detriment to the child." (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1263.) Here, Father is fit and he has assumed custody. Conversely, it is unclear whether reunification services will benefit Mother. Under the circumstances, the court did not abuse its discretion by terminating jurisdiction.

Following the termination of dependency jurisdiction, a parent is not left without a remedy because issues concerning custody and visitation can be dealt with in a family law proceeding. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 736.) "After transfer of the case to family court, the same procedural protections for enforcement and modification applicable to visitation orders originating in family court also apply." (*In re Chantal S.* (1996) 13 Cal.4th 196, 213.) If Mother successfully completes services and reunifies with J., she may be in a position to petition the family law court for a modification of the order regarding her daughters.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

CHAVEZ, J.

FERNS, J.*

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