Filed 3/21/12 In re Antonio B. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANTONIO B., a Person Coming Under the Juvenile Court Law.	B232718 (Los Angeles County Super. Ct. No. CK38207)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DOROTHY S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stanley Genser, Commissioner. Affirmed.

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

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Dorothy S. (Mother) appeals from the juvenile court's order denying her petition under Welfare and Institutions Code section 388[1] and placing her son S. S. in legal guardianship. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family consists of Mother, London (born in May 2000), Antonio (born in May 2004), and S. (born in Nov. 2007).[2] The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on October 2, 2008, when London's father brought him to a police station to report bruises on London caused by Mother.[3] London and Antonio told a caseworker that Mother spanked them with a belt because they were bad. London and Antonio had marks on their bodies, but S. did not. Mother admitted that she whipped the children with a belt that day as a form of discipline. She stated that both children had behavior problems and were openly defiant, that her parents whipped her with a belt when she was growing up, and that she thought this form of discipline was appropriate to correct her children's misbehavior. London was placed with his father, S. was placed with his paternal grandmother, and Antonio was placed with his paternal grandmother.

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[1] All undesignated section references are to the Welfare and Institutions Code.

[2] Only S. is the subject of this appeal. S.'s father, Shawn S., passed away in 2007.

[3] Mother previously came to DCFS's attention in 2005 for emotional abuse of an older daughter, Jasmine S. London, Antonio, and Jasmine were detained in 2006, and the court terminated jurisdiction over the younger two siblings in February 2007. Mother also came to DCFS's attention in June 2007 for general neglect.

DCFS filed a petition under section 300, subdivisions (a), (b), and (j), alleging three counts of serious physical harm, six counts of failure to protect, one count of failure to provide, and two counts of abuse of sibling.

According to a November 5, 2008 jurisdiction/disposition report, Mother stated that this was the only time she had hit London with a belt. London and Antonio stated that they were afraid to live with Mother. London's father wanted joint custody of London with Mother, and Antonio's father wanted full custody of Antonio. DCFS recommended family reunification services, counseling, and parent training classes.

In December 2008, the juvenile court ordered a supplemental report to address Mother's participation and progress in treatment. According to the January 22, 2009 supplemental report, Mother had completed a 30-hour parent skills program in November 2008, and she had been attending weekly sessions in anger management.

At the January 22, 2009 adjudication hearing, the juvenile court stated that all the parties had stipulated to amendments to the section 300 petition. The court found true two allegations of serious physical harm against London and Antonio, based on Mother's striking them, and one allegation of failure to protect, based on Antonio's father's substance abuse. The remaining allegations were stricken.

The court declared London, Antonio, and S. dependents of the court under section 300, subdivisions (a) and (b). The court ordered a reunification plan for Mother and unmonitored visits as to S. as long as she complied with her treatment plan.

In a June 25, 2009 status review report, the caseworker stated that Mother had completed an anger management and individual counseling program, and that her counselor expressed no concern about returning the children to her. An

assessment of S. indicated that he was developmentally appropriate and had no mood, anxiety, appetite, or sleep disorders. A caseworker reported that Mother had consistent and appropriate visits with S. and expressed the belief that Mother should be with him. S.'s paternal grandmother reported that S. appeared happy with Mother, and she expressed no concerns for his well-being with her. At the June 25, 2009 hearing, the court found that Mother was in compliance with the case plan and returned S. to Mother.

A September 3, 2009 interim review report stated that S. was residing with Mother. Antonio reported in August 2009 that Mother had tried to cut his finger off with a pair of scissors during an unmonitored visit, and he wanted to live with his father. London did not want unmonitored visits with Mother and wanted to stay with his father. The report stated that Mother was argumentative and verbally aggressive toward a caseworker.

S. was still living with Mother at the time of a December 1, 2009 status review report. Mother began family preservation services in October 2009 with S. and Antonio. Antonio's father reported in September and November of 2009 that Mother had been smoking marijuana. Mother denied using marijuana, and a drug test ordered by the caseworker was negative.

In November 2009, a counselor reported that Mother interacted well with S. and Antonio. The caseworker stated that, although Mother had completed an anger management program in May 2009, she did not appear to have gained perspective and was not applying new skills. The caseworker further stated that Mother was not allowing DCFS access to supervise her and that she did not seem very concerned about her children's welfare.

On January 28, 2010, DCFS filed an Information for Court Officer, reporting that Antonio told a caseworker that Mother hit him and S. with a belt to

discipline them. Antonio also reported that Mother and his father had a physical altercation. Mother denied having an altercation with Antonio's father and denied using a belt on Antonio or S. In February 2010, a caseworker reported that Antonio denied any physical abuse and did not have any marks or bruises on his body. A March 2010 interim review report stated that DCFS would most likely find the allegations to be unfounded.

On May 25, 2010, counsel for Antonio and S. filed section 388 petitions, asking the juvenile court to order Antonio's visits with Mother to be monitored and to order S. detained from Mother. Antonio's paternal grandmother reported that Antonio told her that Mother occasionally left him and S. with an 18-year-old brother, Rodney, during unmonitored visits, but that Rodney left him and S. alone in the house. Antonio was six years old at the time, and S. was under three. The grandmother went to check on Antonio during a May 19, 2010 visit and found Antonio and S. alone in the home. Mother denied leaving the children alone or in Rodney's care. Rodney acknowledged that Mother occasionally left him with the children, but he denied leaving them alone. S. was placed with his paternal grandmother.

On May 28, 2010, DCFS filed a section 342 petition, alleging a failure to protect under section 300, subdivision (b), on the basis of the report that Antonio and S. were left alone in the home when Mother left them with Rodney. The court ordered S. detained and placed with his paternal grandmother, with monitored visits by Mother.

On June 30, 2010, the court found true the allegations in the section 342 petition. The section 388 petitions were withdrawn.

An August 25, 2010 interim review report indicated that S. was still placed with his paternal grandmother. Mother had monitored visits with S. Mother's

family counselor reported that Mother was not receptive to counseling and that Mother had cursed at Antonio during a session. DCFS recommended an additional six months of reunification services for S., noting that Mother appeared to have a bond with him and maintained regular visits with him. However, the juvenile court found that Mother was not in compliance with the case plan and ordered termination of reunification services under section 361.5, subdivision (b)(10).

On December 20, 2010, Mother filed the section 388 petition that is the subject of this appeal. Mother asked the court to order family reunification services with S. and Antonio, to liberalize visitation, and to give DCFS the discretion to allow overnight visits. Mother's evidence of changed circumstances was that she had attended parenting classes and maintained consistent, frequent visits with the children. She attached a letter indicating that she had attended 11 weekly parenting classes. The court found that the request did not state new evidence or a change of circumstances and ordered a hearing for March 8, 2011.

DCFS filed a section 366.26 report on December 22, 2010. S.'s paternal grandmother did not want to adopt S., preferring to become his legal guardian in order to give Mother an opportunity to get her life together before considering adoption. According to the grandmother, Mother was compliant with visitation, but her visits were infrequent.

At the March 8, 2011 combined hearing on Mother's section 388 petition and the section 366.26 report, Mother testified that she visited S. twice a week for about two hours at a time. She stated that she had benefited from her parenting classes, which taught her correct discipline methods and anger management.

The court stated that the only evidence Mother presented of changed circumstances was the parenting class, but that Mother still had issues regarding allegations of physical abuse and neglect. The court thus denied Mother's section

388 petition, finding insufficient evidence to warrant a change. The court granted legal guardianship of S. to his paternal grandmother and did not order termination of parental rights as to S.[4] Mother was given monitored visits, with discretion given to DCFS to liberalize her visits. Mother timely appealed the order terminating parental rights as to Antonio and placing S. in legal guardianship, but she only challenges the denial of her section 388 petition as to S. on appeal. (See *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451 ["[W]e will henceforth liberally construe a parent's notice of appeal from an order terminating parental rights to encompass the denial of the parent's section 388 petition, provided the trial court issued its denial during the 60-day period prior to filing the parent's notice of appeal."].)

DISCUSSION

Mother contends that the juvenile court abused its discretion in denying her 388 petition as to S. We find no abuse of discretion and affirm.

"Section 388 permits '[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court' to petition 'for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court' on grounds of 'change of circumstance or new evidence.' (§ 388, subd. (a).)" (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) The petitioner must "establish[] by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a '"legitimate change of circumstances"' and that undoing the prior order would be

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[4] The court terminated parental rights as to Antonio in order to finalize adoption by his paternal grandmother.

in the best interest of the child. [Citation.]" (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 (*S.J.*).) "The change of circumstances or new evidence 'must be of such significant nature that it requires a setting aside or modification of the challenged prior order.' [Citation.]" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615 (*Mickel O.*).)

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

The juvenile court's denial of a section 388 petition must be upheld "unless we can determine from the record that its decisions '"exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]' [Citations.]" (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505 (*Brittany K.*).)

The only evidence of changed circumstances presented by Mother was the completion of an 11-week parenting course and consistent visitation with S. However, there was no evidence that Mother had addressed the other concerns that led the court to terminate reunification services, such as her decision to leave the children alone with Rodney during an unmonitored visit. A January 14, 2011 interim review report indicated that Mother had completed the parenting class, was exhibiting an improved attitude toward DCFS, and was visiting S. consistently. However, "the petitioner must show *changed*, not changing, circumstances. [Citation.]" (*Mickel O.*, *supra*, 197 Cal.App.4th at p. 615.) While Mother's

completion of a parenting class and her changed attitude are laudable, the evidence is not "'of such significant nature'" as to require a modification of the prior order. (*Ibid.*) Moreover, even if Mother had established changed circumstances, she also must show that undoing the prior order would be in S.'s best interest. (*S.J.*, *supra*, 167 Cal.App.4th at p. 959.)

In *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly F.*) the court cited several factors to aid in determining a child's best interests under section 388: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*Id.* at p. 532.)

Although the juvenile court did not explicitly consider the factors relied upon in *Kimberly F.*, the record indicates that it implicitly considered them when it denied the 388 petition. The court considered the first factor when it reasoned that Mother had significant issues of allegations of physical abuse, neglect or lack of appropriate supervision, and substance abuse that were not addressed by her petition.[5] The second factor was addressed when the court reasoned that the children had been detained from Mother for a significant length of time, her visits had remained supervised, and she was not involved in the children's lives.

The juvenile court's decision did not exceed the bounds of reason and so must be upheld. (*Brittany K.*, *supra*, 127 Cal.App.4th at p. 1505.) Although

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[5] We note that no allegations of substance abuse by Mother were ever sustained and that she was never ordered to undergo any substance abuse counseling. Antonio's father was ordered to undergo substance abuse treatment, but Mother never was. Nor were any allegations of physical harm against S. (as opposed to London and Antonio) ever made or sustained.

Mother completed a parenting class, one of the concerns expressed by DCFS in its December 2010 section 366.26 report was that Mother still had inconsistent contact with S. and denied that she had unresolved issues. The court's concern that Mother had unresolved issues accordingly is supported by the record. In addition, although Mother testified that she visited S. consistently, according to the DCFS report, S.'s paternal grandmother reported that Mother's visits were infrequent.[6]

At the time of the March 2011 hearing, S. had been detained from Mother for 10 months. The record indicates that S.'s paternal grandmother had been a consistent presence in his life and was bonded with him. Mother has not shown that removing S. from this setting would be in his best interests. The record does indicate that Mother had a bond with S. However, "'[t]he presumption favoring natural parents by itself does not satisfy the best interests prong of section 388.' [Citation.]" (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 260.)

The juvenile court did not abuse its discretion in denying Mother's 388 petition.

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[6] However, a January 2011 interim review report did indicate that Mother "consistently and frequently visits with child S." and appeared bonded with S.

DISPOSITION

The order appealed from is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.