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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re BEVERLY M., a Person Coming
Under the Juvenile Court Law.

B241093

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK33431)

Plaintiff and Respondent,

v.

ERIKA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Elizabeth Kim, Referee. Reversed.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Mother challenges a juvenile court order continuing dependency jurisdiction over Beverly M. under Welfare and Institutions Code section 364.¹ We reverse the juvenile court order.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2011, mother was on criminal probation. The terms of her probation included requirements that she stay away from gang members and submit to drug testing. During a parole sweep of mother's apartment, police officers found a firearm in a kitchen cabinet, marijuana, and "gang paraphernalia." Mother, her boyfriend, and a male friend temporarily living with them were arrested. Mother, her boyfriend, and the friend all said the gun belonged to the friend. The boyfriend was on parole and was arrested for a parole violation due to the firearm. Mother was arrested for violating the terms of her probation. The Los Angeles County Department of Children and Family Services (DCFS) detained two-year-old Beverly M.

Mother had a prior history with DCFS and had failed to reunify with four other children. In 2004, the maternal grandmother adopted two of mother's children. A paternal grandmother subsequently adopted mother's other two children. The prior dependency cases arose out of mother's illicit drug use, including cocaine, PCP, amphetamine, and methamphetamine; possession of illegal drugs in her home; and her exposure of the children to gang activity.

In March 2011, mother was again arrested for violating her probation by associating with gang members. Mother was stopped in a car with her brother and two other men, all gang members. In an interview with DCFS, mother admitted she was a former gang member but said she was no longer involved in a gang lifestyle. She also admitted she smoked marijuana, but said she had a medical license and did not use the drug to get high. However, she asserted that if smoking marijuana would affect her ability to have custody of Beverly M., she would stop using it.

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

In March 2011, the juvenile court asserted dependency jurisdiction over Beverly under section 300, subdivisions (b), (g), and (j). The court sustained the dependency petition's allegations that mother and her boyfriend "established a detrimental and endangering home environment for the child in that [they] possessed marijuana [and] a hand gun in the child's home within access of the child." The petition also alleged mother had a 16-year history of substance abuse, and mother's other children were receiving permanent placement services due to mother's substance abuse and her acts in exposing them to gang-related activities.²

The juvenile court ordered family reunification services for mother, including monitored visitation. The court also ordered mother to undergo individual and parenting counseling, comply with her probation orders, submit to weekly random and on-demand drug testing, regularly attend narcotics anonymous (NA) meetings, and attend a DCFS-approved drug rehabilitation program upon testing positive or missing a drug test.

In September 2011, DCFS reported mother had voluntarily entered a drug rehabilitation program. All of her drug tests were negative and she had not missed any tests. She had completed twelve weeks of parenting classes, was on the "third step" of a 12-step program, was regularly attending NA meetings, and had a sponsor. DCFS visited mother's home to assess it for placement. The social worker expressed concerns about a pool on the property. Mother promptly addressed these concerns by making the pool inaccessible and installing a child-proof lock. The social worker also expressed concern

² Under section 300, subdivision (j), the petition alleged: "[Mother] possessed illicit drugs in the child's siblings, [Jose and Nathan M.]'s home and in the presence of the sibling Nathan. The sibling Nathan ingested amphetamine and methamphetamine and required emergency medical treatment and hospitalization. The sibling suffered a number of seizures, resulting in the sibling being placed in the pediatric intensive care unit. The child's siblings . . . are receiving Permanent Placement Services due to the mother's neglect of the sibling. Such conduct on the part of the mother endangers [Beverly's] physical and emotional health and safety, creates a detrimental home environment, placing the child at risk [of] physical emotional [*sic*] harm, damage and danger." The section 300, subdivision (g) allegation asserted Beverly's father failed to provide her with the basic necessities of life.

about mother's boyfriend who was then incarcerated. DCFS described the boyfriend as "a known gang member," who "led to the reason the child was detained." Mother did not know when the boyfriend would be released, but "stated she believes she has a right to continue her relationship with him." Mother also represented that Beverly considered the boyfriend to be her father. Mother indicated the boyfriend would not live with her once he was released. Mother said she understood that she was not to allow contact between Beverly and mother's boyfriend, and she would provide documentation to DCFS indicating the prohibition on her contact with gang members did not include her boyfriend. The maternal grandmother agreed she would take care of Beverly if mother visited the boyfriend.

Mother had consistent visitation with Beverly that progressed to overnight weekend visits. Mother's counselor reported that they had weekly sessions, mother was meeting her therapy goals, and mother had identified her "relapse triggers" and had developed "new coping skills to use if needed." The counselor also indicated mother was a role model in the program, identifying her as "one of our top 10 patients, putting all [her] efforts into her recovery and her new sober lifestyle. Her attendance is perfect and she is always on time ready to participate." Mother's probation officer reported that mother was complying with the terms of her probation, was voluntarily participating in the " 'Cease Fire Operation' program with LAPD, DEA, and DA for . . . parolees," and was "doing everything above and beyond." In addition to complying with the juvenile court's orders, mother had also completed a life skills class, classes related to eliminating life-threatening diseases and family violence, and was "earning credits towards her tattoo removal of any tattoos that are affiliated with her gang."

When interviewed by DCFS, three-year-old Beverly "excitedly" stated: " 'I'm going to see my mommy today. Love my mommy.'" Mother told DCFS a lot had changed for her and she had learned Beverly's safety was "the most important thing." Mother explained: "I know I need to separate myself from others that aren't a positive influence in my life. . . I'm turning my life around. I want to provide the best for

Beverly. . . . Even though sometimes I feel it's unfair that you guys (DCFS) are involved, I know that it's been for the best. I'm changing my life around and this had to happen to show me where I was going wrong. Now my focus is Beverly. I want her back in my care." At a September 2011 hearing, the juvenile court ordered DCFS to place Beverly with mother. DCFS was to provide family maintenance services.

In March 2012, DCFS reported mother was still in full compliance with the juvenile court's orders. Beverly appeared to have adjusted well to living with mother and DCFS had "not received any concerns regarding Beverly's emotional well-being." Mother graduated from a substance abuse program in October 2011 and had fully complied with weekly random drug testing. She had no missed or positive tests. Mother was receiving family therapy and parenting counseling. She was also still regularly attending NA meetings and contacting her NA sponsor when she encountered any triggers she thought might jeopardize her sobriety. Mother had complied with family maintenance services and participated in every session. DCFS reported mother had matured and "was observed to be more assertive and taking control on her parenting." Mother also was "very motivated in continuing with her sobriety and seeking employment to provide for her daughter." Mother's probation officer reported that mother was in compliance with the terms of her probation. The officer planned to close mother's case at the next criminal court hearing. DCFS recommended the juvenile court terminate jurisdiction.

At a March 2012 hearing, the court indicated it was not inclined to follow the DCFS recommendation. Mother's counsel argued termination of jurisdiction was appropriate. There was no other argument. The court concluded continued jurisdiction was necessary "because conditions continue to exist which justify the court taking jurisdiction pursuant to Welfare and Institutions Code section 300. Those conditions which would justify the initial assumption of jurisdiction under Welfare and Institutions Code section 300 are likely to exist if supervision is withdrawn. [¶] Continued supervision of this child is necessary."

Mother's appeal followed. DCFS has informed this court it takes no position in the appeal.

DISCUSSION

I. There Is No Substantial Evidence Supporting the Juvenile Court Order Continuing Dependency Jurisdiction

The March 2012 hearing was held pursuant to section 364. Section 364, subdivisions (a) and (d) require that when a child is under the juvenile court's supervision but in the physical custody of the parent, the court must hold hearings at least every six months to assess the need for continued jurisdiction. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 649.) Under section 364, subdivision (c), at the six-month review hearings, "the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker . . . establishes by a preponderance of evidence that the conditions still exist [that] would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."

We review the juvenile court's determination for substantial evidence. (*In re N.S.* (2002) 97 Cal.App.4th 167, 172 (N.S.)) "In reviewing the sufficiency of the evidence on appeal, we look to the entire record for substantial evidence to support the findings of the juvenile court. [Citations.] Evidence sufficient to support the court's finding must be reasonable in nature, credible, and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case." (*Ibid.*)

In this case, the social worker did not attempt to establish that conditions existed justifying continued supervision, or that those conditions were likely to exist in the absence of supervision. Instead, DCFS recommended the juvenile court terminate jurisdiction. DCFS reports supported that recommendation. Mother had submitted to a year's worth of weekly random drug tests, and did not have a single missed or positive test. She was in full compliance with the juvenile court case plan, and had participated in additional programs and services that went beyond what the court had ordered. She also

fully complied with the terms of her probation, which included not associating with gang members (including family members), and avoiding other facets of a gang lifestyle. She participated in individual and conjoint counseling. By March 2012, Beverly had been living with mother for six months without incident or any reported concerns.

Indeed, after the court issued disposition orders, the only concern DCFS had which remained even partially unaddressed or unresolved concerned mother's boyfriend. However, mother agreed not to allow contact between Beverly and the boyfriend, and the maternal grandmother agreed to care for Beverly when mother visited the boyfriend. It was unclear when the boyfriend would be released from prison. There was no evidence that mother had gone back on this agreement, that she had seen the boyfriend, that she had allowed Beverly to have any contact with him, or that she was likely to do so in the future.

It is undisputed that mother had a troubled past, one that caused her to lose parental rights over her four other children.³ However, the issues that led to dependency jurisdiction in Beverly's case were not the same as the ones that were factors in the dependency cases of mother's other children. While mother had previously abused drugs such as cocaine and methamphetamine, mother's probation officer told DCFS that mother's more recent drug use was medical marijuana. Mother told DCFS she would stop using the drug, and she apparently did so, evidenced by a year of negative drug tests. Even in the jurisdiction and disposition report, DCFS indicated there was "supporting evidence that [mother] has committed to changing her lifestyle since her daughter [was] born in 2008." And despite mother's past membership in a gang, she had been in compliance with the terms of her probation for a full year, which entailed not associating with gang members, including family members, and avoiding other aspects of gang culture. She was attempting to have her gang tattoos removed. Mother exceeded the

³ Mother's two oldest children were adopted in 2004. The juvenile court asserted jurisdiction over mother's two other children in 2005. The record indicates the children were later adopted by their paternal grandparents, but does not provide a date.

juvenile court's demands of her by voluntarily participating in services and programs to help her turn her life around. Nothing in the record created an inference that conditions justifying dependency jurisdiction were likely to exist absent court supervision.

In *N.S.*, a father similarly contended the juvenile court should have terminated jurisdiction under section 364, subdivision (c). The Court of Appeal agreed. The juvenile court asserted dependency jurisdiction at least in part due to the father's inability to manage stress or anger, his impulsivity, and temper outbursts. (*N.S.*, *supra*, 97 Cal.App.4th at p. 172.) However, at the first six-month review hearing there was no evidence that the father had acted impulsively or had a temper outburst. He was also fully compliant with the case plan, was cooperative with the social worker, and was open to services. He had not missed an individual counseling session, completed a parenting skills training class, and was open to services and amenable to therapy. His therapist reported he had made good progress and identified no factors that would put the child at risk if left in his care. The social worker recommended the father be allowed to return home. The Court of Appeal concluded there was no evidence that continued jurisdiction was necessary. The juvenile court was therefore required to terminate jurisdiction under section 364, subdivision (c).

We are faced with similar facts in this case. We are also mindful of the standard of review. "We review factual findings in the light most favorable to the juvenile court's order. [Citation.] Indeed, '[w]e must indulge in all legitimate and reasonable inferences to uphold the [judgment]. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.' [Citation.]" (*In re H.B.* (2008) 161 Cal.App.4th 115, 119-120.) However, "[o]ur deference to the fact finder, of course, is not without limit. The substantial evidence standard requires evidence that is 'reasonable in nature, credible, and of solid value.'" [Citation.] A judgment is not supported by substantial evidence if it is based solely upon unreasonable inferences, speculation or conjecture." (*Ibid.*) We are unable to conclude sufficient evidence supported the juvenile court's order continuing dependency jurisdiction in this case.

The DCFS reports did not support this conclusion, and instead provided evidence supporting the department's recommendation that the court terminate jurisdiction. In making the order, the juvenile court did not explain what evidence it was relying on to come to the conclusion that continued supervision was necessary. Although such an explanation was not required, it would have facilitated appellate review in this case. In any event, we have only the record of DCFS reports, and that record does not offer sufficient evidence supporting continued jurisdiction under section 364, subdivision (c). We therefore reverse the juvenile court order.⁴

DISPOSITION

The juvenile court order is reversed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.

⁴ Should future circumstances indicate Beverly is again a person described by section 300, nothing prevents DCFS from filing a new dependency petition based on such new evidence. (*In re V.M.* (2010) 191 Cal.App.4th 245, 254; *In re Janet T.* (2001) 93 Cal.App.4th 377, 392 [reversal of juvenile court jurisdiction order did not mean DCFS could not try again].)