Filed 10/29/14 In re Isabelle F. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Isabelle F. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.L., Defendant and Appellant.	B253201 (Los Angeles County Super. Ct. No. CK87452)

APPEAL from an order of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

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T.L. (mother) appeals the order denying her Welfare and Institutions Code section 388 petition.[1] She contends her petition stated a prima facie case requiring an evidentiary hearing and appointment of counsel. We disagree and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

In 2011, the Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of mother's children Isabelle F. (born in 1998) and Michael O. (born in 2003), alleging mother's history of mental and emotional problems and substance abuse placed the children at risk. An amended petition alleged that mother abused Isabelle physically and emotionally, and that as a result Isabelle had serious emotional issues. The children were eventually placed with their maternal aunt, Jackie W. In June 2011, the court sustained the amended petition in part and ordered reunification services for mother.[2]

In the following six months, mother failed to visit with the children and refused to comply with the monitored telephone contact requirement; she also failed to keep in regular contact with DCFS and did not participate in court-ordered programs. She was homeless and her whereabouts were often unknown. Mother had a prior history of drug-related arrests and a conviction for driving under the influence, and during this period she also was arrested for burglary. The children's mental health had improved since placement with the aunt. Isabelle did not want a relationship with mother; Michael did, but was apparently upset by mother's failure to visit or call as scheduled.

The court terminated reunification services in January 2012. Jackie W. was interested in a legal guardianship but not adoption, in the hope that mother would regain custody. In June 2012, the court appointed Jackie W. and her husband as the children's

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[1] Statutory references are to the Welfare and Institutions Code.

[2] The court sustained allegations against the children's fathers as well, removed the children from parental custody, and ordered reunification services for Isabelle's father. Neither father is a party to this appeal.

legal guardians, ordered monitored visitation for the parents "as arranged by the guardian," and terminated jurisdiction.

In October 2013, more than a year after the case was closed, mother, in pro. per., filed a section 388 petition for an order of "mandatory allowance of visitation to the guardians for my children to be able to visit with me." She claimed the court had not ordered visitation, that the children missed her, and that her sister Jackie refused to speak to her. Mother also stated she had successfully completed all her "legal obligations to the criminal court system," had successfully completed an inpatient drug treatment program, and had been clean for nine months. The court summarily denied the petition for lack of substantiating information or documentation in support of mother's conclusory statements that her circumstances had changed or that a modification order would be in the children's best interest. This appeal followed.

DISCUSSION

Mother argues the court erred in denying her section 388 petition without an evidentiary hearing. We disagree.

A summary denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460.) To be entitled to a hearing on a petition to change, modify or set aside an earlier order of the juvenile court, a parent must make a prima facie showing that there is a change of circumstances or new evidence, and that the new order would be in the best interest of the child. (§ 388.) A section 388 petition "must be liberally construed in favor of its sufficiency." (Cal. Rules of Court, rule 5.570(a).) But the petition may not be conclusory, and must include '"specific allegations describing the evidence constituting the proffered changed circumstances or new evidence' . . . . [Citation.] Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

The petition is verified, and mother argues no supporting documentation is necessary to show she has completed a drug treatment program and has been clean for nine months. A similar argument was rejected in *In re Anthony W.*, *supra*, 87 Cal.App.4th at pages 250–251. Considering mother's failure to comply with her reunification plan before the case closed, it is not unreasonable for the juvenile court to require supporting evidence of her claimed improvement as a condition for holding a hearing. Nor does mother's claimed improvement by itself require the trial court to find that a prima facie case has been made for the modification order she sought.

On appeal, mother asserts she sought the court's assistance because the legal guardian had denied her court-ordered visitation. It is unclear why a modification of the court's order is the proper remedy in this situation. Contrary to mother's representation in the petition that the court appointed the guardians "without an order for visitation for myself," the June 2012 order ordered monitored visitation with the parents "as arranged by the guardian." Thus, the guardians already are required to arrange monitored visitation for mother.

In the petition, mother does not claim the guardians have denied her visitation; she only complains that her sister "refuses to speak to her." Even were we to read this statement broadly to mean that Jackie W. has refused to allow mother to visit with the children, mother provides no facts from which the court may determine whether a modification of its visitation order may be necessary. It is unclear whether the guardians allowed mother to visit with the children at all in the 15 months following the guardianship order, and if not, why mother did not bring a 388 petition or attempt to enforce the visitation order sooner.

Moreover, mother's claim that the children miss her is conclusory, absent any evidence she has been in some type of contact with them. The record on appeal cited by mother does not provide evidence of her children's views on the subject since the case was closed in June 2012. Mother has made no showing that a different visitation order would promote the children's best interests; the court did not abuse its discretion in summarily denying the petition.

Mother claims the court violated her due process rights by summarily denying the petition at a hearing at which only DCFS was present. She argues that she was entitled to notice and the appointment of counsel to present argument on her behalf. The minute order of the November 14, 2013 hearing, at which the court summarily denied the petition, states that DCFS was represented by counsel who appeared at the hearing. But the reporter's transcript shows that no appearances were made at the hearing, and the only action the court took was to state its decision on the record. Since the court's decision was issued without the benefit of any argument, the record does not support mother's conclusion that, had she been given notice and appointed counsel, the court would have allowed argument on her behalf at the hearing. Thus, she cannot show prejudice even were we to assume the claimed violations occurred. (See *In re Angela C.* (2002) 99 Cal.App.4th 389, 395 [failure to give notice of hearing subject to harmless error analysis].) Nor does the denial of the petition preclude mother from filing a new petition or from seeking to enforce the existing visitation order by other means.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.