Filed 2/27/18 In re A.R. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.R., a Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.B., Defendant and Appellant.	B284234 (Los Angeles County Super. Ct. No. DK09337)

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case, mother T.B. appeals from the order denying her Welfare and Institutions Code section 388[1] petition to reinstate family reunification services and terminating parental rights as to her son A.R. We affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Five-year-old B.R. and six-month-old A.R. were removed from mother's care in January 2015 following a domestic violence incident between mother and father.[2] This occurred at Children's Hospital of Los Angeles, where A.R. was being treated for a malignant brain tumor. The amended section 300 petition alleged the parents had a history of domestic violence and substance abuse, and that mother had a history of mental and emotional problems and that she failed to regularly take medication as prescribed. The petition also alleged that the parents left A.R. at the hospital without making a plan for his ongoing medical care and supervision, that they failed to visit him regularly, meet with medical staff regarding his condition and care, or timely provide medical authorization, and that their "whereabouts were unknown" to the caregivers for extended periods of time.

---

[1] All further statutory references are to this code.

[2] Father has not participated in reunification efforts and is not a party to this appeal.

The court sustained these allegations, designated the children a sibling group, removed them from their parents' custody, and granted mother reunification services, including training for A.R.'s medical needs. Mother was ordered to participate in a drug program, random drug testing, domestic violence support, counseling, undergo a psychiatric evaluation, and take all prescribed psychotropic medications.

A.R.'s hospitalization continued until July 2015. He underwent brain surgery, chemotherapy, and a bone marrow transplant, and was being fed through a gastronomy tube. Mother reportedly did not visit A.R. frequently at the hospital, but his paternal grandmother was at the hospital almost daily. Upon A.R.'s release from the hospital, he was placed in the home of his paternal grandmother. His sister, B.R., was placed with a different caregiver.

Mother enrolled in individual counseling and completed classes for substance abuse and domestic violence awareness, as well as gastronomy tube training and infant CPR training. The report for the November 30, 2015 review hearing noted that mother had not participated in the ordered psychiatric assessment, was inconsistent in drug testing, and tested positive for cocaine on two dates in October 2015. She also was inconsistent in confirming and attending visits with A.R., and did not yet have a permanent place to live. Mother and paternal grandmother had difficulty arranging for mother's visitation with A.R., requiring intervention by the Department of Children and Family Services (DCFS).

The court praised mother's progress in resolving the problems that led to the children's removal from her home, found a substantial probability that the children would be returned to

her custody within the 12-month period, and continued reunification services.

Mother failed to drug test on two occasions in November and December 2015, and tested positive for amphetamines in December 2015. She claimed her previous boyfriend put "something" in her cup without her knowledge. She had three clean drug tests after that.

As of May 2016, mother had completed the ordered psychiatric assessment, which indicated her mental health condition "does not cause problems for her in daily life that are serious enough to make her eligible for specialty mental health services from the mental health plan." Mother completed a workshop addressing the care of children with special needs and demonstrated good parenting skills during her visits with A.R. at the DCFS office. The paternal grandmother reportedly was uncooperative in arranging sibling visitation between A.R. and B.R. DCFS reported that A.R.'s placement with the paternal grandmother was appropriate although there were concerns regarding her administering medications correctly and providing DCFS with necessary documentation regarding his medical care. At the May 25 review hearing, the court ordered DCFS to assist mother with housing.

The following day, mother met with social workers at the DCFS office. She was very late, appeared unkempt, and smelled of alcohol. Mother acknowledged she had been crying because she felt the court believed she was not able to care for both of her children, making her choose B.R. and not care for A.R. The social worker encouraged mother to attend individual counseling to address psychological problems, including her feelings of stress

and frustration. Mother continued to have difficulty finding housing for herself and both children.

In July 2016, the maternal grandmother agreed to have mother and B.R. live with her; she did not have room for A.R. to live in her home. Mother's visits with A.R. were liberalized to unmonitored; she visited each Wednesday for four hours. Mother and the paternal grandmother continued to have a contentious relationship.

On July 25, the court released B.R. to mother's custody on the condition that mother live with the maternal grandmother or in other DCFS-approved housing.[3] The court found mother had not made significant progress in resolving the problems that led to A.R.'s removal from the home, and that there was not a substantial probability that A.R. would be returned to mother's custody within the next review period. It terminated reunification services and set the matter for a permanency planning hearing pursuant to section 366.26.

Mother moved to Las Vegas in December 2016 in order to find housing. Between November 2016 and May 2017, mother did not visit with A.R., did not show up to sign medical consent forms or Regional Center documents, and her phone was not in service. The court transferred A.R's educational rights to the paternal grandmother. An adoptive home study was approved for the paternal grandmother on May 15.

On May 24, 2017, mother filed a section 388 petition, asking the court to take the permanency planning hearing off calendar and issue a home of parent order for A.R. to live with her. The changed circumstances she alleged were that she had

---

[3] The court terminated jurisdiction as to B.R. on November 21, 2016 and she is not involved in this appeal.

reunified only with A.R.'s sibling because she did not have appropriate housing at that time to accommodate A.R.'s medical equipment. She had since obtained appropriate housing. She alleged she has been visiting A.R. three times per week for six hours per visit. She asserted she was in full compliance with her case plan at the time her reunification services were terminated and can provide a safe home for A.R. In addition, a home of parent order would allow A.R. to reside with his sibling, B.R.

The social worker contacted Nevada Child Protective Services seeking a courtesy assessment of mother's home. She was informed that the assessment for a child in another state can be completed only with an ICPC[4] order.

DCFS recommended denial of the section 388 petition. It noted that mother had visited A.R. only once since November 2016, had failed to complete necessary paperwork for the Regional Center, and failed to maintain regular contact with DCFS.

The court considered mother's section 388 petition at the section 366.26 hearing on July 27, 2017. The parties stipulated that if mother were called to testify, she would say she had the necessary training for A.R.'s gastronomy tube, was able to use the breathing machine he needed, could provide 24-hour care, had identified a hospital close to her home, was financially able to care for him, had investigated providing him with in-home care, and had attempted to visit him but had encountered difficulty with the paternal grandmother about scheduling.

The court heard argument and concluded that despite mother's "heroic efforts," it was not convinced it would be in the

---

[4] Interstate Compact on the Placement of Children.

best interest of the child to send him to live in Las Vegas. The court was concerned about disrupting the services that were in place for A.R. "with no way of watching over to make sure that these services will be put in place, when right now I have the services needed for the child to be well taken care of. . . . The child's well placed and being well taken care of by grandmother, who is ready, willing, and able to adopt . . . . ."

The court denied the section 388 petition, terminated parental rights to A.R., and selected adoption as his permanent plan. Mother appeals from this order.

DISCUSSION

At a hearing on a section 388 petition, the moving party must establish by a preponderance of the evidence that there is new evidence or changed circumstances such that the requested change in the court's order would be in the best interest of the child. (§ 388; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Not every change in circumstances justifies modification of a prior order; the change "must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citation.]" (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

"In evaluating whether the petitioner has met the burden to show changed circumstances, the trial court should consider (1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. [Citation.] The petition is addressed to the sound discretion of the juvenile court, and its decision will

not be overturned on appeal in the absence of a clear abuse of discretion. [Citations.]" (*In re A.A.*, *supra*, 203 Cal.App.4th at p. 612)

On review of the denial of a section 388 petition, "we are limited to whether the order is supported by substantial evidence. We view the record in the light most favorable to the order and decide if the evidence is reasonable, credible and of solid value. [Citation.]" (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.)

Mother asserts she established a change of circumstances because she had secured a residence for her family and had been successfully raising A.R.'s sister B.R. for nine months. These changes are not determinative. The fact that mother is able to parent B.R. successfully is not indicative of her ability to manage the care of both children, especially given A.R.'s medical fragility and developmental delays. Appropriate housing is helpful, and we accept as true mother's stipulated testimony that she has received sufficient training to handle A.R.'s medical needs and that she has located hospital services near her home.[5]

But the conditions giving rise to A.R.'s adjudication as a dependent child were more complex than mother's lack of housing or parenting skills. A.R. was hospitalized with a malignant brain tumor at the time the dependency proceedings were initiated, and the court sustained the allegation that "The

---

[5] The court was concerned about the availability of necessary child welfare services for A.R. in Nevada, given his special needs. This could have been verified through an ICPC, had the court been otherwise satisfied that there was a sufficient change of circumstances and that continuation of reunification services would be in A.R.'s best interest.

parents failed to visit the child regularly and meet with medical staff regarding the child's condition and care. The parents failed to provide timely medical authorization required for the child's medical needs on an ongoing basis. The parents' whereabouts were unknown to the caregivers for extended periods of time." This was in March 2015.

Despite mother's other efforts toward reunification, she had no visits with A.R. from November 2016 until June 26, 2017. In addition, in December 2016 she failed to appear at the hospital to sign a medical consent form for A.R. to receive an MRI, and the procedure had to be rescheduled. When the social worker eventually reached her by telephone, mother told her she had moved to Las Vegas to find housing. The social worker's attempts to reach mother by telephone in January 2016 were unsuccessful, as her number had been disconnected.

A.R.'s regional center case coordinator mailed paperwork for A.R.'s educational services to the address in Las Vegas that mother had provided, but she failed to sign and return them. He, too, was unable to reach her by telephone. In February 2017, he asked the social worker to assist him in changing A.R.'s educational rights holder, since mother had been unavailable; the paternal grandmother was appointed the educational rights holder for A.R. in March 2017.

Mother has not visited A.R. consistently, despite many efforts by DCFS to assist mother with visitation. Nor has she maintained contact with medical staff or other participants in his care team about his needs. These were among the issues that led to A.R.'s dependency.

A.R. was only six months old at the time he was removed from mother's custody, and almost three years old at the time of

the section 388 hearing. He had spent the past two years living with his paternal grandmother, and the record indicates he was well bonded to her.

On this record, we find no abuse of discretion in the juvenile court's determination that it would not be in A.R.'s best interest to grant the section 388 petition.

DISPOSITION

The order denying the section 388 petition and terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.