Filed 11/20/17 D.Q. v. Superior Court 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

D.Q.,

Petitioner,

v.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

VENTURA COUNTY HUMAN SERVICES AGENCY;

Real Party in Interest.

2d Juv. No. B283902
(Super. Ct. No. J070810)
(Ventura County)

D.Q. (mother) filed a petition seeking review by extraordinary writ of a juvenile court order setting a hearing pursuant to Welfare and Institutions Code section 366.26[1] to

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

consider termination of parental rights and to select a permanent plan for her son, E.H. Mother contends (1) E.H. should have been returned to her care at a contested 12-month review hearing, and (2) she was not provided with reasonable reunification services. We conclude substantial evidence supports the court's findings that mother received reasonable reunification services and that returning E.H. to mother's care would create a substantial risk of detriment to the child's safety. We deny her petition.

FACTS AND PROCEDURAL BACKGROUND

On December 21, 2015, Ventura County Human Services Agency (HSA) received a referral from the Ventura County Medical Center regarding two-month-old E.H., who had suffered serious non-accidental injuries to his body, including three fractured ribs, torso bruising and bruising to his face. Mother and her husband, R.H. (father), brought E.H. to the emergency room because they heard a "crunching" sound coming from the child's back. Parents had no reasonable explanation as to the cause of the injuries. Father claimed that E.H.'s facial bruising occurred when he dropped a container of baby wipes on E.H., but a physician determined that father's explanation did not account for all the bruising on E.H.'s face and that E.H.'s injuries appeared to be caused by physical abuse.

Petition and Detention Order

HSA filed a petition pursuant to section 300, alleging that E.H. came within the jurisdiction of the juvenile court. The petition alleged that E.H.'s "injuries would not ordinarily occur except as the result of the unreasonable or neglectful acts o[r] omissions by the [child's] caretaker." Mother and father were named as the child's caretakers.

In interviews, mother admitted that E.H. was often colicky and that she would become frustrated with him. When that occurred, she would give E.H. to father or to her 13-year-old daughter from a prior relationship. Mother referred to her daughter as the "'baby whisperer'" because she could make E.H. stop crying. Mother does not believe her daughter injured E.H., but father is not so sure.

When mother was advised that E.H. may be placed in protective custody, "mother did not raise[] her voice, cry or express[] concern. She maintained the same flat affect throughout the entire interview." Father complained that mother, who is a heavy smoker, cared more about cigarettes than E.H. Paternal relatives told investigators they believed mother caused E.H.'s injuries. It was reported that mother did not want E.H. and that she would often ignore his crying.

E.H. was detained from both parents and placed in confidential foster care. In February 2016, E.H. was moved to the home of his paternal uncle and aunt. A month later, E.H. was returned to his initial foster family because the uncle and aunt felt overwhelmed caring for E.H. in addition to their own children. They noted that E.H. "needed to be held often and [that] he needed constant attention."

Jurisdiction and Disposition Hearing

At the jurisdiction and disposition hearing, HSA recommended that family reunification services be bypassed. Both parents set the matter for a contested hearing.

HSA subsequently reversed its recommendation as to mother. On May 17, 2016, HSA filed an amended petition and provided mother with a case plan. Both parents withdrew their contests. The juvenile court sustained the amended petition,

ordered family reunification services for mother and bypassed services to father. Mother's case plan objectives were to obtain and maintain a stable and suitable residence for herself and E.H., to create a safety network of family, friends and professionals to ensure the child's safety in her care, to monitor her child's health, safety and well-being, to develop a plan to protect the child from future neglect and abuse, and to not permit others to physically abuse the child. She was required to participate in individual counseling once a week, and to complete a program with the Kids and Families Together Visitation Center (TVC) and a parenting course through A Street Intervention.

Six-Month Review Hearing

At the six-month review hearing on October 31, 2016, the juvenile court found, by clear and convincing evidence, that "reasonable services have been provided or offered to the mother which were designed to aid in overcoming the problems which led to the [child's] initial and continuing removal from custody, based on the following facts: The mother was referred to services of counseling and parenting education services, supervised visitation, case management services [and] bus passes."

HSA recommended that family reunification services be continued for another six months. At that time, E.H. was receiving services for developmental delays through Tri-Counties Regional Center. Mother was living in her cousin's home and was separated from father. The assigned social worker, Caren Davidge, reported that "mother has participated regularly in case plan services throughout [the] review period and has visited with the child regularly." She noted, however, that mother "needs to gain a thorough understanding of the child's developmental

needs and demonstrate her ability to meet his needs for safety and stability."

Davidge explained that E.H. "was a victim of severe physical abuse, which one could safely assume was a result of the child being overly fussy or inconsolable, and the caregiver becoming overwhelmed. The child has been found to have special needs and a strong temperament that will require profound patience and nurturing." E.H.'s foster mother reported that service providers suspected that E.H. suffers from emotional dysregulation, which means he becomes overwhelmed to the point where his impulse control and ability to focus become compromised. As a result, E.H. needs constant support from his caregivers to help him regulate throughout the day. This requires caregivers to be particularly attentive, and to help regulate E.H. by applying gentle pressure in a methodical manner to parts of his body.

E.H. also has sensory issues, is extremely active and requires constant supervision. He becomes over-stimulated easily and is prone to tantrums. He is significantly behind in his speech and language abilities, and was recently diagnosed with reactive attachment disorder. That disorder causes E.H. to constantly seek out stimulation, which makes it difficult for him to enter into relationships or attachments.

On September 23, 2016, approximately 10 days after HSA learned of E.H.'s dysregulation diagnosis, mother met with an early intervention service provider to discuss her son's needs. HSA provided these services because "it was apparent that [E.H.] was not going to be a typical baby to parent. And so [HSA] felt that [it] had to offer mother the chance to receive the education and tools to be able to parent th[e] child in order to show whether

she could or could not [do so]." By October 2016, mother had been shown simple techniques on how to hold and apply pressure to E.H. to address his dysregulation, and mother's case plan was updated to include the early intervention services. Due to scheduling difficulties, mother's first visit with E.H. and an early interventionist occurred in January 2017. By February 2017, mother believed she was able to read E.H.'s cues and apply pressure as needed. Mother met with E.H. and early interventionists on at least 14 occasions.

12-Month Review Hearing

At the 12-month review hearing, HSA initially recommended maintaining supervised visits and continuing reunification services. On April 10, 2017, Davidge noted that HSA "must proceed with extreme caution in this case. The mother is being held to a high standard, due to the child's significant needs and the reason this child came to [HSA's] attention. This was a case of severe, non-accidental physical abuse to a young infant. Despite the child making progress in his developmental services, as he has gotten older, his needs continue to change and his behaviors have become increasingly challenging for the caregivers. The child requires constant supervision to assure his safety in his surroundings, as well as the need for his caregivers to remain regulated to further encourage the child's regulation. . . . The mother needs to demonstrate her ability to respond to the child's need for deep pressure and guided play without the need for coaching from the service providers. She [also] needs to understand how her own nervous energy impacts the child."

Seeking more liberalized visits, mother set the matter for a contested hearing. As a consequence, the April 17, 2017 hearing

was continued to July 13, 2017.[2] After receiving reports of mother's continued lack of progress and inability to cope with E.H., HSA recommended that reunification services be terminated and that the case be set for a section 366.26 hearing. HSA claimed that mother had made only minimal progress through her services, that E.H. has special needs that mother is incapable of addressing and that mother is unable to keep him safe.

Davidge and an early intervention specialist, Elizabeth Lopez, testified at the contested hearing. After hearing their testimony, reviewing the documents in the file and listening to counsel's arguments, the juvenile court found "clear and convincing evidence that reasonable services were provided to [mother] during [the] relevant review period." It determined "the services that were offered here were specialized and individualized, tailored to the specific issues and needs that were presented in this case, which were significant."

The juvenile court further found that returning E.H. to mother's care would create a substantial risk of detriment to the child's safety. The court explained: "[T]he experts that were involved in the initial case analysis were of the view that [E.H.'s] injuries occurred when a caregiver, whoever that was, [m]other or [f]ather or someone else, [was] frustrated by [E.H.'s] behaviors and engaged in physical contact that resulted in the significant and serious injuries involved. The Court, based on the evidence before it, is of the view that all the indicators are that [E.H.], if anything, is much more active and likely to induce frustration by caregivers if they're not appropriately able to 'regulate' [him] as

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[2] Due to the continuances, the 12-month review hearing was held after the 18-month mark.

the phrase was used during our hearing. And I would find that the services that were given to [mother] were designed to help her meet those needs but she was simply either resistant to them or had a false sense of her own abilities to parent and, as a result, is not able to protect -- would not be able to protect [him] going forward." Mother challenges these findings.

DISCUSSION

Substantial Risk of Detriment

At the 12-month review hearing, a juvenile court must return a child to his or her parent unless it finds, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. HSA has the burden of establishing the risk of detriment. (§ 366.21, subd. (f).)

Our task on review is to determine whether the record contains substantial evidence supporting the juvenile court's finding that there was a substantial risk of detriment if E.H. was returned to mother. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762, 764.) We "must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) All reasonable inferences must be drawn in support of the court's findings. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

First, mother contends the juvenile court failed to make any finding that returning E.H. to her care would create a substantial risk of detriment to the child's safety. The record does not support this contention. The court's written order states that "[p]ursuant to . . . [s]ection 366.21, subdivision (f), return of the child[] to the physical custody of mother would create a

substantial risk of detriment to the safety, protection or physical or emotional well-being of the child[], based on the following facts: The mother showed minimal benefit from her case plan services and was unable to demonstrate her ability to meet the child's special needs." (Italics added.)

Next, mother asserts that substantial evidence does not support a finding that returning E.H. to mother posed a substantial risk of detriment to the child. Mother concedes, however, that as the dependency proceeding progressed, the goals of her case plan shifted. Instead of focusing on resolving the issues that led to E.H.'s removal, the plan focused on addressing the special needs that E.H. began exhibiting following his detention. Mother acknowledges she was unable to meet this particular objective of her case plan.[3]

Lopez, E.H.'s primary early intervention specialist, testified that E.H. has significant developmental delays and is a "really hard case." His social worker, Davidge, similarly testified that E.H. "is a child with significant special needs. And he needs a special type of parenting. He is not an easy baby to take care of . . . . And it is going to require that his caregiver[s] be unconditionally patient with him, offer him the structure, routine, consistency, stability, the interventions that he needs so that he can grow and develop to his highest ability given his delays, and that they can implement the services that are offered to them." Davidge concluded that E.H. "is going to require an

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[3] Mother contends she was unable to meet that objective because HSA failed to give her the timely opportunity to do so. As discussed below, we conclude substantial evidence supports the juvenile court's finding that mother received reasonable services under the circumstances.

extra level, very high level of supervision and parenting that I don't think that he would receive if he were to return home."

Davidge based her conclusion on mother's unsatisfactory performance in her case plan. Despite 18 months of services, mother's improvement was minimal and inadequate for E.H.'s needs. Mother was unable to read E.H.'s cues and required constant prompting to address his physical and emotional state. On May 4, 2017, Lopez reported that mother could not manage E.H.'s behaviors. Lopez stated: "[One] thing [mother] likes to do when [E.H.] gets upset is instantly bombard him with options. She often says, 'Here's your car, want a snack, your bottle or some bubbles?' I've told her multiple times to only give him two options such as, 'do you want the car or a snack.' If he doesn't pick, pick one for him and stick to it. Giving [E.H.] too many options, or even using too many words d[y]sregulates him. Frankly, I think that when [mother] is with [him] she becomes d[y]sregulated too. She still[] needs a lot of one on one parenting. This is unrealistic if she wants to reunite with [E.H.]. He needs love, affection, structure and discipline. [Mother] can provide all of these things, but only if someone is there to tell her every step of the way."

Before recommending termination of mother's services, Davidge scheduled an extra three-hour visit at a park so that she could observe the interactions between E.H. and mother. The visit did not go well. Davidge observed E.H. almost fall to the ground while he was playing on park equipment. Davidge also observed several other "close calls." At one point, mother, who had been told multiple times that E.H. needs constant supervision, turned her back on E.H. and he ran off and started

climbing on a picnic table bench. When mother turned around, she said, "'I thought you were right with me.'"

Davidge also observed E.H.'s ambivalence toward his mother, and determined that such ambivalence "cannot be fully attributed [to] her lack of visitation with him. The child has been observed to actively engage with [HSA] staff [with] whom he has even less contact with than the mother, and turns to those staff as . . . trusting adults before willingly interacting with the mother. The child's apparent avoidance towards the mother is also of great concern, when considering his emotional safety in her care."

Mother points to no evidence suggesting she is capable of assuming full parenting responsibility for E.H. Mother struggled to manage E.H. in visits lasting short periods of time, with continuous coaching from service providers. Throughout her 18 months of services, mother remained resistant to feedback and maintained that she already knew how to parent E.H. This lack of self-awareness implies that, absent continued oversight, mother will return to the deficient parenting she demonstrated prior to E.H.'s removal. We conclude substantial evidence supports the juvenile court's finding that returning E.H. to mother's custody would create a substantial risk of detriment to the child's safety, protection or physical or emotional well-being.

Reasonableness of Services

An agency "is required to make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan,

and made reasonable efforts to assist the parents in areas where compliance proved difficult.'" (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555, italics omitted.) We recognize that in most cases more services might have been provided, and the services provided are often imperfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) But, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We review for substantial evidence the juvenile court's finding that reasonable services were offered. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762, 764.)

Mother concedes that HSA correctly identified the issues, offered services designed to remedy those issues and maintained reasonable contact with mother throughout the course of the case plan. Mother complains that HSA failed to provide assistance when compliance proved difficult because there was a delay before she received the early interventionist services with E.H. She further claims it would have improved her ability to respond to E.H.'s dysregulation if she had received more early intervention services. The juvenile court rejected these claims, finding by "clear and convincing evidence that reasonable services were provided to [mother] during [the] relevant review period."[4]

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[4] The relevant review period was October 31, 2016 through the date of the contested hearing. The juvenile court previously ruled that all services provided to mother prior to October 31, 2016 were reasonable, and mother did not contest that ruling.

Substantial evidence supports the juvenile court's ruling. The record reflects that less than two weeks after learning of E.H.'s dysregulation diagnosis, HSA arranged for mother to meet with an early interventionist. Mother met with the early interventionist in September 2016 and again in October 2016. The early interventionist provided mother with information regarding dysregulation and showed her techniques to use to address E.H.'s dysregulation. After some scheduling difficulties were resolved, mother had her first hands-on visit with E.H. and an early interventionist in January 2017. This was the first of "at least" 14 such visits between January and June 2017.

Just weeks after the first visit with E.H. and the early interventionist, mother reported that "she was taught deep pressure" by the early interventionist and that she believed she had "caught on." A few weeks later, a TVC clinician informed Davidge that "mother had not made a lot of improvements" in her 26-week program. The clinician reported that mother "remained resistant to the clinician's instruction" and that mother occasionally would implement something they had discussed "without sensitivity or forethought."

In May 2017, the early interventionist made a similar comment. She stated: "It is very frustrating to work with someone [mother] who doesn't implement your suggestions. Every week we still work on the same things. I'm spending more time on showing and helping [mother] how to parent than showing her how to work with [E.H.]."

At the contested hearing, Lopez suggested that giving mother more time to practice applying pressure might help E.H. with his dysregulation. Lopez then clarified that the techniques being shown to mother are not difficult and that most parents are

able to pick up the technique after being shown once or twice. Mother was unable to grasp the technique after at least 14 visits with E.H. and the early interventionist between January and June 2017. Under these circumstances, we conclude mother has not demonstrated that the early intervention services she received were unreasonable, particularly in the context of the other extensive services that were provided. (See *In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547 [the fact that more services could have been provided does not render agency's efforts unreasonable].)

DISPOSITION

The petition for extraordinary writ is denied on the merits. The temporary stay of the juvenile court proceedings, granted by this court on September 18, 2017, is dissolved. This decision is final as to this court upon the filing of this opinion. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Kevin J. McGee, Judge
Superior Court County of Ventura

Dependent Family Advocates, Denise M. Trerotola, for Petitioner.

No appearance for Respondent.

Leroy Smith, County Counsel, and Ronda J. McKaig, Assistant County Counsel, for Real Party in Interest.