Filed 7/17/12 In re K.C. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.C. et al., Persons Coming Under the Juvenile Court Law.	B238338 (Los Angeles County Super. Ct. No. CK 55700)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.H., Defendant and Appellant.	

APPEAL from an order of the Superior Court for the County of Los Angeles. Terry T. Truong, Juvenile Court Referee. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Kimberly Roura, Associate County Counsel, for Plaintiff and Respondent.

SUMMARY

The issue in this case is whether the juvenile court erred in denying a mother's Welfare and Institutions Code section 388 petition without a hearing.[1] The petition asked the court to change a previous order so that mother could have sleepover visits from her children one weekend each month and participate in school and after-school activities. We find no abuse of discretion and so affirm the juvenile court's order.

FACTS

The juvenile court took jurisdiction over mother's four children in 2004, shortly after the youngest was born with methamphetamines in her system. Since then, mother, R.H., has been in and out of various substance abuse programs, sometimes doing very well but then reverting to her previous habits, and has been incarcerated at times. After the children—the newborn and siblings who were two, three, and four years old—were detained, mother failed to reunite with them, and on August 9, 2006, the court ordered a permanent plan of legal guardianship with their maternal great-aunt. The aunt requested legal guardianship, thinking that the children were still bonded to their mother, "and that in the future, adoption could be detrimental to the well being of the children." The court ordered "monitored visitation every other Saturday from 1 PM to 5 PM, once [mother] is released from prison." Jurisdiction was terminated.[2]

Seven months or so later, in March 2007, mother filed the first of several section 388 petitions, asking the court for changes in the visitation order. Section 388 permits a parent, "upon grounds of change of circumstance or new evidence," to petition the court for a hearing to change or set aside any previous order of the court. (§ 388, subd. (a).) "If it appears that the best interests of the child may be promoted by the

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

2 Under section 366.4, subdivision (a), "[a]ny minor for whom a guardianship has been established resulting from the selection or implementation of a permanency plan pursuant to Section 366.26 is within the jurisdiction of the juvenile court."

proposed change of order, . . . the court shall order that a hearing be held . . . ." (§ 388, subd. (d).)

Mother's March 2007 petition asked the juvenile court to order "unsupervised visits/weekends" with her children. Mother had been in prison for eight and a half months, but was on parole and had been transferred to a residential substance abuse program in February 2007. Mother appeared to the Department of Children and Family Services to be "committed to recovery" and "worthy of unsupervised visits" if the visiting atmosphere was safe. The Department recommended that the legal guardian, with whom the children were well bonded and who appeared to have their best interests at heart, "have the discretion regarding the parents' visitation . . . ." But, on May 17, 2007, mother withdrew her section 388 petition, so no order was made on mother's petition and jurisdiction remained terminated.

Almost two years later, in March 2009, mother filed a second section 388 petition. She was in prison at the time, serving a three-year term and due for parole in November 2009. Her petition stated, erroneously, that in April 2007, the juvenile court had ordered unsupervised visits every weekend. Mother asked the court to order the legal guardian (or a social worker or her father) to bring the children to visit her in prison, and "also for the guardian to keep in contact letting me know how the[y're] doing in school and at home." The court ordered a hearing, at which the children's counsel reported on her conversations with the guardian and the children, stating, "I don't find in any way, shape or form whatsoever that [the legal guardian] is trying to not allow these kids to have contact with their mother." The court denied mother's petition, ruling the legal guardian "has the discretion to make the determination whether the children should be transported to the prison to visit with the mother."

Almost two more years passed, and on April 21, 2011, mother filed her third section 388 petition. She again erroneously stated that the court had granted her unsupervised visits every other weekend, and asked for an order that "the girls sleep over one weekend every month and the boys another weekend," and "also to participate in school and after school activities when possible."

As new information for the judge, mother described the court's denial of her previous petition, leaving visits to her in prison to the legal guardian's discretion, and added, "Guardian feels that my visits every other weekend were also taken." Mother included a highly laudatory two-page, unsigned letter dated April 11, 2011, from the residential substance abuse facility where she had just completed treatment. The letter reported that mother had called her children more than 90 times since she had been at the facility (since January 20, 2011), but actually spoke with them only eight times. The letter writer called the legal guardian, who "made it clear that she would not allow the children to visit [mother] nor would she allow [mother] to visit them when she was given a weekend pass." The letter further indicated that mother's brother, M.G., was a registered sex offender, listed on the Megan's Law website, and he had been residing at the legal guardian's house where all four children reside. The letter indicated that mother had made numerous calls to various agencies, including the Department, the Probation Department and the Children's Court, and mother's therapist had also tried "to have this situation immediately addressed." According to the letter, mother spoke to her brother's probation officer on February 15, 2011, and the officer stated that he would take immediate action. The letter concluded that "[t]o our knowledge," M.G. still resided at the legal guardian's home. Mother's petition also included her own handwritten letter with similar information, also stating that the legal guardian was not abiding by the court order and "I do not get my visits, [and] when I call to speak to the children I always get the run around."

The juvenile court denied the petition without a hearing on May 23, 2011, finding that the petition did not state new evidence or a change of circumstances, and that "Program letter is not signed. Also, [mother's] letter is illegible." Mother took no appeal from the order.

Another five months passed, and on October 18, 2011, mother filed a fourth section 388 petition, the one at issue on this appeal. Again she erroneously referred to an April 2007 order for unsupervised visits every other weekend. As new information, mother stated that she was "attending treatment program with intensive counseling," that

her brother, a registered sex offender, was living with the legal guardian and "because mother complained about this, legal guardian is refusing to allow mother to visit with the children." She requested the same change as in her previous petition: separate sleepovers for her sons and daughters one weekend a month, and her (mother's) participation in school and after-school activities. These changes would be better for the children because they "have a close relationship with mother and mother believes that her counseling has provided her with better communication skills and mother no longer poses a risk to the children." Mother attached to her petition the same unsigned April 11, 2011 letter from the facility where she had completed treatment in April, and the same handwritten letter she had included with the petition she had filed six months earlier.

The juvenile court again denied mother's petition without a hearing, finding the request did not state new evidence or a change of circumstances, and the proposed change of order "does not promote the best interest of the child."

This time, mother filed a timely appeal.

DISCUSSION

Mother contends the juvenile court should have held a hearing on her claims that she "was prepared for significant visitation with her children," but the legal guardian was denying her visitation and was permitting a registered sex offender to live in the home with the children. According to mother, failure to hold a hearing "was an abuse of [the court's] discretion and an abdication of its role as a protector of the children of this state." While mother's claim that a registered sex offender lives in the home with the children naturally gives one pause, on this record we can find no abuse of the court's discretion.

The law under section 388 is clear. A juvenile court order may be changed or set aside "if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "[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." (*Ibid.*; § 388, subd. (d) ["If

it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ."].) 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." (*In re Zachary G.*, at p. 806.) We review the court's order denying a hearing for abuse of discretion. (*Id.* at p. 808.)

Mother's "proposed change of order" (§ 388, subd. (d)) simply asks the court for a change in visitation to allow weekend sleepovers and for the right to participate in school and after-school activities. The juvenile court concluded mother's proposed change of order "does not promote the best interest of the child." We cannot say that conclusion was " ' " 'arbitrary, capricious, or patently absurd . . . .' " ' " (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1456.) Nothing in the petition supports the notion that the changes mother proposed would promote the best interests of the children. All mother has done is to state her belief that the changes she requested would be better for the children because they "have a close relationship with mother," who now has "better communication skills and . . . no longer poses a risk to the children."

These conclusory allegations do not suffice. (See *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348 ["allegations of her [section 388] petition were to be liberally construed, but conclusory claims are insufficient to require a hearing. Specific descriptions of the evidence constituting changed circumstances is required."].) The children, who have been living with mother's aunt for more than seven years, did not see their mother at all while she was in prison, and her claim of a close relationship is belied by the statement in her April 2011 handwritten letter that she felt that "the relationship with myself and my children is fading away and [I] would like the chance to build back our relationship and to be able to bond with them." While this is a commendable goal, we cannot fault the juvenile court's conclusion that the change requested—overnight weekend visits—would do nothing to promote the best interests of the children, who have now been living with their great-aunt for most (and in one case all) of their lives.

As for the claim that mother's brother, a sex offender, is living in the house with the children, that circumstance, while literally "new evidence," is entirely unrelated to the relief mother is seeking. She is not seeking a change in legal guardianship or in the children's placement, but just a change in her visitation rights. As the Department contends, there are other channels for resolving issues relating to a sex offender's presence in the home; in the context of a request for a change in a visitation order, the point is simply not relevant. And, mother's claim that the legal guardian is refusing to allow mother to visit with the children is likewise disconnected from the relief she seeks. Mother does not seek enforcement of the court's original order, giving her monitored visitation every other Saturday for four hours; does not reveal what her current living circumstances are; and does not provide any description of the circumstances of the legal guardian's alleged refusal to allow mother to visit. (See *In re Ramone R., supra*, 132 Cal.App.4th at p. 1348 [conclusory claims in a section 388 petition are insufficient to require a hearing].) Indeed, mother's petition contains no information on her current circumstances, except to say that she "is attending treatment program with intensive counseling" and to attach documents—prepared a full six months before her petition—found insufficient by the juvenile court when it denied her previous petition. No abuse of the juvenile court's discretion appears.

DISPOSITION

The order is affirmed.

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GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J. FLIER, J.