Filed 1/17/19 In re G.B. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| In re G.B., a Person Coming Under the Juvenile Court Law. | 2d Juv. No. B288231<br>(Cons. w/ 2d Juv. No. B289226)<br>(Super. Ct. No. J071718)<br>(Ventura County) |
| VENTURA COUNTY HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CHRISTOPHER V.,<br><br>Defendant and Appellant. | |

Christopher V. (Father) appeals from orders (1) sustaining the Ventura County Human Services Agency's (HSA) petition to declare his two-year-old daughter, G.B., a ward of the

court (Welf. & Inst. Code,[1] § 300); and (2) removing G.B. from his custody (§ 361). He contends the evidence was insufficient to support the court's orders. We affirm.

FACTUAL AND PROCEDURAL HISTORY

After noticing a "bump" on G.B.'s stomach, her mother, L.B. (Mother), took her to the emergency room at University Medical Center in Las Vegas, Nevada (UMC). Doctors there discovered a cancerous tumor on her kidney that had spread to her lungs.

Doctors at UMC wanted to perform immediate surgery but her parents resisted. Mother refused to allow a complete medical examination or blood pressure readings, and was not open to chemotherapy treatment. She stated her belief that she could treat the renal mass with cannabinoid oils. She threatened to leave the hospital with G.B. against the doctors' medical advice. Father did not intervene.

Because the parents said they wanted to treat G.B. at a location closer to their homes, G.B. was airlifted to UCLA Medical Center (UCLA). Both parents continued to resist treatment at UCLA, despite being told that G.B. would die within 20 to 30 days without surgery. Mother was reluctant to allow a biopsy and said she wanted to conduct her own research on alternative remedies. At one point, she denied that G.B. was in need of medical care.

Staff at UCLA reported that the parents would not allow medical staff to perform surgery or even a biopsy because Mother "did not believe that [G.B.] had a tumor." A public health nurse reported that "both parents are resistant to the treatment

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

plan [surgery and chemotherapy] and are now threatening to leave this hospital [UCLA] against medical advice (AMA) to seek 'alternative care' for [G.B.] but have not discussed where she will get it from." A doctor wrote at least three letters describing the diagnosis of kidney cancer that had spread to G.B.'s lungs, and the recommended treatment of surgery, biopsy, and chemotherapy and radiation. The doctor noted that without this treatment, G.B. "will not long survive." Nevertheless, Mother insisted that alternatives to surgery be performed, even though neither she nor the doctors were aware of any alternatives. She wanted more time to obtain "more research on the alternatives." Father did not intervene.

HSA filed a petition to declare G.B. a ward of the court. At the initial detention hearing three days later, the court ordered that UCLA could perform medical care short of surgery. At a continued hearing three days later, the court authorized surgery and other medical procedures.

After the court authorized surgery, a meeting was planned to review the surgery with the parents. Mother "replied [that] she does not consent and does not want to be a part of it." Nevertheless, the day before surgery, both parents met with the surgeons. They were "'freaking out' and threatening to go to the 'media.'" Father announced "he will go into the OR and prevent the surgery." The doctors said that "if there is a commotion then the surgery will be stopped."

When surgery was performed, doctors discovered that the cancer had spread extensively, making removal of the tumor and kidney too dangerous. The parents were informed that the tumor could not be removed because the cancer had spread. A social worker reported "the parents are happy the kidney was not

removed and the parents want the child transferred to Mexico." Mother said she "should have never [taken G.B.] to the hospital" and they would "transport [G.B.] to Mexico if the State would let us." The parents then posted claims on Facebook and on "medicalkidnap.com," contending the doctors, social workers and the court were wrong about G.B.'s medical condition and were conspiring to kidnap her. They claimed G.B. was "butchered" by the surgery, and said they needed to petition to immediately stop all further treatment of G.B. "until she had a diagnosis."

Because a biopsy determined the tumor was treatable, the doctors requested that chemotherapy be started immediately, followed by radiation therapy. Without this treatment, G.B.'s chances of survival "would be 0% (or 100% chance of death from this disease)." The court ordered the commencement of the recommended six weeks of chemotherapy, followed by other necessary treatment. After several rounds of chemotherapy, G.B. was well enough to be discharged from the hospital. Following her discharge, G.B. was placed in foster care.

## DISCUSSION

### *Jurisdictional Findings*

Father first contends there was insufficient evidence to support the juvenile court's order sustaining the allegations supporting the exercise of jurisdiction over G.B. We disagree because the evidence established that Father failed to provide adequate medical treatment for G.B.

Section 300 sets forth the grounds required to be proven to establish jurisdiction over a minor child. Section 300, subdivision (b)(1) provides that a child may be adjudged a dependent of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious

physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate . . . medical treatment." Proof by a preponderance of evidence must be adduced to support the findings. (§ 355, subd. (a).) We review a juvenile court's jurisdictional findings for substantial evidence. (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 137.)

Here there was substantial evidence supporting the jurisdictional findings. From the time that G.B. was initially seen at UMC, both parents refused to cooperate with medical professionals seeking to intervene to save their daughter's life. They were informed that their daughter's medical condition was extremely precarious and that death was imminent without treatment. Nevertheless, the parents stalled and obstructed medical professionals at every turn, seeking to delay or prevent medical intervention in any form. They refused to consent to basic diagnostic tests, even blood draws. When Mother refused to consent to standard tests and procedures, Father did nothing to intervene on his daughter's behalf. After G.B. was transferred to UCLA, the parents received a stark and ominous diagnosis: G.B. would surely die within a very short time without medical treatment. Nevertheless, they continued to resist medical treatment. Without court intervention, it is probable that G.B. would have died. Ample evidence exists to support the finding that Father failed to provide G.B. with adequate medical treatment.

Father miscomprehends the appropriate standard of review when he contends "[t]he evidence regarding the parents' consent to [G.B.] receiving invasive treatment including major

surgery and potentially toxic chemotherapy is contradictory." The question is not whether substantial evidence exists to support Father's position, but whether there is substantial evidence in the record to support the court's findings. Here the record is replete with evidence that both parents placed G.B. at risk of serious physical harm, including death, by refusing to consent to necessary medical treatment after being informed of the need to do so.[2]

*Removal Order*

Father next contends there was insufficient evidence to support the order removing G.B. from his custody. We disagree because clear and convincing evidence established a substantial danger to G.B.'s health if she were returned to his custody.

Section 361, subdivision (c)(1), provides in relevant part that a dependent child shall not be removed from the physical custody of her parents unless the court finds by clear and convincing evidence that there would be a substantial danger to the child if she were returned to their custody. We review an order removing a dependent child from parental custody for substantial evidence. (*In re A.O.* (2010) 185 Cal.App.4th 103, 112.)

The court did not err when it issued its order removing G.B. from Father's custody. The evidence established that neither parent could be relied upon to continue to monitor G.B.'s health and return her to medical professionals for necessary testing and treatment. Even after G.B.'s surgery,

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[2] Because substantial evidence supports the b-1 and b-2 counts, we need not decide whether the court's jurisdictional findings are also supported for the remaining counts.

which confirmed the presence of a metastasized cancerous tumor which would, if left untreated, lead quickly to death, Mother said she "should have never [taken G.B.] to the hospital." Father failed to intervene and instead appeared to support Mother's claims that G.B. had been "butchered" and "kidnapped."

In addition, after G.B. was discharged from the hospital and while undergoing chemotherapy, her parents had a supervised visit, during which Mother gave G.B. four-to-five chewable "gummy bears." Later that evening, G.B.'s foster parents reported that G.B. was unusually lethargic, had difficulty chewing and keeping food in her mouth, raising her arms, or holding up her head. G.B. was rehospitalized and discovered to be dehydrated with abnormally low blood pressure. A toxicology screen returned positive for cannabinoids at the highest detectable limit. Doctors reported that G.B.'s kidney showed signs of damage due to dehydration, and opined that absent rehospitalization, G.B. "would have had further kidney damage" and "low blood pressure which would affect her organs."

Based on the evidence, the court determined the parents "drugged [G.B.] during a visit." The court said, "I don't think she's safe in their care until they tell me why they did that and why they thought it was a good idea so we can educate them why that's not safe. [¶] So I do find under [section] 361[, subdivision] (c) that there is clear and convincing evidence that returning [G.B.] today would cause, if not immediate harm, certainly a substantial risk." Because substantial evidence supports the court's finding, there was no error.

*Reasonable Efforts to Prevent Need for Removal*

Finally, Father contends the court erred when it determined that reasonable efforts were made to prevent the need for G.B.'s removal from his custody. We again disagree.

At the initial petition hearing, the social worker must report to the court on the reasons why the child has been removed from the parents' custody (§ 319, subd. (b)), and the court must make a determination "as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child . . . and whether there are available services that would prevent the need for further detention" (§ 319, subd. (d)(1)). We review the court's determination for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163-1164 [reviewing determination under parallel provision of § 361].)

Substantial evidence supports the juvenile court's finding that HSA made reasonable efforts to assist the parents in learning about G.B.'s medical condition and need for surgery and chemotherapy. The evidence established that HSA met or consulted with the parents and medical professionals on multiple occasions in an effort to further the parents' understanding of G.B.'s condition and needs, and to obtain their consent to medical tests and treatment. But as the court properly found, the effort "failed not because it wasn't reasonable, but because the parents were not rational." Among other things, the court noted that Mother reported that Father "has got some serious mental issues to the point where he can't really communicate with people." Even after meeting with surgeons to discuss the need for surgery to save his daughter's life, Father threatened to unilaterally stop the surgery. Finally, the court found that G.B. was "drugged during a visit . . . [a]nd I don't believe anybody did it but the

parents." The court asked, "[h]ow can [we] trust [the] parents not to do that again if they won't admit to it, one, and they won't tell me why they did it in the first place?" Father has not identified any additional efforts or services that were available, or could have been made available, to prevent the need for G.B.'s removal from his custody for medical treatment and follow-up. There was no error.

DISPOSITION

The judgment (orders sustaining the petition to declare G.B. a ward of the court and removing her from Father's custody) is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

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Susan H. Ratzkin, for Defendant and Appellant.

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