

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.M., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B283230
(Super. Ct. No. 16JD-00360)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

B.M.,

Defendant and Appellant.

B.M. (Mother) appeals orders of the juvenile court dismissing the dependency proceeding and granting sole custody of her son K.M. to his father. K.M. is a child coming under the juvenile court law. (Welf. & Inst. Code, § 300, subd. (b)(1).¹) We

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

conclude Mother has not shown that the court abused its discretion in making its orders. We affirm.

FACTS

On October 17, 2016, the San Luis Obispo County Department of Social Services (DSS) filed a juvenile dependency petition (§ 300, subd. (b)(1)) alleging Mother and S.M. (Father) had failed to protect K.M., a five-month-old boy. Father was arrested for leaving the child in a car for 20 minutes. He was “dropping off paperwork at his attorney’s office” relating to a family law case Mother filed.

In a detention report, DSS noted that Mother had “tested positive for [m]ethamphetamines and [she had] acknowledged a history of mental health issues, [m]ethamphetamine use and related criminal activity.” At an October 18 hearing, the juvenile court ordered the child to be detained. It found the child “is a person described by” section 300, subdivision (b)(1).

In an addendum report filed November 1, 2016, DSS recommended that the child be placed with Father. It said there was no pattern of neglect by Father. He had received “therapeutic and mental health treatment” and “has developed several tools to ensure there is not a reoccurrence of [the child] being left in a car.” At a hearing on visitation, Mother testified that she had been living at a “sober living home” and had a “treatment program.”

On December 13, 2016, DSS filed a disposition report recommending that the child “continue to be placed with his father.” It said Mother had used methamphetamine “on and off for four years” and the child had tested positive for methamphetamine because of Mother’s “breastfeeding.” Mother had visitation with the child two times a week. She had been

living at the “Griffin” house, but she “is being exited” from that facility “due to her drinking.”

On January 11, 2017, the juvenile court held a combined jurisdiction and disposition hearing. The court ruled the child “is adjudged a dependent of the court.” In its written findings and orders after dispositional hearing, the court ordered that “[c]ustody of the child is retained by” Father, with supervised visitation for Mother.

On March 14, 2017, Father filed a section 388 petition seeking to terminate dependency jurisdiction. He claimed the child “is thriving in his . . . care.” He sought “full legal and physical custody.” He requested that Mother receive supervised visitation. He said Mother did not comply with her case plan and did not “make progress on her issues.” The juvenile court ordered a hearing “because the best interest of the child may be promoted by the request.”

In an interim report, DSS recommended that the child “remain in the care of his father and that the Juvenile Court dismiss the [section] 300 Petition with sole legal and physical custody granted to the father.” It said that Father “is providing a safe home for his child.” Mother “is unable to provide the safe environment that her son needs.” It said that Mother needed a year of treatment “to have a chance [to stay] clean and sober.”

In a May 25, 2017, hearing, the juvenile court said it was adopting “the findings recommended by [DSS].” It terminated dependency jurisdiction, granted legal and physical custody to Father and supervised visitation to Mother.

DISCUSSION

Terminating the Dependency Case and Granting Father Sole Custody

Mother contends the juvenile court did not make sufficient findings in terminating the dependency case and in granting Father sole custody.

DSS contends substantial evidence supports the express and implied findings that the orders furthered the best interests of the child and that dependency jurisdiction was no longer necessary. We agree.

The juvenile court may grant a section 388 petition to modify its prior orders where there are changed circumstances that show the modification is in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 535.) Such an order will not be overturned on appeal unless the juvenile court abused its discretion. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

The juvenile court has “discretion to terminate dependency jurisdiction when the child is in parental custody and no protective issue remains.” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 207.) The statutory goal is to terminate dependency proceedings “as soon as, the circumstances warrant.” (*Ibid.*) “[T]he juvenile court’s decision to terminate dependency jurisdiction necessarily means it found conditions justifying an initial assumption of jurisdiction under section 300 did not exist and were unlikely to exist if supervision were withdrawn.” (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1166.) “The only remaining question is whether the juvenile court’s implied finding on this issue is supported by substantial evidence.” (*Ibid.*)

Sufficiency of the Findings

Mother contends the juvenile court did not make sufficient express findings to support its orders and a reversal is required. We disagree. The court should make “a finding . . . on the record of the basis for its determination.” (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078.) “An express finding on a contested issue” can “shape and improve the adjudicatory process” (*Ibid.*)

Father filed a section 388 petition requesting termination of the dependency proceeding and custody of the child. The juvenile court said it was granting a hearing on that petition “because the best interest of the child may be promoted by the request.” At the April 21, 2017, hearing, the court found, “It’s clear the mother has had a long substance abuse history.” In its May 25, 2017, written custody order, the court found Mother would only receive “supervised visitation” because she “has not made substantial progress” in her “[d]rug abuse treatment program with random testing.”

At the May 25, 2017, hearing, the juvenile court said it was adopting “the findings recommended by [DSS].” DSS recommended that 1) the child “remain in the care of his father,” and 2) the court “dismiss the [section] 300 Petition with sole legal and physical custody granted to the father.” DSS said it made these recommendations because Father was providing a safe home for the child and Mother was unable to do so.

Here the juvenile court should have expressly stated its findings instead of incorporating by reference the DSS recommendations. This shorthand approach does not provide the specificity normally required for findings. But the reference to the DSS reports did provide guidance about why the court made its orders terminating jurisdiction. The order terminating

jurisdiction “necessarily means it found” the dependency proceeding was no longer necessary. (*In re Aurora P.*, *supra*, 241 Cal.App.4th at p. 1166.) The court made express findings on the custody and visitation issues. But even if the court erred by not making more specific findings, the result does not change. A reversal is only required if it is “reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*In re J.S.*, *supra*, 196 Cal.App.4th at p. 1078.) That is not the case here.

As the County notes, the evidence strongly supports the juvenile court’s order terminating dependency jurisdiction. DSS said there was no need for further dependency jurisdiction because: 1) Father has custody, 2) he “has followed through with all requests of Child Welfare Services,” 3) he is “providing a safe home for his child,” 4) he is “following through on any medical care,” 5) he “engages his child [in] appropriate recreational activities,” and 6) he has “shared with [his social worker] what he will need to do in the future to continue to provide a safe environment for his son.” DSS also said the child “is a happy 11 month old baby boy” who is “up to date on his immunization and medical appointments.” The Father reported to DSS that the child “is doing well at day care.”

Moreover, DSS contends Mother is not able to show prejudice on the order dismissing dependency jurisdiction because of her position at the hearing. When the court asked what position Mother was taking on Father’s petition, her counsel said, “We’re just asking for *a visitation plan* that gives the mother a period of time where she can keep her bond with her child.” (*Italics added.*) Counsel did not make any objection to dismissal of the dependency case. Nor did counsel present

evidence to challenge the DSS recommendation for dismissal at that final hearing.

The juvenile court's order limiting Mother to supervised visitation because of her substance abuse problem and her lack of progress in drug rehabilitation is supported by the following facts: 1) Mother told DSS she would enter "rehab on February 14, 2017," and test for drugs, but "she did not test, nor did she go into treatment" on that date; 2) on March 2, 2017, Mother tested positive for "[m]arijuana, [m]ethamphetamine, [e]cstasy and [b]upropion"; 3) Mother's therapist told DSS, "I don't believe [Mother] has the coping skills she needs at this time" and "every time she sees [Mother] she is in one crisis or another"; 4) Mother has "a history of no shows" for her therapy appointments; 5) Mother's probation officer said that Mother "was not in compliance with Prop 36" and that she refuses "to see that drinking alcohol was a problem"; 6) DSS determined that Mother "is unable to provide the safe environment that her son needs"; and 7) DSS also noted that Mother "needs a year in out of county treatment in order to have a chance with staying clean and sober."

Mother contends the order terminating dependency proceedings improperly ended her right to family reunification services.

DSS responds: 1) "there was no removal-of custody order made at disposition"; and 2) therefore, because the child remained with Father, Mother was not entitled to reunification services. We agree.

In the findings and orders after dispositional hearing, the juvenile court ruled the "[c]ustody of the child is retained" by Father. Where a child remains with the "custodial parent," the other parent is "not entitled to reunification services." (*In re*

Destiny D., *supra*, 15 Cal.App.5th at p. 212.) In *Destiny D.*, the court said that, under section 16507, subdivision (b), “[f]amily reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court.” (*Destiny D.*, at p. 212.) The agency may offer special services to a “parent not retaining custody, designed to enhance the child’s relationship with that parent.” (*Ibid.*) But an order for such “enhancement services is subject to the court’s discretion.” (*Id.* at p. 213.) Here the court ordered supervised visitation for Mother by “a professional visit supervisor.” Mother has not shown an abuse of discretion.

DSS claims Mother’s request to delay termination of the dependency proceeding where it is no longer required and the child is at home undermines the statutory goals. “[N]othing in the statutes or rules limits the time period for court supervision and services when the child remains in the home If supervision is no longer required, the court simply terminates the dependency.” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 304, fn. 10.)

We have reviewed Mother’s remaining contentions and we conclude she has not shown grounds for reversal.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Richard M. Curtis, Judge

Superior Court County of San Luis Obispo

David A. Hamilton, under appointment by the Court of
Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy
County Counsel, for Plaintiff and Respondent.