Filed 9/27/17 In re J.C. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.C., a Person Coming Under the Juvenile Court Law.	B279309 (Los Angeles County Super. Ct. No. DK19486)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SHANNON C., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Julie Fox Bradshaw, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Mother Shannon C. appeals from the dependency court's disposition order of October 7, 2016 removing her daughter J.C. from her custody, and the order of November 7, 2016, further extending the removal. She contends that court should have continued the disposition hearing to give her more time to obtain the necessary training to care for the child and that there were reasonable means to protect the child short of removing her from parental custody. We disagree and affirm.

BACKGROUND

In September 2016, the Los Angeles Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300[1] petition on behalf of J.C., who had been born on March 27 at 23 weeks gestation, and had remained in the neonatal intensive care unit (NICU) since birth.[2] Among other medical problems, the infant had chronic lung disease, possible brain damage due to cerebella hemorrhage, and had been on oxygen until a few days earlier. She required gastric–intestinal tube (G–tube) feedings every three hours and nebulizer treatments twice a day for asthma. The hospital

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

2 Mother, who lived in Alabama, checked herself into a hospital in Los Angeles after going into labor. She was "septic" with an infection and fever. Doctors recommended the baby be delivered by C–Section. Mother rejected that recommendation as well as any administration of IV fluids.

informed DCFS that J.C. was ready for discharge, but hospital staff had significant concerns about releasing the infant to mother's care.

In June, mother left California, purportedly to attend trucking school, but she either failed to complete the class or was discharged after she got in trouble for driving a truck to Los Angeles to visit J.C. in August. She then moved to Omaha, Nebraska, and worked at a plastics manufacturing company. Mother visited J.C. once between June and mid–September. Although mother called once or twice a day to check on the baby, nursing staff told DCFS mother was volatile, became easily frustrated and hostile on those calls, and sometimes "irrationally lashed out" at them. There was some concern that this and other behavior by mother (e.g., flat affect, inappropriate bouts of laughter incongruent with a conversation, processing difficulties) reflected undiagnosed mental health problems.

The hospital informed mother in late August that J.C. had been cleared for discharge. Mother promised to come to California to retrieve J.C. in early September, but did not arrive until September 13. Upon arrival, mother informed J.C.'s medical caregivers for the first time that she planned to transport J.C. to Omaha by Greyhound bus. This plan concerned J.C.'s doctors, primarily because the bus would travel a route through varying altitudes which would require that she be administered oxygen. That meant mother, who had inadequate

training and limited resources,[3] would require specialized medical equipment that she could not afford in order to deliver the oxygen to J.C.[4] Medical professionals were also concerned because the long–term effects of J.C.'s brain bleed remained uncertain. In addition, the baby was very difficult and irritable, had to be fed by G–tube every three hours and required nebulizer treatments twice a day. There was also a significant concern about releasing J.C. into the care of mother, with whom the baby had not bonded and who had been physically absent for three months of the five–month–old's life. A social worker also expressed concern about mother's cognitive ability in light of the fact that, notwithstanding numerous attempts by hospital staff to explain J.C.'s fragile medical state and needs, mother exhibited persistent difficulty processing this information. Mother believed that J.C. was "normal," not "disabled." Mother told DCFS she had a place to live in

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[3] Mother did not apply for SSID because she did not believe J.C. was "disabled." When advised she would have to pay for medical services until she obtained Medicaid for J.C., mother said she had money or could get financial support from "Vanessa Barnes" (relationship unknown).

[4] Upon being informed that her plan to transport J.C. by bus was not safe or viable and would place J.C. at further risk, mother proposed an alternative plan: she would rent a car in Los Angeles and drive the child to Alabama (presumably to collect the aunt), and then on to Omaha. However, this plan too was deemed non–viable. Such a trip could involve up to 47 uninterrupted hours of driving, which was too long for a medically fragile child who required 24–hour access to electrical outlets for G–tube feedings and nebulizers.

Omaha and a plan for child care (maternal aunt live-in), and was "capable of taking care of her child," a task she believed would be "easy." Mother had no prior history with a child welfare agency in California.[5] She told DCFS she planned to have the maternal aunt, who lived in Alabama, move to Omaha and be J.C.'s child's 24–hour care provider. Mother was still figuring out when the aunt would be able to

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[5] However, mother has a long history with the Alabama Department of Human Resources Family and Child Services (Alabama agency) dating back to mid–2003, several months before she gave birth to the first of five children (including J.C.), when she was found homeless and pregnant, sleeping in a hospital lobby. That referral was later closed.

The Alabama agency became involved again in mid–2009 after mother, then pregnant with her third child, and engaging in behavior described as "very erratic" and "explosive," attempted to give her eldest son away to a stranger. The Alabama agency intervened and provided services to the family until March 2010.

In July 2011, the Alabama agency received another referral after mother's seven, four and two–year–old children were found walking outside alone. They said they were on their way to mother's workplace to get something to eat. The children were dirty, unkempt, smelled foul and were infested with bugs. An investigation of the home revealed that it had no utilities, only one can of food and was so infested with bugs that "the walls and floors appeared to be moving." Mother admitted that she had left the children alone for the past month while she was at work, placing the responsibilities of caring for the others on her seven–year–old. She told the Alabama agency she "should have given up her children already and did not plan on working towards reunification with them." The children were placed in foster care. Mother gave birth to her fourth child in July 2013, who was immediately placed in foster care. The eldest child was eventually placed with his father, and the three younger boys were adopted by their foster parents.

move in, because mother did not yet have money to move her sister to Nebraska.

The hospital had established certain criteria mother needed to satisfy in order properly to care for the baby upon discharge. Those criteria included arranging for pediatric care for J.C. in Omaha, and ensuring that the aunt accompanied mother when she came to retrieve J.C. so she too could receive the necessary training as to how properly to care for the baby. Mother somewhat satisfied the first criterion: she made arrangements for a pediatrician for J.C., but cancelled the first five scheduled visits. The aunt did not accompany mother to Los Angeles to retrieve J.C. The aunt had not known the hospital had specifically requested that she participate in training regarding how to care for J.C. She had not gone with mother to Los Angeles because mother could not afford to pay for her plane ticket.

DCFS contacted the relevant child-welfare agency in Nebraska to ascertain what, if any, plan and services were available for mother if J.C. was released to her custody, but was informed that the agency could not get involved until mother and child arrived in Nebraska.

On September 16, DCFS filed a section 300 petition on behalf of J.C., alleging that mother's failure to undergo the requisite training to provide appropriate care for her medically fragile daughter, or to make an appropriate plan to transport J.C. to Nebraska, endangered the child's physical health, safety and well–being and placed her at risk of serious physical harm. (§ 300, subd. (b).) On the same day, the infant was detained and placed in DCFS custody. J.C. was later placed in a

Los Angeles intermediate care facility for developmentally delayed children.

Mother told the DCFS investigator that she no longer planned to use her sister as a caretaker for J.C., and was going to quit her job to provide fulltime care for the baby herself. She stated she had financial support from unnamed other people, and planned to apply for disability benefits and other assistance.

DCFS reported that according to an attending nurse, mother had never properly given the baby a bath. She completed no training on how to use the oxygen machine and did not make herself available for continued training. Mother performed adequately during the trainings she did attend, but hospital staff needed to further assess her. The plan had been for mother and the aunt to spend two to three days in the hospital to attend trainings, but neither did. Mother completed a "first response class" and G-tube and nebulizer trainings, but stayed at the hospital for only one day and then left.

The adjudication hearing was held on October 7, 2016. The court received the DCFS reports in evidence and heard testimony from mother.

Mother testified that she resided in Omaha, Nebraska, and had suitable housing. She had earlier planned to return to Nebraska home with J.C. by Greyhound bus, but now planned to transport the child by train. The trip would last three days. She had not yet discussed her plan to travel by train with the doctors, nor did she ask for their opinion.

Between June and October 2016, she saw the child approximately six times. According to mother, she received training at the hospital in G-tube, nebulizer, and vitamin administration. However, because J.C. was not being fed by G-tube or using the nebulizer, the training did not relate specifically to her. When mother left in June 2016 to pursue a trucking career and establish herself in Nebraska, she maintained twice-daily telephonic contact with the hospital.

Once mother returned to Los Angeles in September 2016, she was able to actually use the G-tube and nebulizer with the J.C. on several occasions, but she had never administered oxygen. After arriving in Los Angeles on September 13, she returned to Nebraska six days later and had not administered any further treatments. She came back to Los Angeles a day before the hearing and saw the child for an hour, during which time she did not utilize the G-tube or nebulizer. She recently received training in Omaha on how to obtain and administer oxygen. She located a hospital in Omaha where the child could be treated and applied for Medicaid, which would be available in November 2016.

Mother stated she took a six-month leave of absence from work and planned to provide full-time care for the child during that time. She had contacted three different Medicaid-approved health care organizations in Omaha, one that would provide child care when mother returned to work, another that would provide in-home nursing assistance, and the third would supply her with the equipment J.C. needed and staff who would come to the home to ensure everything was properly in place.

The court asked whether mother would need to administer oxygen during the train ride. Mother responded that when going through Denver, Colorado, she would need to administer oxygen due to the high altitudes. When questioned about how she would know when to administer the oxygen, mother responded she would administer it when the train went through a tunnel or mountains, or when the conductor indicated they were going through Denver. Mother was unsure about how much oxygen the child would need, but stated she had 56 hours of oxygen available. When the court asked whether she planned to get training on how to administer oxygen before the trip home, mother replied, "that will be feasible" and admitted she had not yet administered oxygen to the child.

After hearing argument from counsel, the court sustained the section 300 petition. The court commended mother on her preparation, but did not believe she was ready yet to care for J.C. without further training. The court noted the child was extremely medically fragile and failure to provide appropriate care would have very serious consequences. Mother had yet to administer oxygen to the child. She needed to know exactly when the child would need oxygen, and relying on a train conductor to tell her when they were about to traverse mountains was not reasonable. The court did not believe that mother had sufficient training on the G-tube and nebulizer based on statements by hospital staff. Also, the court expressed concern at mother's seeming disinterest in consulting medical professionals.

The court found the child described by section 300, subdivision (b), and stated it planned to proceed to disposition. The minor's attorney stated she had discussed the matter with county counsel and mother's attorney as to how to effectuate reunification as soon as possible. Counsel stated that once mother received the necessary hospital trainings and instruction from the foster care placement on how to bathe the child, counsel would recommend the child be released to mother. The court concurred.

Mother's counsel stated those goals would take too long. The court replied that its only concern was the child's safety, but wanted to accomplish reunification as soon as possible and planned to set a progress hearing in two weeks. Mother's attorney asked the court to continue the disposition hearing. The court denied the request stating there was no good cause, but reiterated it would set a progress hearing in two weeks. The court declared the child a dependent under section 300, subdivision (b), removed the child from mother's custody, and ordered reunification services. The court set the matter for a six month review hearing as well as interim progress hearings to get an update on mother's medical training.

The court held progress hearings on October 21 and November 7, 2016. On October 21, 2016, the court commended all counsel for working together on a plan to have mother obtain the necessary trainings to be able to leave California with the child by the time she would need to return to work on November 14. The social worker confirmed that in September 2016, mother received training on the

feeding pump, vitamin administration, nebulizer, and CPR. She still needed training on how to administer oxygen. Mother told the social worker she obtained a prescription for the portable G-tube pump at a Nebraska facility. Mother also provided a list of hospitals along the train route in case J.C. required emergency medical care. She identified a nursing facility as the child's primary care provider while mother worked. She also provided the name and contact information for Dr. Susan Hollins as the child's primary doctor in Nebraska. However, when the DCFS social worker spoke to Dr. Hollins, the doctor stated mother had canceled every appointment with her since September 2016, totaling five cancelled appointments. Dr. Hollins also stated, "transporting a premature child alone, that is oxygen dependent, utilizes nebulizer and G-tube feed is an 'accident waiting to happen.'"

Dr. Shelia Horak, from a pediatric medical center in Nebraska, wrote a letter confirming she had met with mother at the clinic and provided training on how to replace J.C.'s gastrostomy button, but stressed the training did not take the place of training with the child and it was imperative mother participate in specific training with J.C.

The primary care doctor at LA+USC Hospital, Dr. Guerra Vargas, expressed concern that mother was overly confident regarding the care of her premature child with chronic lung disease. According to Dr. Guerra Vargas, it appeared mother "does not get what is going on with her child." Mother had been given the opportunity to stay at the hospital for three days to receive hands-on training but elected not to. Mother continued to ask to breast feed the child even though it was

explained to her that could cause the child to aspirate. Dr. Guerra Vargas expressed the same concerns as Dr. Holland regarding taking the baby on a train trip alone. After a consult, it was determined that J.C. would need to be on oxygen for the entire trip, and mother needed to learn about the increased risks of SIDS.

The training mother required could not be done in one day, and Dr. Guerra Vargas did not believe mother had enough hands on experience to provide care for the child on a train for two days, creating an enormous risk. Dr. Guerra stated, "I do not medically clear her to go on this train trip with an inexperienced caregiver who has had minimal training and experience on all of her needed procedures. Allowing her to do so could unnecessarily jeopardize her health and indeed possibly cause her harm."

The manager at J.C.'s placement facility agreed to bring mother to LA+USC Hospital on November 1, 2016, for child specific G-tube and nebulizer training. The oxygen training would be provided by the oxygen supply company. At the training, mother was observed on a one-time occasion to give the baby a bath and provide a breathing treatment, G-tube feeding, and the nebulizer. She was corrected as needed. The trainer enrolled mother in a three-hour G-tube class for additional training. The instructor expressed concern about the minimal amount of training mother had received.

On November 7, 2016, the court found J.C. was still too medically fragile to release her to mother's custody. Mother appeals from that order, and from the disposition order of October 7, 2016.

DISCUSSION

I. *Continuance*

On October 7, 2016, after adjudicating the petition, the court denied mother's request to continue the disposition (based on her request to obtain additional training), finding no good cause, but set a progress hearing instead to effectuate reunification as soon as possible. Mother contends that the court erred in denying her motion to continue. We disagree.

As relevant to the instant case, section 358, subdivision (a) provides: "(a) After finding that a child is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the child. Prior to making a finding required by this section, the court may continue the hearing on . . . the motion of the parent . . . , as follows: [¶] (1) If the child is detained during the continuance, and the social worker is not alleging that subdivision (b) of Section 361.5 is applicable, the continuance shall not exceed 10 judicial days." Moreover, under section 352, subdivision (b): "Notwithstanding any other provision of law, if a minor has been removed from the parents' or guardians' custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance." As with any continuance granted in dependency proceedings, a motion to

continue the disposition hearing must be supported by good cause. (§ 352, subd. (a) ["Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance."].) "A reviewing court will reverse an order denying a continuance only upon a showing of an abuse of discretion." (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.)

In the instant case, J.C. was initially detained on September 16, 2016. The court adjudicated the matter on October 7, 2016. Therefore, the court had discretion to continue the disposition hearing for 10 days until October 17, and in any event, absent extraordinary circumstances, could not hold the disposition hearing later than November 16, 2016. (§ 352, subd. (b).)

We find no abuse of discretion in the court's denial of a continuance. Between J.C.'s birth on March 27, 2016, and the adjudication on October 7, 2016, mother received the opportunity for the necessary trainings, including an intensive three-day hospital training, but declined to participate fully. Further, she saw the child only six times, making it virtually impossible for her to complete the necessary child-specific trainings. Although she would need to travel with the child through high altitudes, necessitating oxygen administration, by the time of the disposition hearing, she had yet to administer oxygen to the child. Further, medical personnel expressed concerns about mother's seeming over-confidence in her ability to care for J.C. and inability to fully understand the baby's needs. Under these

circumstances, the court quite reasonably declined to continue the disposition–whether for 10 judicial days under section 358, subdivision (a)(1), or up to 60 days after the date of J.C.'s detention under section 352, subdivision (b)–to give mother additional time to complete tasks she already had seven months to complete.

In any event, mother fails to demonstrate prejudice, because it is not reasonably probable that if the court had granted a continuance, the court would have entered a different disposition. As the record shows, by November 7, 2016, J.C. was still too medically fragile to be released to mother's custody, and mother still had inadequate training to adequately care for her. Thus, even if the court had continued the disposition hearing for as long as to November 7, 2016, it is not reasonably probable that the court would have entered a different disposition order than the one entered on October 7, 2016. Hence, mother cannot demonstrate prejudice.

II. *Removal Order*

Mother contends that the court erred in removing J.C. from her custody, because there were less drastic ways to protect her health and safety. We find no error.

Under section 361, subdivision (c)(1), before removing a child from a custodial parent, the juvenile court must find, by clear and convincing evidence, the child would suffer detriment if he or she remained in the parent's care, and there are no reasonable means to protect the child

absent removal. (§ 361, subd. (c)(1).) We review such a finding for substantial evidence. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

Mother contends, in substance, that even if the train transportation she envisioned was too risky for J.C., air transportation or having a trained person accompany her and J.C. on the trip were alternatives that should have been considered. But the concerns of medical personnel, DCFS, and the juvenile court involved not simply the issue of transportation. From the time of J.C.'s birth in March until June 2016, mother received some general training, but she was unable to have child-specific training because J.C. was not then using a G-tube or nebulizer. From June to September 2016, mother saw the child only once. Though she called the hospital regularly during that time, her behavior during telephone calls concerned hospital staff. When she returned to Los Angeles in September 2016, she attended a one-day training on the G-tube and nebulizer and declined to attend the three-day training offered by the hospital. At the time, she also had no viable child care plan.

By the time of the October 7 adjudication, she had changed her travel and child care plans without consulting the child's doctors. The court noted from her testimony the same concerns raised by hospital personnel–that mother did not yet have enough training, was over-confident in her ability to care for the child, and did not take the concerns of medical professionals seriously. By the November 7 progress hearing, there were still major concerns, including that mother had cancelled every appointment with the child's primary care doctor in

Nebraska, had administered oxygen to the child only once, and still needed redirection when bathing and feeding the child. Simply put, substantial evidence supported the court's finding that J.C.'s safety could not be guaranteed without removing her from mother's custody.

DISPOSITION

The orders are affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.