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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.D., a Person Coming Under the
Juvenile Court Law.

B244233
(Los Angeles County
Super. Ct. No. CK76851)

Y.A.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

Petition for Extraordinary Writ: Denied.

Law Offices of Katherine Anderson, Jennifer Pichotta and Jessica Jorgensen for
Petitioner.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Stephen D. Watson, Senior Associate County Counsel for Real Party in Interest.

INTRODUCTION

Y.A. (mother) filed her petition contending the juvenile court erred in finding, after a contested hearing that there was a substantial risk of detriment to her two year old daughter, J.D., if she were returned to mother's custody. Petitioner also requested a stay of the juvenile court's setting of a December 19, 2012 implementation hearing under Welfare & Institutions Code section 366.26.¹ We denied petitioner's request for a stay of the December 19, 2012 hearing

We hold that there is substantial evidence supporting the juvenile court's finding that return of J.D. to the physical custody of mother would create a substantial risk of detriment to the physical and emotional well-being of the minor under section 366.2, subdivision (e). The setting of a hearing under section 366.26 terminating parental rights was appropriate. Because the court's findings and orders were proper, mother's petition is denied.

Procedural History

On November 15, 2010, the Department of Children and Family Services (DCFS) received a referral alleging general neglect of newborn J.D. by mother and father. The referral alleged J.D.'s mother and father (father) were methamphetamine users and mother used methamphetamine days before giving birth to J.D. One of J.D.'s half siblings, J.G., had been declared a dependant of the juvenile court in 2009 as a result of mother's and father's substance abuse and domestic violence. J.G. was released to his father, and the dependency case was terminated on December 21, 2009. Mother had also lost custody of two other children, who were residing with their father—not J.D.'s father.

J.D. was born without complications. But on December 9, 2010, a doctor examined J.D. and documented that J.D. had "skull deformity-congenital vs. acquired" as

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

her face “drooped” to the left side. The doctor referred J.D. for further examination and x-rays.

After a DCFS social worker interviewed mother, the social worker found mother had been trying to get into a homeless program, but had not had stable housing for the past year. Mother admitted taking drugs for the last 10 years, including methamphetamine daily, and marijuana occasionally. Mother said father had left a substance abuse program, but she did not know his current whereabouts and had no way of contacting him. Mother agreed to refrain from contact with father due to his leaving the substance abuse program and the possibility he was using drugs. The social worker made an unannounced visit to the motel where mother was and saw father was staying with mother. Father had been with mother consistently since November 19, 2010, and had used methamphetamine four days after leaving his substance abuse program. DCFS noted both parents had a history of arrests for possession of and being under the influence of a controlled substance, and father was currently on probation.

On December 14, 2010 DCFS filed a petition as to J.D. under section 300, subdivisions (a), (b) and (j), based on mother’s and father’s substance abuse and domestic violence. On December 14, 2010 the juvenile court found a prima facie case that J.D. was a child described by section 300, subdivisions (a) and (b), and ordered the child detained. The juvenile court ordered family reunification services, with mother to complete parenting, individual counseling to address cases issues and domestic violence, and an inpatient substance abuse program with testing. Father was ordered to complete parenting, substance abuse counseling and testing, 52 weeks of domestic violence counseling, and family counseling. The juvenile court also ordered monitored separate visits for mother and father.

DCFS reported that J.D. was placed with foster mother M.D. and that the parents had a history of domestic violence and admitted to using methamphetamine in the past but denied current use. Mother had negative drug tests on November 22 and December

9, 2010. The DCFS report also noted J.D.'s physical deformities. Both parents were visiting regularly and visitation was going well.

DCFS filed an information that J.D. was diagnosed with coronal craniosynostosis (skull deformity), was awaiting brain surgery, and was placed in a medical placement home with foster mother E.P. DCFS further advised that mother had enrolled in a residential drug treatment facility on January 11, 2011, but was terminated on January 27, 2011, for failure to comply with program rules.

On February 10, 2011, the juvenile court sustained the section 300 petition and declared J.D. a dependent of the court. The juvenile court ordered monitored, separate visitation for mother and father and ordered mother and father to participate in individual and parenting counseling, and drug counseling with random testing. DCFS filed a report stating that J.D., now five months old, was residing at St. Philomena Care Home. Doctors recommended J.D. undergo craniofacial reconstruction at age 9 to 10 months. Both mother and father were visiting regularly.

Mother was enrolled and making progress in a parenting class at Pasadena City College, and in an impact outpatient substance abuse treatment program. As of April 28, 2011, all of her urine drug tests had been negative. On May 12, 2011, the juvenile court found that mother and father were in full compliance with their case plans. In a report filed August 11, 2011, DCFS reported that J.D. remained at St. Philomena Care Home, was happy and in good health, although developmentally delayed, and was scheduled to undergo craniofacial reconstructive surgery on August 3, 2011. Mother had regularly visited J.D.

DCFS reported that mother began receiving individual counseling at Foothill Family Services on June 9, 2011, and had kept all appointments as of July 21, 2011. Mother had enrolled in a parenting course at Pasadena City College and received a letter dated July 8, 2011, stating that all scheduled urine analysis testing was negative.

On August 11, 2011, DCFS updated the court with the information that J.D. underwent craniofacial reconstructive surgery, and was discharged to placement on

August 7, 2011. Mother was at J.D.'s bedside daily in connection with the surgery. Mother, who was living at the home of J.D.'s maternal grandfather (her father) since December, 2010, was asked to move out of her father's home because "he said I wanted to be out in the streets all the time." Mother was now staying at her cousin's house but would not disclose the address.

At the sixth month review hearing, the juvenile court found mother was in compliance with her case plan; had regularly visited J.D.; and demonstrated the capability to complete the objectives of her treatment plan and provide for J.D.'s safety, emotional well-being, and special needs. The juvenile court granted DCFS discretion to place J.D. with her paternal grandparents, and set a 12-month review hearing for J.D. In its report, DCFS noted that J.D. was residing with her paternal grandparents, was happy, social, had grown mentally, and was in good health, although she was prescribed the use of a helmet and eyeglasses. From December 1, 2011, Mother and father began renting a two bedroom apartment together for \$900 per month, and were relying on father's truck-driving income.

The parents visited J.D. consistently, and the paternal grandparents, the parents and J.D. had gone on two family camping trips together at which the parents were given more hands-on experience with the child. The paternal grandmother stated mother had to be reminded to change J.D.'s diapers or assist with exercises, but had no concerns otherwise.

Mother completed drug counseling and random drug testing. She continued her individual counseling, and her therapist indicated mother had insight into her challenges and was learning new skills. Mother completed 32 hours of parenting classes at Pasadena City College, and attended 33 of 37 support group sessions in her domestic violence counseling. Mother and father had recently moved into an apartment together and had to learn to live with each other without drugs. Because of mother's and father's criminal histories relating to substance abuse and domestic violence and mother's previous loss of

custody of three children, DCFS assessed a “high risk” level of returning J.D. to parental custody.

At the 12-month review hearing, the juvenile court found that returning J.D. to parental custody would create a substantial risk of detriment to her physical and emotional well being. The juvenile court granted mother and father unmonitored visits of increasing length. There were no overnight or weekend visits without court approval, but the monitor could be eliminated with the concurrence of J.D.’s attorney. The juvenile court found mother and father were in compliance with their case plans and had consistently visited J.D. DCFS then requested that the juvenile court order overnight and weekend visits for the parents, which the juvenile court did. The court set the 18-month review hearing for June 6, 2012.

On June 6, 2012, DCFS filed a report that noted J.D. was still residing with the paternal grandparents. She had completed infant stimulation and physical therapy, but it was possible that she may undergo a procedure to remove fluid from her left ear.

Mother was moving with father from their current apartment to a two bedroom home. Mother had submitted to all random drug testing with negative results for drugs and alcohol, and had completed 50 of 54 support group sessions and 32 hours of parenting class. Mother consistently visited J.D. and was prompt in picking up and dropping off the child. DCFS assessed the risk to J.D. if returned to parental custody as moderate and recommended the child be reunified with her parents.

In a last minute information, DCFS informed the juvenile court that the father was in federal custody as of May 25, 2012. Father was one of 43 defendants in a drug conspiracy case dating back to 2007, in which he was alleged to have made three telephone calls in 2009 for the purchase of two and one half ounces of methamphetamine. The juvenile court was advised that a team decision making meeting occurred on May 31, 2012, in which mother’s ability to maintain self sufficiency and meet J.D.’s needs was addressed. Mother was to contact Public Social Services regarding an application for Medi-Cal, cash aid and food stamps, explore California’s Supportive and Therapeutic

Options Program (STOP) regarding funding for rental assistance, explore family preservation services, and obtain the results of mother's roommate's Livescan fingerprints/background check.

At the 18-month review hearing, the court noted that father was in federal custody and unavailable. Mother stated she had no job and planned to support J.D. with benefits for the time being. Mother's attorney stated her understanding that mother had explored assistance and would be following up with applications for Medi-Cal, cash aid and food stamps. J.D.'s attorney wanted the child to remain with the paternal grandparents. The juvenile court stated that it wanted "somebody in here to tell me what exactly [mother] learned while she continued a relationship with [father] the entire time," and "I need a professional in. I need to know that they know [mother] actually has a way to pay the rent and take care of this child."

DCFS filed an interim report. Mother had undergone gall bladder surgery on July 27, 2012 and had not returned home. The therapist and domestic violence support group facilitator stated that they were aware that mother and father had been living together. DCFS reported mother's rent for her two bedroom home was \$700 per month, and she was able to pay that amount with financial assistance from the paternal grandparents.

Mother did not have a job or any income to support herself and J.D., and the paternal grandparents said mother could not live with them. Mother was receiving \$260 in food stamps for July and August, but was denied general relief in San Bernardino County because she was married. J.D.'s paternal grandmother said mother had not applied for any jobs, had not taken any initiative, cancelled her appointment with the supplemental security income office, did not seem concerned about the child, and did not have any sense of urgency to make her life a "life." The paternal grandparents would pay mother's 2012 August rent, but would not assist financially going forward and would not allow mother to live in their home. DCFS was concerned that mother did not have the means to support herself or J.D. and recommended terminating reunification services.

At the contested 18-month review hearing, the juvenile court held the contested hearing regarding the return of child J.D. to mother under section 366.22. The DCFS social worker testified that mother had no income and was not financially stable, was denied general relief, and that while STOP funds and family preservation services were to be explored if J.D. was reunified with mother, neither could be provided until the child was in the home with mother. Mother's domestic violence counselor testified that mother had completed 52 weeks of counseling and was equipped to avoid domestic violence in the future.

Mother testified that she had learned to address domestic violence and had been looking for a job. She said her monthly rent was \$750, that J.D.'s paternal grandmother had been paying it, and she had no source of income. Mother said she planned to look into a program for career training in order to support herself and J.D. if she were returned to her. The juvenile court found mother's testimony credible, stating, "I'm okay with that (the progress) she's made."

The juvenile court said both parents complied with and learned from their case plans. It said it was not concerned about domestic violence, because father was in custody where he would likely remain for a significant time. The court, however, stated that the paternal grandparents would no longer financially support mother, and "there is a detriment to return" of J.D. to mother. The juvenile court also stated that J.D. was developmentally delayed, had a skull deformity, was visually impaired, had a high risk for amblyopia, and had "very special needs, including doctor's appointments." The juvenile court stated that "[mother] is in the process of getting her own life in order," and "to place a child with no issues back in a home that mother doesn't have would be difficult enough, but to place a child with very special needs, requiring very special attention with a parent who's working on her own issues, her own life, and her own independence is simply not where we are right now."

J.D.'s attorney stated mother was not prepared to be a safe parent to J.D. The DCFS attorney said there was no way J.D. could be sent home safely. The juvenile court

observed that, 20 months after the inception of the case, mother's plan was, "I think I can probably do it if you help me in the following way," and "if you put this into place, it might help."

The juvenile court found that returning J.D.'s to mother's care would create a substantial risk of danger to the physical or emotional well-being of the child, terminated reunification services and set a section 366.26 hearing for December 19, 2012. On August 31, 2012, mother filed a notice of intent to file writ petition challenging the June 6 and August 22, 2012, findings and orders of the juvenile court.

DISCUSSION

Mother contends that substantial evidence did not support the court's finding that J. D. would suffer substantial risk of detriment if returned to mother's care. The juvenile court is directed by section 366.22 to return a child to the custody of his parent(s), unless the court finds that the return would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. At a section 366.22 hearing, the juvenile court must either return the child to the parent or set the matter for a section 366.26 hearing.

A juvenile court's determination regarding substantial risk of detriment at a section 366.22 hearing is reviewed for substantial evidence. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400-1401; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763-764.) Under this standard, we examine the whole record in a light most favorable to the findings and conclusions of the court and defer on issues of credibility of the evidence and witnesses. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) We uphold the juvenile court's orders and findings if any substantial evidence, contradicted or uncontradicted, support them, resolve all conflicts in support of the court's determinations, and indulge all legitimate inferences in favor of affirmance. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

Mother testified that J.D.'s paternal grandparents had been paying her monthly rent of \$750 and admitted she had no source of income. Because J.D.'s paternal grandparents said they would no longer financially support mother, and would not allow her to stay in their home, the juvenile court found that "there is a detriment to return."

Substantial evidence supported the court's finding of detriment despite mother's assertion she was residing in a two bedroom home. There is evidence that mother was not able to pay rent for the home; J.D.'s paternal grandparents were finished providing financial support to mother; they declined to allow her to live in their home; and mother had no support or place to live for her child J.D.

Mother provided no reason to believe she would rectify her inability to provide housing for J.D. Mother admitted she had no job and stated she planned to support J.D. with benefits for the time being. Her attorney said mother would be applying for assistance such as Medi-Cal, cash aid and food stamps. By the August 22, 2012 contested hearing, however, mother still had no job, no income, and no support for herself or J.D. Although mother said she needed to "try harder" to get a job, the paternal grandmother said mother had not taken any initiative to apply for any jobs.

Mother was also denied general relief in San Bernardino County and had only \$260 in food stamps for July and August. The juvenile court noted that 20 months after the inception of the case, mother's plan was, "I think I can probably do it if you help me in the following way." Given mother's lack of housing and lack of effort in obtaining income or aid, the juvenile court found return of the child would be detrimental. This finding was supported by substantial evidence, especially in light of J.D. being developmentally delayed and having "very special needs."

Mother argues that concern over her financial stability was speculative, and DCFS had programs for parents in her position. But mother delayed in obtaining assistance. Over two months later at the 18-month review hearing, mother was still without income and still only planning to look into another program. Thus, there is evidence that mother failed to take the steps necessary to ensure she could provide appropriately for J.D. The

evidence at the 18 month review hearing was that mother had no income, would have no further financial support from the paternal grandparents, and was not welcome in the grandparents' home.

Mother contends she was in compliance with her court-ordered case plan. But compliance with court-ordered programs is not determinative and does not require return of a child under all circumstances. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1142-1143.) The juvenile court held that it was aware of mother's compliance and was comfortable with what mother said regarding benefits from her programs. But regardless of mother's compliance, the juvenile court found that it could not place J.D. into a "home that mother doesn't have" Should circumstances change, nothing precludes mother from filing a modification request under section 388.

There evidence that mother had been in a violent relationship with father and had been abusing drugs. Father had been a drug abuser and inflicted violence on mother. Daughter J. D. was an infant born when mother was still taking drugs and had special needs including a skull deformity and vision impairment from a drooping eye. While mother and father concluded their DCFS counseling and drug programs, father was incarcerated for a federal drug crime and was no longer available to support mother and daughter. Despite spending 18 months in counseling and assistance, mother had not obtained a job or source of income, obtained housing or even arranged for general relief for food, housing or health care. Counsel for J.D believed that mother was incapable of supporting and caring for her special needs daughter.

In *In re John V.*, *supra*, 5 Cal.App.4th, at pp. 1211-1212, the court found that a mother's pattern of instability, which included no permanent housing, sporadic and frequently changing employment, inability to budget or allocate money, and inappropriate choices of living partners persisting from the beginning of the children's dependency to the 18-month review, demonstrated no progress in resolving the problems that led to the children's out-of-home custody. This constituted substantial evidence supporting the trial court's decision that it would be detrimental to return the children to

mother's custody. The same reasoning is applicable here and warrants the juvenile court's conclusion that J.D. would suffer a substantial risk of detriment if returned to mother.

Once the juvenile court determined it would not return J.D. to mother, it was required to set the matter for a section 366.26 hearing. (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1502.) Accordingly, petitioner's efforts to preclude the section 366.26 hearing set for December 19, 2012 is rejected.

DISPOSITION

Mother's petition for a writ is denied.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.