Filed 3/27/13 In re Mia D. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MIA D., a Person Coming Under the Juvenile Court Law.	B242294 (Los Angeles County Super. Ct. No. CK61291)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ROSEMARY B. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Dickstein Shapiro and Paul G. Novak for Defendants and Appellants.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Rosemary B. and Donald D.[1] appeal from an order finding a prima facie case for detention of Mia D., under subdivisions (a), (b), and (d) of section 300 of the Welfare and Institutions Code,[2] and ordering them to stay away from Mia. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mia had been the subject of a past dependency proceeding after she tested positive for methamphetamines at birth and was immediately detained by the Department of Children and Family Services (DCFS) in 2005. Mia was declared a dependent child of the court under section 300, subdivision (b), due to her parents' abuse of methamphetamines and other illicit drugs. She was placed with her maternal great-grandparents. On June 14, 2007, the juvenile court terminated jurisdiction and placed Mia in the home of her parents.

In November 2010, DCFS received a referral indicating that Mia's mother had given birth to another child, and they both tested positive for methamphetamines. During the investigation, DCFS interviewed Donald D. He told the investigating children's social worker (CSW) that Mia had been living with him and his girlfriend, Rosemary B., for the past two years, after the parents left Mia in his home. He was unable to contact the parents so Mia could be enrolled in school. Donald D. and Rosemary B. petitioned the court for appointment as Mia's guardians. The probate court granted them letters of

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[1] Mia D.'s mother, Amanda S., and father, Joseph D., are not parties to this appeal. Donald D. is a paternal cousin. He and Rosemary B., his girlfriend, were Mia's temporary legal guardians.

[2] All further statutory references are to the Welfare and Institutions Code except as otherwise identified.

temporary guardianship on November 22, 2010.[3] Attorney Paul Novak represented them in the guardianship proceedings.

In July 2011, Riverside County Child Protective Services (Riverside CPS) received a referral that Donald D. had sexually abused his minor daughter, Alyssa D. She and her brother lived with their mother but visited their father on weekends. During the investigation, Alyssa told a CSW she was concerned about Mia, in that she had observed Donald D. and Rosemary B. physically abuse Mia.

On July 13, 2011, DCFS received a referral alleging Mia was the victim of physical abuse, general neglect, and at risk of sexual abuse by Donald D. and of physical abuse by Rosemary B. According to the referral, Donald D. was Mia's second cousin and her caregiver, and there was an allegation of sexual abuse of his daughter. DCFS conducted an investigation and found the allegations of physical and sexual abuse were unfounded. The allegation of general neglect was deemed inconclusive due to the fact that neither Donald D. nor Rosemary B. was willing to submit to on-demand drug testing.

On November 8, 2011, Riverside CPS received another referral alleging that Alyssa was a victim of sexual abuse by Donald D., and she made a full disclosure of the abuse at a forensic interview. During two separate interviews by CSWs and a subsequent forensic interview by two detectives at the Corona Police Department, Alyssa gave detailed accounts of the abuse beginning when she was very young and continuing over several years. Alyssa said Donald D. had raped her many times from the time she was three years old until the rape stopped when she was about eight years old. She stated that Donald D. also used to hit her and left bruises on her. According to Alyssa, Rosemary B. observed the sexual and physical abuse but did nothing to protect her. The December 29 findings of the investigation were that the allegations of sexual abuse of Alyssa by Donald D. were substantiated.

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3 The proceedings were in *In re Guardianship of Mia* [*D.*], Los Angeles County Superior Court case number BP125577, filed November 25, 2010.

Also on November 8, DCFS received an associated referral alleging that Mia was a victim of sexual abuse by Donald D. When a CSW went to Donald D.'s home to interview Mia, Rosemary B. would not allow the CSW to enter the home and only allowed the CSW to interview Mia on the front lawn while Rosemary B. was present. Mia denied any form of abuse. Although the CSW contacted Donald D. several times to arrange a SCAN exam for Mia, Mia was not brought to either appointment made for her. Rosemary B. went to the CSW's office and told him that she did not feel that Mia needed to be subjected to more interviews, that she and Donald D. were too busy, and that the CSW should cancel the appointment then scheduled. She agreed that the CSW could interview Mia's primary physician. Information the physician provided did not document any concerns about abuse. The ensuing DCFS investigation found that the allegation was unfounded.

On March 27, 2012, DCFS received a referral alleging Mia was at risk of sexual abuse by Donald D. and that Riverside CPS had substantiated an allegation that Donald D. had sexually abused Alyssa. In April, a CSW from DCFS was refused permission to enter Donald D.'s home or interview Mia. The CSW consulted with Riverside CPS regarding their investigation. The CSW talked with a detective who was present at Alyssa's forensic interview. The detective stated that his investigation was still open because there were unanswered concerns regarding the possible impact of pending custody issues between Donald D. and his ex-wife.

Based on the investigations, on April 16, 2012, DCFS removed Mia from Donald D.'s home. On April 19, DCFS filed a petition pursuant to section 300, subdivisions (a), (b), and (d), naming Mia's parents, as well as Donald D. and Rosemary B. The petition alleged Mia was at risk of physical and sexual abuse based on the substantiated allegations regarding Alyssa and on neglect by Donald D. and Rosemary B. due to alcohol abuse.

At the April 19, 2012 detention hearing, Attorney Novak, on behalf of Donald D. and Rosemary B., asked the juvenile court to appoint counsel for them for the dependency proceedings. He argued that they had a right to appointed counsel pursuant

to section 317, in that they were Mia's temporary legal guardians "for the next two weeks."[4] The juvenile court stated that it would not appoint them counsel at that time, in that as temporary legal guardians, their status could be removed at any time. The court stated that it would not appoint counsel until a legal guardian was appointed.

Counsel for DCFS informed the court that, although the petition was filed naming the temporary legal guardians, as well as the parents, DCFS intended to file another petition naming only the parents and relating to Mia's siblings' pending dependency proceedings. Counsel stated his understanding was that the temporary guardianship was going to dissolve in two weeks and the DCFS detention report submitted for the hearing set forth facts indicating that Mia's placement with Donald D. and Rosemary B. was no longer appropriate. The court ordered DCFS to file the amended petition forthwith.

The court found that Mia was a person described by section 300, subdivisions (a), (b), and (d), and ordered Mia detained, with DCFS to have temporary custody. The court then ordered Donald D. and Rosemary B. to stay away from Mia.

The minute order for the hearing did not list Donald D. and Rosemary B. as parties and did not mention the juvenile court's denial of their request for appointed counsel on the basis of their status as temporary guardians. The order stated that the court issued a stay away order and "Donald D[.] and Rosemary B[.] [are] ordered to stay away from the minor." As to visitation, the court ordered "No contact by Donald D[.] & Rosemary B[.] with minor[] pending further order of court."

In addition, the court ordered DCFS to file a section 300 petition as to Mia's parents by April 30, 2012. The April 19 petition which named Donald D. and Rosemary B., as well as the parents, was dismissed on April 30. The matter was

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[4] After appellants' initial appointment in November 2011, the probate court had repeatedly extended their letters of temporary guardianship, pending contested proceedings on permanent guardianship. Also, during that time, Mia's maternal great-grandmother filed an opposing petition requesting guardianship. Mia had been placed with her maternal great-grandmother during the prior dependency proceeding involving her mother and father.

continued for a progress review hearing on June 11 and an adjudication hearing on June 22, 2012.

On May 3, 2012, the probate court issued an order terminating, without prejudice, Donald D.'s and Rosemary B.'s temporary legal guardianship over Mia and denying their petition for appointment as her permanent guardians.[5]

DISCUSSION

Appellants' claims on appeal relate to their standing as temporary legal guardians. They contend that the juvenile court violated their statutory rights as Mia's temporary guardians to court-appointed counsel and their related due process rights. They argue that the juvenile court erred in denying them standing to participate in the proceedings.

DCFS filed a motion to dismiss this appeal as moot on the ground we are unable to provide any relief to appellants, in that, based upon the May 3, 2012 order of the probate court, appellants no longer have the status of temporary or permanent guardians of Mia or any other legal relationship with Mia which would allow them to participate as parties in the underlying dependency proceedings. Appellants opposed the motion and requested that we render an opinion, in that the issue of the right of a temporary guardian to appointed counsel is an important issue of public interest, even if we determine that the appeal is moot. We decline to dismiss the appeal as moot or render such an opinion.

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[5] On October 2, 2012, DCFS filed a motion to dismiss this appeal and requested judicial notice of the probate court's May 3, 2012 order. To the extent that the order is part of the record in the pending dependency proceeding, it is already before us and, therefore, it is unnecessary to grant judicial notice. However, given that it is an order in another legal proceeding in another court, we will take judicial notice of the order, in that it is a court record relevant to the dependency proceeding at issue here. (Evid. Code, §§ 452, subd. (d), 459.)

After a dependency petition has been filed, "and until the time that the petition is dismissed or dependency is terminated, no other division of any superior court may hear proceedings" regarding custody or guardianship. (§ 304.)

We conclude that the determination by the trial court not to appoint counsel for appellants, despite their status at the time as Mia's temporary legal guardians, and to otherwise deny them standing to participate in the proceedings through the court's stay away order, did not prejudice appellants. The California Supreme Court explained the harmless error analysis applicable to a dependency proceeding in *In re James F.* (2008) 42 Cal.4th 901. At issue was "whether a juvenile court's error in the procedure used for appointment of a guardian ad litem for a parent in a dependency proceeding is a form of structural error that requires automatic reversal of an order terminating the parent's parental rights, or whether it is instead subject to harmless error analysis." (*Id.* at p. 911.) The court explained that "[e]rrors that can 'be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt' [citation] generally are not structural defects. [Citation.]" (*Id.* at p. 917.) "[T]here are also a very few constitutional errors that the United States Supreme Court has categorized as structural, not because they defy harmless error analysis, but because prejudice is irrelevant and reversal deemed essential to vindicate the particular constitutional right at issue. [Citation.]" (*Ibid.*) From the appellate court opinion under review, the court quoted from the dissenting opinion that "error in appointing a guardian ad litem for a parent in a dependency proceeding was not structural and did not require automatic reversal, because an appellate court could accurately determine whether the parent actually suffered prejudice, and also because of the strong public interest in the expeditious resolution of dependency actions." (*Id.* at pp. 913-914.) The court concluded that procedural error in the appointment of a guardian ad litem for a parent in a dependency proceeding is amenable to harmless error analysis. (*Id*. at p. 915.)

In the instant case, appellants did not suffer actual prejudice as required for reversal of the juvenile court's decisions at the April 19 detention hearing. Even if the court had appointed counsel for appellants on the basis of their status as temporary legal guardians, they lost that status on May 3, well before the next hearing scheduled for June 11. Additionally, the juvenile court removed any basis for appellants to have

standing as parties by ordering a new section 300 petition to be filed no later than April 30, naming only Mia's mother and father.

Under the harmless error test, a judgment or an order by a dependency court may be reversed only if the error has resulted in a miscarriage of justice (Cal. Const., art. VI, § 13), that is, "only if the reviewing court finds it reasonably probable the result would have been more favorable to the appealing party but for the error." (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60.) It is not reasonably probable that appellants would have obtained a more favorable result had counsel been appointed for them at the detention hearing.

First, the allegations before the court regarding the substantiated claims of the physical and sexual abuse by Donald D. of his daughter Alyssa, including rape before she was eight years old, was ample basis for detaining Mia from appellants' home. Second, at the detention hearing, the juvenile court ordered DCFS to replace the April 19 petition against appellants and Mia's parents with a new petition against only the parents by April 30, in effect removing the allegations against appellants.

Appellants assert that denying them appointed counsel and standing to participate in the dependency proceedings constituted a violation of their constitutional due process rights to be heard. DCFS asserts that a temporary legal guardian has no constitutional due process right in dependency proceedings. We need not resolve that issue here, as even assuming that they had such a constitutional right at the time of the detention hearing, "the weight of authority in California applies the *Chapman* [*v. California* (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed.2d 705] harmless error standard in juvenile dependency proceedings where the error is of constitutional dimension. [Citations.]" (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1146.) That is, the error must be harmless beyond a reasonable doubt. (*Chapman*, *supra*, 386 U.S. at p. 24; *Mark A.*, *supra*, at p. 1146.)

Any error here clearly was harmless beyond a reasonable doubt. Within less than a month and prior to the next hearing, appellants lost any legal basis for claiming a right

to counsel or standing as temporary legal guardians.[6] They would not have had any due process right to be heard at the next hearing, even if the juvenile court had granted them appointed counsel at the detention hearing. Thus, reversal is not "essential to vindicate the particular constitutional right at issue." (*In re James F., supra*, 42 Cal.4th at p. 917.)

Moreover, affirming the juvenile court's orders would be consistent with the strong public interest in the expeditious resolution of dependency actions to provide a stable home for a dependent child of the court. Reversal of the court's orders would likely be *contrary* to Mia's best interests, in that it would delay the adoption process. We have taken judicial notice on our own motion of the minute orders issued by the juvenile court in this case after appellants filed their notice of appeal, through February 5, 2013. (Evid. Code, §§ 452, subd. (d), 459.)

In September 2012, the juvenile court ordered that no reunification services were to be provided to Mia's mother and father. On February 5, 2013, the juvenile court ordered DCFS to complete the adoption assessment with regard to the desire of Mia's maternal great-grandmother to adopt her. "After reunification efforts have failed, it is not only important to seek an appropriate permanent solution—usually adoption when possible—it is also important to *implement* that solution reasonably promptly to minimize the time during which the child is in legal limbo. A child has a compelling right to a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child. [Citation.] Courts should strive to give the child this stable, permanent placement, and this full emotional commitment, as promptly as reasonably possible consistent with protecting the parties' rights and making a reasoned decision. The delay an appellate reversal causes might be contrary to, rather than in, the child's best interests." (*In re Celine R., supra*, 31 Cal.4th at p. 59.)

No cause greater than Mia's compelling right to have a stable, permanent home exists in this matter to warrant remanding the matter to the juvenile court to reconsider

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[6] Appellants may seek to participate in the proceedings as defacto parents. (Cal. Rules of Court, rule 5.534(e).)

appellants' request for appointed counsel or standing. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 59.)

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.