Filed 3/1/12 Michelle B. v. Super. Ct. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MICHELLE B., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B235454 (Los Angeles County Super. Ct. No. CK75099)

ORIGINAL PROCEEDING; petition for extraordinary writ. Jacqueline Lewis, Juvenile Court Referee. Writ denied.

Frank E. Ostrov, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Jeanette Cauble, Deputy County Counsel, for Real Party in Interest.

Michelle B. (Mother) filed a writ petition seeking review of a dependency court order terminating reunification services with her children and setting a permanency planning hearing. The petition raises two issues: (1) whether Mother received at least 18 months of reunification services and (2) if not, whether the court abused its discretion in failing to extend services up to a maximum period of 18 months. We conclude that even if Mother had not reached the 18-month limit for reunification services under Welfare and Institutions Code section 351 the court did not abuse its discretion in declining to extend services to that point. Therefore we deny the writ.

BACKGROUND[1]

This petition involves J.H., born August 1998, and C.D., born November 2007. (A third minor child, R.R., is not involved in this proceeding and we do not discuss the court's orders with respect to him.) The children came to the attention of the Department of Children and Family Services (DCFS) in October 2008 after J.H. told his school nurse that Mother's boyfriend had given him a "whoopin" the night before. The nurse reported the incident to the DCFS.

The DCFS removed the children from Mother's home in October 2008 and detained them in foster care for a few days pending the detention hearing. At the detention hearing on October 22, 2008, the court released C.D. to his father and placed J.H. with a family member. The court ordered reunification services for Mother as to both children.

The court held a jurisdictional hearing on January 9, 2009. It sustained the dependency petition as to J.H. under Welfare and Institutions Code section 300, subdivisions (a), (b) and (g)[2] and as to C.D. under subdivisions (b) and (j). The boys' placements remained the same. On January 15, 2009, the court issued a dispositional

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[1] We have issued two previous unpublished opinions in this case: *In re J.H.* (Nov. 5, 2009, B213547) (*J.H. I*) and *In re J.H.* (Nov. 30, 2011, B228378 & B230695) (*J.H. II*).

[2] All statutory references are to the Welfare and Institutions Code unless otherwise noted.

order terminating jurisdiction over C.D. and awarding sole legal and physical custody to his father. The court retained jurisdiction over J.H. and ordered that he remain in foster placement. The court ordered reunification services for Mother and J.H.

In November 2009 we reversed the orders removing J.H. and C.D. from Mother's home, terminating jurisdiction over C.D. and awarding sole legal and physical custody of C.D. to his father. (*J.H. I*, *supra*, p. 13 of typed opn.) We ordered that "[t]he children shall be returned to their mother's home unless circumstances occurring after the dispositional orders warrant other remedies" and that "[o]n remand the court shall order family reunification services for Mother as to . . . C.D." (*Ibid*.)

Our remittitur in *J.H. I* issued in January 2010, but before the children were returned to Mother, DCFS filed a subsequent petition alleging that on December 25, 2009 Mother and her boyfriend arrived at the home of J.H.'s caretaker unannounced and in violation of Mother's visitation order and together they brutally beat James Nelson, the caretaker's paraplegic adult son, while he sat in his wheelchair. (*J.H. II*, *supra*, at pp. 3-4.) The court held evidentiary hearings on the supplemental petition throughout 2010. On November 1, 2010, the court issued an order finding J.H. and C.D. dependent children of the court under section 300, subdivisions (a), (b), (g), and (j) and removing them from the custody of their parents. (C.D.'s father had died in the meantime and C.D. was residing with his adult sister where he remained after the court's order.) The court ordered family reunification services for Mother with J.H. and C.D. We affirmed these orders in *J.H. II*, *supra*.

The court scheduled an 18-month review hearing for May 2, 2011. In a report prepared for that hearing the DCFS recommended that J.H. and C.D. remain in their placements, that Mother's reunification services be terminated and that the matter be calendared for a permanency planning hearing. In August 2011 the court found that "we are [past] the 18 month date," terminated reunification services and set the matter for a permanency planning hearing.

Mother filed a timely writ petition challenging the court's order and DCFS filed a response. We ordered the permanency planning hearing stayed pending our decision on Mother's petition.[3]

DISCUSSION

Section 361.5, subdivision (a) states in relevant part: "(1) Family reunification services, when provided, shall be provided as follows: [¶] . . . [¶]

"(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of section 366.21 but no longer than 12 months from the date the child entered foster care as defined in section 361.49 unless the child is returned to the home of the parent or guardian.

"(C) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited as set forth in subparagraph (B). For the purposes of this paragraph, 'a sibling group' shall mean two or more children who are related to each other as full or half siblings. [¶] . . . [¶]

"(3) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services *may* be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of section 366.21 that the permanent plan for the child is that he or she will be returned and

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[3] Mother has requested that we take judicial notice that while this appeal was pending Mother filed a petition under section 388 for the return of J.H. and C.D. We decline her request. There is no showing that the petition has been ruled upon and, in any event, it bears no relevance to our decision in this appeal.

safely maintained in the home within the extended time period. *The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period* or that reasonable services have not been provided to the parent or guardian." (Italics added.)

Mother contends that her reunification services with C.D. did not reach or exceed the 18-month time limit because, under *In re A.C.* (2008) 169 Cal.App.4th 636, 649, "the time limits for services set forth in section 361.5 do not apply if dependents are not removed from the custody of both parents at the dispositional hearing." C.D. was never removed from the custody of his father. Therefore, Mother reasons, subdivision (a)(3)'s 18-month clock never started to run as to him and the brief time between C.D.'s initial detention and the dispositional hearing during which C.D. was out of the custody of both his parents did not start the clock running. (*In re A.C.*, *supra*, 169 Cal.App.4th at p. 650.)

Mother further contends that her reunification services with J.H. did not reach or exceed the 18-month time limit because for purposes of subdivision (a)(3), J.H. was "originally removed from physical custody of his . . . parent" in November 2010 when the court sustained the supplemental petition arising out of Mother's beating of the person in the wheelchair and ordered J.H. removed from Mother's custody. The January 2009 dispositional order removing J.H. from Mother's physical custody did not start the subdivision (a)(3) clock running, Mother argues, because that order was reversed on appeal in *J.H. I*, *supra*. Under this reasoning Mother only had nine months of reunification services with J.H, from November 2010 to August 2011.

We need not decide whether Mother's interpretation of subdivision (a)(3) is correct because even if Mother's reunification services did not reach the 18-month limit the court did not abuse its discretion in declining to extend services up to that limit.

The opening sentence of subdivision (a)(3) clearly gives the court discretion to extend reunification services up to 18 months. But that discretion is limited. The subdivision further provides that: "The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical

custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian.[4]

The court found there was no substantial probability that either C.D. or J.H. would be returned to Mother's physical custody within the time remaining in the 18-month period and that finding is supported by substantial evidence that neither Mother nor her boyfriend, whom she planned to marry, had made sufficient progress in relinquishing their use of violence toward the children and others.

The court observed that if Mother was going to marry—and thereby bring into the children's home—the man who had abused the children in the past and joined Mother in the attack on James in his wheelchair, there had to be some showing that the boyfriend had renounced his past violent behavior toward the children and outsiders. The court found that the record contained no such evidence and Mother does not dispute this finding on appeal.

The court noted that Mother had made statements to DCFS workers and her therapist promising not to use physical discipline against her children in the future but the court distrusted that promise because Mother chose not to testify at the 18-month review hearing, chose not to talk to her therapist about her fiancé's abuse of her children and their beating of James and because Mother refused to accept responsibility for her part in the beating.

Mother argues that the court erred in basing its finding that the children could not be safely returned to her custody in part on her refusal to accept responsibility for the beating she gave James as he sat in his wheelchair. Mother relies on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 and our Supreme Court's decision in a case involving the denial of parole, *In re Shaputis* (2011) 53 Cal.4th 192 (*Shaputis II*). Neither decision is relevant to this case.[5]

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[4] Mother does not argue that reasonable services weren't provided.

[5] We granted Mother's application to file a "Supplemental Petition in Light of *In re Shaputis*." We treated the document as a supplemental brief on the relevancy of *Shaputis* to this case and afforded the DCFS an opportunity to respond which it did.

In *Blanca P.*, the court reversed a finding at the 18-month review hearing that it would be detrimental to the children to return them to their parents' custody because "'the father has not assumed responsibility'" for sexually molesting one of the children. (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1747.) But there is an important distinction between *Blanca P.* and the case before us. In *Blanca P.* the trial court prejudicially erred in conclusively presuming that the father had molested the child based on an earlier trial court finding to that effect when there was *new* evidence at the 18-month review hearing that he had not done so. (*Id.* at pp. 1757-1758.) The Court of Appeal held: "[C]ollateral estoppel effect should not be given, at a 12- or 18-month review, to a prior finding of child molestation made at a jurisdictional hearing when the accused parents continue to deny that any molestation ever occurred and there is new evidence supporting their denial." (*Id.* at p. 1757.) In the case before us there was "substantial evidence" at the hearing on the supplemental petition "that Mother spit on James . . . and that Mother and her boyfriend beat James severely about the head and face causing him to bleed profusely." (*J.H. II*, *supra*, at pp. 3-4.) Mother presented no new evidence at the 18-month hearing showing that she and her boyfriend did not beat and spit on James as the court previously found.

In *Shaputis II*, *supra*, 52 Cal.4th 192,, the court affirmed the Board of Parole Hearings' decision to deny parole to an inmate convicted of murder. The *Shaputis II* decision is based on Penal Code section 5011, subdivision (b) which states: "The Board of Prison Terms shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed." Section 361.5 contains no provision equivalent to Penal Code section 5011. In any case, Mother's refusal to admit that she and her boyfriend severely beat James while he was sitting in his wheelchair is not the *only* evidence which supports the court's decision that the children could not safely be returned to Mother. DCFS recommended against returning the children to Mother's custody. The record shows that regardless of who instigated the confrontation between Mother, H.G. and James, Mother violated the court's visitation order when she went to the foster home and in bringing H.G. with her. The court noted that H.G., whom Mother

stated she intended to marry, had not renounced his past violent behavior toward the children nor denied beating James as he sat in his wheelchair. The court also stated it distrusted Mother's repudiation of violence because she did not testify at the 18-month review and chose not to talk to her therapist about H.G.'s past abuse of her children and his role in the beating of James.

DISPOSITION

The writ is denied. The stay of the permanent planning hearing is lifted.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.