Filed 11/7/12 In re Joseph E. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

In re JOSEPH E., a Person Coming Under the Juvenile Court Law.	B240924 (Los Angeles County Super. Ct. No. CK74141)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. VANESSA M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Donna Levin, Referee. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Vanessa M. (Mother) appeals from the juvenile court referee's order of April 19, 2012, denying her Welfare and Institutions Code section 388 petition.[1] The referee adjudged minor Joseph E., born in 2010, a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). Joseph E., Sr. (Father), is not a party to this appeal. Mother contends that the referee's orders removing custody of Joseph from Mother at detention and disposition on the section 387 petition are ineffective because the record does not show Mother was furnished a written explanation of her right of review as required by section 248 and the detention and disposition orders were not approved by a judge as required by section 249. Mother also argues that her due process rights were infringed upon because the record does not show that she was served with a written explanation of her right to seek immediate review of the referee's denial of her section 388 petition. She also urges the referee erred in summarily denying her section 388 petition without holding an evidentiary hearing. We disagree and affirm the order.

BACKGROUND

In June 2010, two days after the birth of Joseph, the Los Angeles County Department of Children and Family Services (DCFS) received a referral of allegations of general neglect by Mother. Subsequent investigation of the family showed that Mother and Father had failed to reunify with older daughters Olivia, who had been born in 2008 with methamphetamine in her system, and Krystal. Mother had been convicted in 2008 for driving without a license and sentenced to 12 months' probation. In March 2010, Mother began attending a substance abuse program pursuant to the terms of her probation.

On June 28, 2010, DCFS filed a nondetained petition pursuant to section 300, subdivisions (b), (g), and (j) (abuse of sibling) on behalf of Joseph. The juvenile court ordered that Joseph remain released to Mother on the conditions that she comply with a safety plan that included weekly random drug testing and that Mother continue her drug

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

treatment program. Subsequently, that petition was dismissed and a first amended petition was filed on July 29, 2010, pursuant to section 300, subdivisions (b), (g), and (j) that alleged Mother had a history of illicit drug abuse; Father was incarcerated and currently unable to provide for Joseph; and Father failed to reunify with Olivia due to Father's substance abuse.

On August 12, 2010, Mother pleaded no contest to the section 300, subdivisions (b) and (g) allegations. Although it is unclear from the record, it appears that the allegation under section 300, subdivision (j) was dismissed. The juvenile court ordered Joseph to remain in Mother's custody and Mother to receive family maintenance services, to attend a parenting class, and to attend a drug treatment program with weekly drug testing.

On March 3, 2011, Mother was incarcerated on charges of conspiracy to commit murder. At a hearing the next day, the juvenile court ordered DCFS to investigate Mother's incarceration and continued the matter for six months. On March 14, 2011, DCFS filed a section 387 petition, requesting that Joseph be detained from Mother, alleging that she had been incarcerated on March 3, 2011, for conspiracy to commit murder. DCFS reported that prior to her arrest, Mother was attending parenting classes, had completed individual counseling, had tested negative in random drug tests, and had completed drug counseling and education programs.

DCFS reported that Mother had not made any arrangements for Joseph's care. Maternal grandmother told DCFS that "maternal aunt came by to pick up [Joseph] after [Mother's] arrest and later brought [Joseph] to Maternal Grandmother's residence." On March 10, 2011, DCFS informed maternal grandmother that Joseph was being detained from Mother's care. Maternal grandmother, who had adopted Krystal and Olivia, was willing to care for Joseph.

At the March 14, 2011 detention hearing, the juvenile court detained Joseph from Mother's custody. The minute order of the hearing was signed by Referee Donna Levin and dated March 14, 2011, and signed by the Honorable Marguerite K. Downing, Judge. The minute order was "entered" on March 14, 2011.

On June 30, 2011, the juvenile court sustained the section 387 petition and custody of Joseph was taken from Mother. The court denied Mother family reunification services pursuant to section 361.5, subdivisions (b)(10), (b)(11), and (e). Mother was advised of her "appeal, rehearing, and sealing rights." The clerk stated on the record, "For the record, I handed the petition for extraordinary writ and the notice of intent to file and the advisement of rights."

Joseph remained placed with maternal grandmother, who took him to see Mother several times per month. Joseph had a good relationship with maternal grandmother, who provided for Joseph's physical, emotional, and psychological needs. Maternal grandmother preferred legal guardianship to adoption.

On April 6, 2012, while incarcerated, Mother filed a section 388 petition, stating that she had completed "another" parenting class, a domestic violence class, a "Women In Transition Support group," and was currently participating in an inpatient drug program "that permits infants to be placed with their mothers." She requested that the juvenile court order Joseph to be placed in the drug program with Mother, or in the alternative that Mother receive family reunification services, including unmonitored visitation. She stated that the change would be better for Joseph because she and Joseph "have a bond that would be detrimental to [Joseph] to sever." Mother attached certificates that showed she had completed a parenting course and attended classes dealing with domestic violence, child support, and career planning, but did not attach proof that she was participating in an inpatient drug program.

On April 19, 2012, the juvenile court denied Mother's section 388 petition without a hearing. Mother appealed.

DISCUSSION

A. Mother has failed to show the juvenile court referee did not comply with sections 248 and 249.

Mother contends that the juvenile court referee's orders removing custody of Joseph from Mother at detention and disposition on the section 387 petition are ineffective because the record does not show Mother was furnished a written explanation

of her right of review as required by section 248 and the detention and disposition orders were not approved by a judge as required by section 249. We disagree.

As pertinent here, section 248, subdivision (a) provides that a referee shall serve the parent with a written copy of the findings and order and shall also furnish to the parent a written explanation of the right to seek review of the order by the juvenile court. Section 248, subdivision (b) provides that if the parent is present in court at the time the findings and order are made, then the findings and order may be served in court on the parent who is present in court on that date and a written explanation of the right to seek review of the order shall be furnished at that time.

The record shows that at the March 14, 2011 detention hearing Mother was advised of her "appeal, rehearing and sealing rights." Further, the clerk handed to Mother the petition for extraordinary writ and the notice of intent to file and the advisement of rights. Accordingly, Mother's argument that the record does not show Mother was furnished a written explanation of her right of review as required by section 248 fails.

Section 249 provides, "No order of a referee removing a minor from his home shall become effective until expressly approved by a judge of the juvenile court." But where a detention order has been made by a referee and approved by a judge, the subsequent dispositional order is "not an order removing the minor from his home and [does] not have to be approved by a judge of the juvenile court." (*In re I.S.* (2002) 103 Cal.App.4th 1193, 1197.) The record shows that juvenile court Referee Donna Levin ordered Joseph removed from Mother's custody at the March 14, 2011 detention hearing. The order was approved by juvenile court Judge Marguerite K. Downing and the minutes were entered on March 14, 2011. Pursuant to *In re I.S.*, the subsequent dispositional order did not require approval by a judge of the juvenile court.

Accordingly, Mother's argument that the detention and dispositional orders were ineffective because they were not approved by a judge as required by section 249 fails.

B. Mother was not prejudiced by a lack of service of written explanation of her right to seek review of the referee's denial of her section 388 petition by a judge of the juvenile court, and the referee did not abuse its discretion in summarily denying her section 388 petition without holding an evidentiary hearing.

Mother argues that her due process rights were infringed upon because the record does not show that she was served with a written explanation of her right to seek immediate review of the referee's denial of her section 388 petition. She also argues that the referee erred in summarily denying her section 388 petition without holding an evidentiary hearing. We conclude that Mother has not shown that she was prejudiced by the lack of a written explanation of her right to seek immediate review because the referee did not err in denying her section 388 petition.

Constitutional errors in dependency matters are subject to the "harmless beyond a reasonable doubt" standard of *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824]. (*In re Angela C.* (2002) 99 Cal.App.4th 389, 394.) The record does not show that Mother was given written notice of her right to have the referee's denial of her section 388 petition reviewed, as required under section 248. But, as we explain, any error was harmless beyond a reasonable doubt because Mother failed to make a prima facie showing necessary to trigger the right to a full evidentiary hearing. Thus, even had a juvenile court reviewed the referee's denial of the section 388 petition, the outcome would have been the same.

Section 388, subdivision (a) states in relevant part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall . . . set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction." Section 388, subdivision (d) provides: "If it appears that the best interests of the child may be promoted by the proposed change of order, recognition

of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held and shall give prior notice . . . ."

"[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition." (*In re Zachary G*. (1999) 77 Cal.App.4th 799, 806.) "The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*Ibid*.)

Our review of Mother's section 388 petition shows that she merely alleged general, conclusory allegations, which fail to establish a prima facie showing. (See *In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

Mother merely alleged she had completed or was enrolled in various programs and attached certificates that showed she had completed a parenting course and attended classes dealing with domestic violence, child support, and career planning. But Mother did not attach proof that she was participating in an inpatient drug program. Nor did she indicate the name of the inpatient drug treatment program she claimed to be attending or how long she had been receiving treatment. And prior to her arrest for conspiracy to commit murder, Mother had completed drug counseling and education programs, tested negative in random drug tests and was attending a parenting class. Therefore, she has not alleged changed circumstances that require a change of order requiring Joseph to be placed in the drug program with Mother, or in the alternative that Mother receive family reunification services, including unmonitored visitation.

Further, the petition did not establish a prima facie showing that a change in the order would be in Joseph's best interests. In this regard, the petition alleged that Mother is bonded with Joseph. But she did not specify what type of contact she maintains with Joseph, and her allegation that she is bonded with Joseph is simply conclusory. And "up until the time the section 366.26 hearing is set, the parent's interest in reunification is given precedence over the child's need for stability and permanency." (*In re Marilyn H.*

(1993) 5 Cal.4th 295, 310.) After termination of reunification services, it is presumed that continued care is in the best interests of the child. (*Ibid*.) Mother has not shown how Joseph's best interests would be served by the change in order she requested.

Mother did not establish a prima facie showing of change of circumstances and that a change of order would be in the best interests of Joseph. Accordingly, we conclude that the referee did not err in denying Mother a hearing on her section 388 petition.

DISPOSITION

The order appealed from is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.