Filed 11/29/12 In re Sean S. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SEAN S., a Person Coming Under the Juvenile Court Law.	B239763 consolidated with B242011
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BETHANY S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK89861)

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn Mordetzky, Juvenile Court Referee. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In this consolidated appeal, Bethany S., mother of then five-year-old Sean S., appeals from the orders of the juvenile court taking jurisdiction over the child, removing him from her physical custody and retaining jurisdiction at the six-month review hearing. (Welf. & Inst. Code, §§ 300, subd. (a), 361, subd. (c), & 366.21, subd. (e).)[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The jurisdiction and disposition orders*

The section 300 petition, as sustained, reads, "On prior occasions, the child Sean S[.] Jr.'s mother, Bethany S[.] inappropriately disciplined the child by striking the child's buttocks with a belt. Such physical abuse was excessive and caused the child unreasonable pain and suffering. [Bethany's] inappropriate discipline of the child places the child at substantial risk of physical harm."

Sean lived with Bethany. Bethany was also the caretaker for her adult daughter S.'s three children, Z. (age 5), D. (age 3), and K. (age 2), because they had been removed from S.'s custody.

The family came to the attention of the Department of Children and Family Services (the Department) because a teacher found bruises covering K.'s buttocks and the back of his upper leg while changing the child's diaper. The Department also received a companion referral alleging Sean was being physically abused by Bethany. The Department took the children into protective custody. Bethany admitted that she allowed her daughter S. to live with her in violation of previous court orders.

The social worker observed red marks or lines and purple bruises on K.'s cheeks. Z. stated his mother and Bethany " 'whoop[] me and my little brothers, and Sean with a sandal, belt and sometimes just their hands.' " He stated " 'if any body has a bad day at school my mom or grandma [Bethany] will give us a whooping.' " He is afraid of Bethany and S. " 'when they fight and are mad because they yell and hit us and it hurts.' "

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

Sean stated that Bethany spanks him with a belt whenever he gets in trouble or has a bad day at school. He has sustained marks and bruises as the result of Bethany's spanks. He is afraid of the adults who live in the house because " 'they spank us when we have bad days at school.' " Sean told the social worker that when he gets in trouble, Bethany spanks him on the buttocks with a big belt or his own belt. Bethany originally denied using a belt, but later admitted it. Asked whether spanking is her usual form of discipline, Bethany replied, " 'Yes, get a beating.' " Bethany explained that Sean has cerebral palsy and one functioning kidney. Sometimes this affects his memory and he has fainting spells.

This family is known to the Department. When she was a teenager, S. was removed from Bethany's custody and placed in foster care because of Bethany's failure to protect her from a maternal uncle who physically abused her. She was also sexually abused by an older sister. Bethany was physically abused as a child.

The social worker conducted an assessment to determine the potential for future risk to Sean's safety and concluded that the family could be categorized as a " 'HIGH' " risk for future abuse or neglect. The Department placed Sean in protective custody deeming it the only intervention that would ensure the child's safety. The social worker concluded, "If the child was not placed in protective custody, the child would be in danger of immediate or serious harm."

The juvenile court ordered Sean detained from Bethany. Bethany submitted to the petition on the basis of the social worker's report and signed a court-ordered case plan recommending Sean be placed outside the home. The case plan required Bethany to participate in services and have monitored visits with Sean, a minimum of three hours, and limited only by the monitor's availability.

At the jurisdiction hearing, the juvenile court found Bethany had knowingly and intelligently waived her right to a trial. Based on the Department's reports, the court found that the allegations recited above were true and declared Sean a dependent child. (§ 300, subd. (a).)

Turning to the disposition, the juvenile court asked whether anyone wanted to be heard before it rendered the disposition ruling. Bethany's attorney responded, "Regarding the case plan, we would request that it be on the record that it's [*sic*] – the one visit per day is by monitor's availability, not by discretion of the case worker." Bethany did not request that Sean be returned to her custody. The juvenile court removed Sean from Bethany's custody. The court ordered family reunification services for Bethany to include parenting class, individual counseling to address anger management, appropriate disciplinary techniques, and case issues. The court awarded Bethany monitored visits with Sean pursuant to the signed case plan.

2. *The six-month review hearing and order (§ 366.21, subd. (e))*

In its status review report for May 2012, the Department noted that Bethany had complied with all of the court's orders and the case plan objectives. The Department noted that the "collaterals/service providers . . . are in agreement that Sean should be returned to [Bethany's] care at this time." Therefore, the Department recommended that Sean be returned to Bethany's home. It also recommended family maintenance services be provided for a period of six months to enable Bethany and Sean to participate in conjoint counseling to address limit setting and to enable Sean to undergo counseling and play therapy, as Bethany's therapist felt the two would benefit from such sessions.

At the six-month review hearing (§ 366.21, subd. (e)), the juvenile court noted that the Department recommended return of Sean to Bethany's care and family preservation. The court asked counsel whether they wished to be heard in reference to the Department's requests. Bethany's attorney asked for a moment and then responded, "No, your honor." The court then found that return of Sean to his father's custody would create a substantial risk of detriment and created a continuing need for placement. The court also found Bethany had made significant progress in resolving those issues that brought her before the court and her visits were incident-free. The court ordered Sean returned to Bethany's home and referred the matter for family maintenance services. Bethany appealed.

CONTENTIONS

Bethany challenges: the jurisdiction and disposition orders for lack of substantial evidence, and the orders made at the six-month review hearing.

DISCUSSION

1. *The order sustaining the petition is supported by substantial evidence*.

At a jurisdictional hearing, " 'proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300.' (§ 355.)" (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) "[T]he purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. . . ." (§ 300.2.)

Section 300, subdivision (a) "provides that a child is within the jurisdiction of the juvenile court if he " 'has suffered . . . serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian.' " (*In re David H.* (2008) 165 Cal.App.4th 1626, 1641.) In *David H.*, the court determined that striking a seven-year-old child with a belt or cord, leaving "bruises, red marks, welts, and broken skin . . . ." constituted serious physical harm under section 300, subdivision (a). (*In re David H.*, at pp. 1644-1645.) The court in *In re Mariah T.* (2008) 159 Cal.App.4th 428, held striking a three-year-old child on the stomach and forearms and leaving deep purple bruises constituted serious physical harm. (*Id.* at pp.438-439; see also *In re N.M.* (2011) 197 Cal.App.4th 159, 169.)

Bethany does not deny beating Sean, a five-year-old child, with a belt. Asked whether spankings were her usual form of discipline, Bethany replied, "*Yes, get a beating.*" (Italics added.) Sean reported having sustained marks and bruises as the result of Bethany's beatings. Just one witness's testimony can support jurisdiction under section 300. (*In re Sheila B., supra*, 19 Cal.App.4th at p. 200.) We conclude that the evidence supports the juvenile court's findings. Although there were no marks on Sean

at the time the Department discovered the serious harm inflicted on K., jurisdiction over Sean under section 300, subdivision (a) is supported by the evidence of past harm. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1439.)

2. *We uphold the disposition order removing Sean from Bethany's custody and awarding her monitored visits.*

Bethany contends as there was insufficient evidence of harm to Sean to justify sustaining the petition under a sufficiency of the evidence standard, there is obviously insufficient evidence to justify removal based on clear and convincing evidence. She also argues there was no real risk to Sean during visitation and so monitored visits were an abuse of discretion.

Bethany forfeited her challenge to the removal and visitation orders. (*In re Richard K.* (1994) 25 Cal.App.4th 580.) The court in *Richard K.* held that by submitting to the social worker's recommendation that the child be removed, without introducing evidence or making argument, the mother forfeited the issue of whether there was sufficient evidence to support the removal order on appeal. (*Id.* at pp. 589-590.) Here, Bethany signed a case plan agreeing that Sean should be *suitably placed outside her home* and that she have *monitored visitation*. At the hearing, the juvenile court asked whether Bethany had anything she wanted to say about the disposition. Her attorney replied only that the frequency of Bethany's visits not be based on the case worker's discretion. The court granted Bethany's request by ordering visits be limited only by the monitor's availability. Accordingly, Bethany may not be heard to challenge the court's removal and visitation orders, which orders she effectively endorsed. (*Id.* at p. 589.)

Alternatively, the removal and visitation issues are moot. "An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.]" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) The juvenile court has since ordered Sean returned to Bethany's custody. There is no potential for adverse consequences here such that we could provide Bethany with a remedy.

In any event, the record contains sufficient evidence to support the removal and visitation orders. Section 361, subdivision (c)(1) requires, before a child may be taken from the parent's physical custody, that the juvenile court find by clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." Although the statute requires clear and convincing evidence for removal of a child, on review we apply the substantial evidence standard. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th at 872, 880-881.)

Bethany admitted that beating her young child with a belt was her usual form of discipline. Furthermore, she violated court orders by allowing S. in her home, and thereby enabling S. to beat her very young children with a belt and sandal. The Department found this family to be at high risk for future abuse or neglect based on the family's past history with the Department. Thus, contrary to Bethany's assertions, "a simple warning" would not be enough. " 'The focus of [section 361, subdivision (c)] is on averting harm to the child. [Citation.]' [Citations.]" (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) The juvenile court's removal order is supported by the record here.

3. *Bethany's challenge to the orders made at the six-month review hearing are unavailing.*

Bethany contends, as there was clearly no basis for jurisdiction in the first place, the court erred in continuing jurisdiction at the six-month review hearing. Effectively, Bethany is rearguing the contentions she raised with respect to the jurisdiction and disposition orders. We have already concluded those contentions are unavailing.

Furthermore, Bethany forfeited her challenge to the orders made at the six-month review hearing. (*In re Richard K., supra,* 25 Cal.App.4th at pp. 589-590.) She did not challenge or object to the Department's recommendations in the juvenile court, and did not ask the court to terminate jurisdiction.

DISPOSITION

The orders are affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.