Filed 7/23/15 In re A.C. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.C. et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B260647 (Super. Ct. Nos. J069754, J069755) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. K.C., Defendant and Appellant.	

K.C. (Mother) appeals the judgment of the juvenile court terminating her parental rights to her children, A.C and M.C. (Welf. & Inst. Code, § 366.26.)[1] We conclude, among other things, that the juvenile court did not err by denying Mother's section 388 petition and terminating her parental rights. We affirm.

FACTS

On December 3, 2013, the Ventura County Human Services Agency (HSA) filed a juvenile dependency petition. (§ 300, subd. (b).) It alleged Mother's substance abuse, including the use of methamphetamine, and her "history of domestic violence" with her "significant other," placed the children at a "substantial risk of serious physical harm."

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

HSA removed the children--A.C., a three-year-old boy, and M.C., an infant girl. HSA noted that Mother had completed a substance abuse program "while incarcerated" in prison. Mother spent the "majority of her pregnancy" with A.C. while she was incarcerated. She told the social worker that she was on parole and was required to take drug tests. In April and October 2013, she tested positive for use of methamphetamine. Mother told HSA that in October she used that drug because "it seemed easy to use." She said she stopped smoking marijuana in 2009.

HSA obtained information that Mother had smoked methamphetamine in front of A.C. and she had used methamphetamine when she was eight and one-half months pregnant with M.C. When A.C. was removed by HSA, the social worker noted he had numerous red bumps on his arms, legs, feet, chest and face caused by bed bugs. Mother admitted to HSA that while she was pregnant with M.C, she had twice tested positive for methamphetamine. M.C. was in a hospital where she was receiving "IV fluids." She was "experiencing *significant withdrawals from methamphetamine exposure in utero*." (Italics added.) The hospital could not immediately release her because her condition was "not stable." The juvenile court found the children came "within Section 300 of the Welfare & Institutions Code."

HSA provided Mother with family reunification services. In June 2014, Mother told a social worker that she had been arrested. She had purchased drugs and "had intentions to use." A social worker reported that "the failure of the mother to address her drug use continues to be a concern regarding safety for the minors in her home."

HSA recommended that family reunification services be terminated because of Mother's "failure to participate *in any case plan services*." (Italics added.) The juvenile court found that Mother had not complied with her case plan requirements. It terminated reunification services with the children and set a section 366.26 hearing.

Mother filed a section 388 petition alleging there were changed circumstances which required the juvenile court to change its order terminating reunification services. The court terminated Mother's parental rights to the children. It denied her section 388 petition,

finding she had not shown "changed circumstances" or that a change would be in the children's best interests.

DISCUSSION

The Section 388 Petition

Mother contends the juvenile court erred because it "improperly denied" her section 388 petition. She claims the court erred by not granting her "further reunification" with the children. We disagree.

Section 388, subdivision (a) allows a parent to petition to change or modify a previous order of the juvenile court. (*In re Andrew L.* (2004) 122 Cal.App.4th 178, 190.) The burden is on the parent to show "there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child." (*Ibid.*) "'The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.'" (*Ibid.*)

Mother contends the juvenile court should have granted her section 388, subdivision (a) petition as to A.C., because it incorrectly provided her with only six months of reunification services for that child. She claims: 1) A.C. was more than three years of age when he was removed; 2) A.C. was "not a member of a qualified sibling group"; 3) "services were terminated at the six month review"; 4) HSA "did not file a section 388 [subdivision (c)] petition for an early termination of services for [A.C.]"; and 5) consequently, HSA's failure to seek termination under that section mandated that the court provide 12 months of reunification services, instead of only six.

HSA contends Mother's argument is based on an incorrect statement of facts. It claims it properly sought an early termination of services under section 388, subdivision (c). We agree. Section 388, subdivision (c)(1)(B) permits HSA to seek termination of court-ordered reunification services where the "action or inaction of the parent" creates "a substantial likelihood that reunification will not occur, " such as where the parent does not participate "in a court-ordered treatment plan."

In its July 15, 2014, status review report, HSA said it "recommends that Family Reunification services for the minor, [A.C.], with the mother, [K.C.], be terminated

to the parent *pursuant to section 388(C)(1)(B) of the Welfare and Institutions Code* due to [Mother's] failure to participate in any case plan services." (Italics added.)

In her reply brief, Mother contends HSA's July 15th report was not a proper petition. She claims, consequently, it did not provide her due process notice. But Mother has forfeited these issues because she did not raise them in the juvenile court. (*In re B.G.* (1974) 11 Cal.3d 679, 689; *In re Z.S.* (2015) 235 Cal.App.4th 754, 771; *In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1198.) Mother also did not raise them in her opening brief. (*Kovacevic v. Avalon at Eagles' Crossing Homeowners Assn.* (2010) 189 Cal.App.4th 677, 680, fn. 2.) But even on the merits, the result does not change. HSA gave clear notice that it sought termination of reunification services because of Mother's failure to participate in case plan services. Mother had an opportunity to challenge HSA's claims in the juvenile court. On appeal, Mother makes no showing from the record to demonstrate that she met her case plan requirements. The juvenile court found there was "a substantial likelihood that reunification will not occur" because of Mother's failure to "visit the child" and to "participate regularly and make substantive progress in a court-ordered treatment plan." Mother has not shown that those findings are not supported by the record. She also acknowledges that she "did not appeal the termination of . . . services" order.

Mother claims her section 388, subdivision (a) petition showed changed circumstances, and, consequently, the juvenile court should have ordered additional reunification services for both of her children. In her petition she said that after termination of services on June 16, 2014, she "has been actively involved in services independently, is working and has a stable place to live." Mother presented a letter from "New Start for Moms" drug treatment program indicating that "she completed an intake on July 2, 2014."

But HSA noted that document also indicated that Mother "had 24 canceled or missed activities since her enrollment." Mother had been "randomly tested" for drugs on seven occasions. Six tests showed she was "drug free," but one test was positive, and "she also failed to test on one occasion."

Mother claimed that the documents attached to her petition constituted new evidence. But HSA noted that some of those documents "were previously submitted . . .

prior to termination of . . . services." Mother attached a record of attendance for the "AA/NA" program. But HSA noted there were "no cards for any meetings in the month of August, 2014." It also said Mother had missed "all" of her child visitation appointments scheduled for July 2014, including the visits for July 1, 8 and 15. She did not visit the children in August. She only requested that "her visits be reinstated" on September 3, 2014. Mother has not shown why the court could not reasonably conclude that she failed to meet her burden to show sufficient changed circumstances.

But even had Mother shown some new circumstances, the result does not change. The second prong of a section 388, subdivision (a) petition requires parents to show the change they are seeking would be in the best interests of the children. (*In re Andrew L.*, *supra*, 122 Cal.App.4th at p. 190.) In her petition Mother claimed she had a place to live and employment. But she did not make a showing that she had made progress in her ability to be a parent and overcome the problems that caused her children to be removed. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224.) Mother's addiction to drugs was one of those problems. The documents attached to her section 388 petition presented proof that this was still a problem because of her positive drug test. In addition, HSA noted that Mother had missed two months of child visitation appointments after the termination of services. The trial court could reasonably infer this showed lack of adequate concern for the children.

"[T]here is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child, particularly when such placement is leading to adoption by the long-term caretakers." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 465.) HSA said the children were "both in very secure, stable and loving homes [with individuals] that are willing to adopt [them]." Mother made no showing to challenge those facts.

HSA contends the change Mother seeks would be detrimental to the children. The social worker said M.C. "appears to have an emotional connection to those in her current placement." During visits, "[M.C.] cries and yells until the prospective adoptive parent returns to the visitation room." "The only home environment and care providers that

she has known are in her current placement . . . ." Mother had "a difficult time calming the child down when she begins to cry uncontrollably."

A.C. told the social worker that "he was afraid to visit his mother and was scared of 'living with her.'" His maternal grandmother was A.C.'s "primary caregiver for the first three years of his life, while [his] mother was incarcerated in prison." He has "memories of the domestic violence he witnessed" when he lived with Mother. He had to be referred to a therapist to "address his fear and anxiety." The social workers said that A.C. "has always embraced the entire prospective adoptive family, and they have in turn embraced [him]." A.C. has developed "a very close bond" with the "biological son" of that family.

An important factor in evaluating the child's best interests is "the strength of the child's bond with his or her new caretakers compared with the strength of the child's bond with the parent." (*In re Ernesto R.*, *supra*, 230 Cal.App.4th at p. 224.) HSA said that "[t]here does not appear to be a bond or attachment of the children" to Mother. Mother claims she "has acknowledged her wrongs and corrected her conduct." But given Mother's history, she has not shown why the trial court could not find "that a section 388 order for reunification services at this late date would deprive [the children] of a permanent, stable home in exchange for an uncertain future." (*Id*. at p. 225.) Mother has not shown error.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

Robert R. Walmsley, under appointment by the Court of Appeal, for Defendant and Appellant K.C.

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