Filed 2/21/13 In re Ashanti A. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ASHANTI A. et al., Persons Coming Under the Juvenile Court Law.	B242449 (Los Angeles County Super. Ct. No. CK85824)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CO. C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Dismissed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Co.C. (Mother) has three children subject to the jurisdiction of the juvenile court: Ashanti (born in June 2002), C. (born in Aug. 2003) and S. (born in April 2006). Each child has a different father, none of whom is party to this appeal.

Mother's appeal arises from the contested 12-month review hearing. At the hearing, the juvenile court found that the Los Angeles County Department of Children and Family Services (Department) had provided her with reasonable reunification services and that she had made significant progress in complying with the case plan. The court ordered Department to continue to provide reunification services and granted Department (which had conceded that it was responsible for Mother missing visits with her children) discretion to liberalize Mother's visitation with her children.

In this appeal, Mother contests the trial court's finding that Department had provided reasonable services to her. Relying upon *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147 (*Melinda K.*)—an opinion from our colleagues in Division Two—we dismiss the appeal. We conclude that the finding does not constitute an appealable order because, notwithstanding Mother's disagreement with it, she has suffered no adverse consequence as a result of it.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Juvenile Court's Assertion of Dependency Jurisdiction*

In April 2011, Mother, represented by counsel, pled no contest to four counts of an amended section 300[1] petition filed by Department. The counts were based upon Mother's abusive use of marijuana that interfered with her ability to

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

provide care for her children and two separate incidents of domestic violence, one involving Mother and S.'s father and the other involving Mother and a male companion. In the former incident, S. was injured.

The juvenile court declared the three children dependents of the court and removed them from their parents' custody, placing them with a relative. The court ordered Mother to participate in a 12-week parenting program, a substance abuse program and individual counseling to address, among other things, anger management and the effects of domestic violence on children. In addition, the court ordered the children to participate in individual counseling and Mother to participate in conjoint counseling with the children. The court ordered monitored visits for Mother with her children and gave Department discretion to liberalize those visits. The court directed Department to provide Mother with reunification services. The court set the matter for a six-month review hearing.

2. *The Six-Month Review Hearing*

In October 2011, Department prepared a report for the six-month review hearing that set forth the following. To a large extent, Mother had complied with the juvenile court's orders. She completed a 12-week parenting skills class, a 15-week anger management class, and a six-month substance abuse program that included random testing. In August 2011, she began individual counseling. Department recommended continuation of reunification services.

The issue of visitation was fluid throughout this period. At first, Mother did not comply with the court's orders regarding visitation. She "had unmonitored access to the children during the time that the visits were supposed to be monitored[,] . . . took the children to solicit for food from strangers[, and] took [one] child . . . from school after his pre-school graduation."

However, thereafter, Mother consistently visited her children and interacted appropriately with them. As a result, Mother filed a section 388 petition requesting unmonitored visits with her children. The trial court, with Department's agreement, granted the motion permitting two unmonitored visits per week. But subsequently, the children reported that they were involved in two physical altercations during these unmonitored visits.[2] As a result, Department filed a section 388 petition to return Mother to monitored visits.

As for the court order that Mother participate in conjoint counseling with her children, the October 18, 2011 report explained that the children were receiving individual counseling but that the program was "unable to facilitate conjoint sessions due to scheduling conflicts and the children's participation in summer school. Subsequently, the children transitioned to another counseling agency to ensure the therapist can provide services. . . . The children's therapist reported that she is still building rapport with the children and anticipates conjoint sessions with Mother and the children [in] a few months." A January 27, 2012 letter from Mother's counselor indicated the children were "prepared to begin conjoint therapy with their therapist and their mother in early 2012."

At the six-month review hearing conducted on February 8, 2012, the juvenile court found that Mother's participation in the case plan had been "partial" and that Department had provided reasonable services to Mother. The court

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[2] The children told the social worker that in one incident, Mother and her boyfriend "held Ashanti down on the ground while C. and S. hit and scratched her. The second fight was between Ashanti and C. Both children reported that the Mother was recording the fight and encouraged Ashanti to 'beat up' C. because of her behavior. . . . S. reported that Mother's boyfriend . . . punched him several times in the stomach during a visit and Mother did not intervene to protect [him]." Mother denied her children's claims. The children subsequently recanted their allegations but then conceded the recantations were false and were the product of pressure and verbal abuse from Mother.

granted Department's section 388 petition to return to monitored visits for Mother and directed the Department to continue to provide reunification services. Two weeks later, the juvenile court filed an order directing Department to obtain, among other things, a "recommendation from children's therapists concerning whether conjoint therapy with children is appropriate at the present time."

3. *The Twelve-Month Review Hearing*

Pursuant to Mother's request, a contested hearing was conducted to determine whether Department had provided reasonable services. The matter was submitted on Department's reports and testimony from Mother and the social worker.

Department's reports indicated that by January 2012, Mother had attended 14 individual counseling sessions. Conjoint counseling with Mother and her children began on April 17, 2012, consisting of a weekly one-hour session. In addition, the therapist met with each child individually.

Mother had two monitored visits per week with her children although Department conceded that "[a]pproximately four to five visits have been canceled because there is no [Department] staff available to monitor the visits." On some occasions, Mother brought her children's cousins to the monitored visits. During those visits, the children would play with each other while Mother spoke on her cell phone "for 20-30 minutes." During this period, "there [were] several instances where Mother [was] not appropriate with [her] children and use[d] poor judgment in allowing inappropriate play." For instance, Mother allowed six-year old S. to play with a BB gun that he had taken from his cousin's purse. On another occasion, Mother "pushed [Ashanti] up against the [bathroom] wall and stated, 'you are going to be home in a few months and I am going to get you straight.'"

And several times, Mother was verbally abusive to her children, including calling her daughters dumb for letting the caregiver give them perms.

Social worker Adrienne Snowden, called as an adverse witness by Mother, testified that Mother had completed all requirements of the case plan except for conjoint counseling. Nonetheless, Snowden was concerned about Mother's "interaction with the children, statements that she makes to the children during monitored visitation." Snowden believed that Mother needed additional services to address that problem.

On the issue of visitation, Mother attempted to establish, through examination of Snowden and introduction of Snowden's Title XX reports,[3] that numerous monitored visits had been cancelled (more than the four to five recited in Department's report) because of Department's inability to furnish a monitor; that often Mother was not informed of that fact beforehand; and that as a result, Mother was kept waiting for her children who never arrived.

Mother testified and denied that she called her daughters dumb for permitting their caregiver to give them perms; that she pushed Ashanti against the bathroom wall; and that she knowingly let S. use the BB gun.

Department recommended that reunification services continue to be provided to Mother pending the 18-month review hearing.

Mother argued that Department had not provided reasonable services because: (1) she had missed 11 visits with her children as a result of Department's poor planning and (2) conjoint counseling did not commence until April 2012 although the court had first ordered it in April 2011.

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[3] Snowden's Title XX reports from November 14, 2011 through April 16, 2012 were introduced into evidence. Because the reports were not part of the record on appeal, we granted Mother's motion to augment the record to include them. Thereafter, the Clerk of the Superior Court filed a certificate stating that the documents could not be found.

Department argued that it had provided reasonable services. On the issue of visitation, it conceded that there had been some missed visits but questioned whether the evidence supported Mother's claim of 11 missed visits. Regardless, Department noted that it had a limited amount of individuals who can function as monitors; that it did the best it could with its limited resources; and that "hopefully, in the future, the visitation can be arranged without so many missed visits."[4] On the issue of conjoint counseling, Department stated that it commences "when the child's therapist deems it appropriate. And, normally, [the] child's therapists do not deem it appropriate immediately after reunification services are ordered. [¶] If [the] courts want to start ordering us to immediately provide conjoint counseling,

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[4] Department argued: "With respect to the Mother, if I'm understanding [her attorney's] argument, she's already said that there were no reasonable efforts because the Department did not provide regular visitation for the Mother. And she did quote something like 11 missed visits. I'm not sure there's evidence to support 11 missed visits. Certainly, there is evidence to support some missed visits.

"And, as [counsel for the children] said, unfortunately, services by the Department are not expected to be perfect. They're expected to be reasonable. This is why we frequently encourage parents to come up with friends or relatives who can be monitors, because the Department, unfortunately, as every government agency does, is short of funds.

"And we don't have an infinite number of people who can monitor visits for parents, especially when there's restrictions on when those visits can take place, such as the fact that the children are in school most of the day. We can't really do weekend visits. This is just a fact of life.

"Legislatures frequently enact laws, and then they don't provide money to support those laws. That's something that the criminal justice complains about. It's also true for the social justice system. There's just not enough money to do everything.

"We did what we could. We tried to make up the visits. It wasn't a perfect system. I'd be the first to admit it. We gave her as many visits as we were able to monitor with the resources we have.

"Again, we can likely arrange many more visits if Mother was able to come up with a monitor that could be approved by the Department. I know a couple of the people that she's offered have not been approved for a variety of reasons. . . .

"It's a system that is not perfect and does not have a lot of resources. That's the problem that we always have to deal with."

we can do that. But right now, it says, when [the] children's therapists deem it appropriate, we're more or less constrained by that particular aspect of it." Counsel for the children concurred in Department's recommendation to continue to provide services to Mother and its assessment that it had provided reasonable services even though "the visitation has not been perfect."[5]

First, the trial court found, based upon the documentary and testimonial evidence, that returning the children to Mother's custody would create a substantial risk of harm to them so that it was necessary to continue the placement of the children with their relative. In this proceeding, Mother does *not* challenge that ruling.

Turning to the issue of the sufficiency of the reunification services, the court found that "under the circumstances" the services Department had provided were "reasonable. They're not perfect. They're far from perfect. And I do think the court should and will make certain orders to ensure that more efforts are made." In regard to visitation, the court began by noting "that it wasn't long ago that [Mother] had unmonitored visitation. But because of circumstances that arose, the visitations went back to monitored visitation. And some of the issues still come up since the last hearing on this matter. And while I agree that there is much to be

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[5] Counsel for the children explained: "I would agree with the argument . . . that the visitation has not been perfect. And this is sort of a systemic problem with the HSA aides not doing a very good job, not just in this case, but in numerous cases.

"But the Mother has had a significant number of visits. And I think that the missed visits that she had don't rise to a level of a no reasonable services finding.

"And part of this, the Mother kind of brought on herself, because she did have unmonitored visits. And because of her conduct during the unmonitored visits, the department filed a [section] 388 [petition], which was granted. And then her visits went back to monitored. And then we find ourselves in the predicament we are today.

"And it's somewhat misleading, the number of missed visits, because as was indicated during testimony, some of the visits were make-up visits. So it's not like all the visits didn't happen. There were some make-up visits apparently."

hoped for in terms of services by the Department to the parents and, in particular, this case as well, the court also recognizes the limitations because of economic reasons, among others, and time constraints."

With respect to conjoint counseling, the court stated that "it would just not be appropriate for [it] to order counseling when it's not right, when it's not appropriate. That doesn't make sense, of course, conjoint counseling when the parties, and particularly the children, just aren't ready for it. [¶] . . . I'm not prepared . . . to order or force conjoint counseling, until such time as the therapist for a child renders an opinion in regard to that."

The court, acknowledging that Mother had made significant progress in complying with the case plan, ordered Department to continue to provide services. In addition, the court granted Department discretion to liberalize Mother's visitation schedule to "increase the opportunity to provide for more consistency in the visitations" and "if appropriate, maybe part of the solution regarding the visitation is that Mom's visitation might be unmonitored." When Mother's counsel voiced concern that the previously missed visits could ultimately result in termination of Mother's parental rights, the court responded: "She's not losing her children as long as she's complying. No one has even indicated that we're taking her children away from her. [¶] . . . I'm directing the Department to ensure that [she] is receiving her visitation."

The court set the matter for a section 366.22 hearing.

DISCUSSION

In this proceeding, Mother purports to appeal from the juvenile court's "final findings and orders on May 3, 2012 . . . that [Department] made reasonable efforts to provide her with reunification services." In particular, she contends that the "long delay in providing conjoint counseling services was unreasonable" and

Department's "execution of its responsibility to ensure visitation was unreasonable." (Capitalization omitted.) Relying upon *Melinda K., supra,* 116 Cal.App.4th 1147, we conclude that Mother cannot appeal from the May 3, 2012 finding because although she disagrees with it, she is not aggrieved by it.[6] We therefore dismiss the appeal.

In *Melinda K.*, the parent sought a contested hearing at the six-month review hearing on whether Department had adequately provided counseling services to her child as had been previously ordered. (*Melinda K., supra,* 116 Cal.App.4th at p. 1151.) After taking evidence, the juvenile court found that Department had provided reasonable reunification services, including counseling, and ordered a six-month extension of those services. (*Id.* at p. 1152.)

The parent appealed to contest the finding that reasonable services had been provided, arguing that there had been an unreasonable delay in providing counseling services to her child. The parent relied upon section 395 to argue that the contested finding was appealable.

Section 395 provides: "A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed from as an order after judgment." This provision has been interpreted to mean that "[t]he dispositional order is the 'judgment' referred to in section 395, and all subsequent orders are appealable." (*In re S.B.* (2009) 46 Cal.4th 529, 532.)

Melinda K. concluded that section 395's language "does not authorize an appeal from the isolated finding in this case that reasonable reunification services had been provided." (*Melinda K., supra,* 116 Cal.App.4th at p. 1153.) *Melinda K.*

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[6] Department raised this point in its respondent's brief. Mother responded in her reply brief.

reasoned: "The juvenile court is required to make numerous specific findings throughout the dependency process. For example, when family reunification services have been ordered, the court is required expressly to make a finding at each subsequent hearing as to whether reasonable services have been provided during each review period. [Citations.] When the juvenile court makes a finding that reasonable services were provided, a parent . . . may not be immediately impacted by that finding. Here, for example, mother was not aggrieved by the finding that reasonable reunification services were provided, given that services were continued for at least another six months and no negative consequence flowed from the reasonable services finding." (*Ibid*.)

Melinda K. noted that it was significant that the parent did "not challenge the nature or adequacy of the reunification services ordered. Nor does she challenge the juvenile court's order to continue such services. Additionally, mother does not challenge the court's order that her daughter not be returned to her based on its finding that doing so would be detrimental to the child's safety, protection, physical or emotional well-being. Mother does not contest the court's finding of detriment, nor does she contend that her daughter should have been returned to her at the six-month review hearing." (*Melinda K.*, *supra*, 116 Cal.App.4th at p. 1154.)

Melinda K. therefore concluded: "*We do not believe that section 395 permits a party to appeal a finding in the absence of an adverse order resulting from that finding. Accordingly, we conclude that there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding*." (*Melinda K., supra*, 116 Cal.App.4th at pp. 1153-1154, italics added.)

Melinda K. noted that its "conclusion would be different if the court had found that the child's return to mother would be detrimental to her because mother had not availed herself of services provided when mother contended that the Department had failed to provide her with reasonable services. In that event, the juvenile court's order that the minor not be returned to mother would be premised on its finding that reasonable services had been provided, and a direct appeal from that order would be appropriate and necessary to address the issue. [Citations.]" (*Melinda K.*, *supra*, 116 Cal.App.4th at p. 1154.)

This case is virtually indistinguishable from *Melinda K.* The juvenile court found that Department had offered reasonable services to Mother and made no adverse order based upon that finding. Instead, it acknowledged that Mother had made significant progress in complying with the case plan, ordered continuation of reunification services, and granted Department discretion to liberalize the visitation schedule (including the possibility of moving to unmonitored visits) with the goal of increasing the opportunity for consistent visitation. In sum, the juvenile court's order was entirely favorable to Mother. Further, as in *Melinda K.*, Mother does not challenge the juvenile court's finding of detriment and does not contend that her children should have been returned to her at the 12-month review hearing. We therefore conclude that the juvenile court's finding that reasonable reunification services had been provided does not constitute an appealable order.[7]

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[7] *Melinda K.* held that a parent could challenge the juvenile court's finding that reasonable services had been offered by a petition for writ of mandate if the "finding . . . may ultimately have a significant effect on the dependency proceedings [because in that way] sequential appeals and their accompanying delays will be avoided. [Citation.]" (*Melinda K.*, *supra*, 116 Cal.App.4th at p. 1157.) Mother does not ask us to treat her appeal as a writ petition and we see no compelling reason to do so because, as we explain above, nothing in the record supports a claim that the finding of reasonable services will negatively affect Mother in subsequent proceedings. And perhaps more to the point, the remedy for a failure to provide reasonable services is an order for the continued provision

Mother advances several arguments to avoid this conclusion.

First, she argues there is an adverse consequence to a finding of reasonable services because it "is a necessary step in the statutory process for terminating services and setting a hearing to determine the permanent plan for a child. [¶] . . . Prejudice to a parent from an affirmative finding cumulates at each successive phase of the juvenile proceeding. . . . With two findings of reasonable services already made and the 18-month hearing fast approaching, [Mother] was nearly out of time—conjoint therapy began April 17 . . . and the 18-month hearing was scheduled 6 weeks thereafter on June 20—she had just two months."[8]

On this record, Mother's argument is unpersuasive speculation. The argument completely disregards the positive tenor of the trial court's comments at the 12-month review hearing about Mother's progress, its implicit acknowledgement that Department, not Mother, was responsible for the missed visits, and the following response it made when Mother's counsel advanced the same speculative argument as made now: "She's not losing her children as long as she's complying. No one has even indicated that we're taking her children away from her. [¶] . . . I'm directing the Department to ensure that [she] is receiving her visitation."

Next, Mother relies upon *In re T.G.* (2010) 188 Cal.App.4th 687 (*T.G.*), a case which both distinguished *Melinda K.* on its facts and held that its conclusion was inconsistent with Supreme Court precedent.

In *T.G.*, at the six-month review hearing, the juvenile court found that reasonable services had been offered to the parent and ordered that services be

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of services—an order Mother already has and which can, if appropriate, be continued again. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975.)

[8] None of the briefs state what, if any, subsequent action the juvenile court has taken in this case.

continued. But the juvenile court also found that the parent had made inadequate progress toward alleviating or mitigating the causes requiring removal of his children and that the parent had failed to make substantive progress in completing the case plan. Further, the court did not find that there was a substantial probability that custody of the children would be returned to the parent. (*In re T.G.*, 188 Cal.App.4th at pp. 691 & 693.) *T.G.* reasoned that "all of these findings are interrelated. Because the [trial] court found Father's progress inadequate and concluded there was no substantial probability of return, we cannot say that this case is analogous to *Melinda K.* Nor can we say for certain that no negative consequences flowed from the court's finding that reasonable services were provided up until the six-month review hearing." (*Id*. at pp. 693-694.) *T.G.* therefore concluded that the parent could appeal from the order finding reasonable services. Here, in contrast, the juvenile court made no findings adverse to Mother when it found reasonable services had been offered. Thus, *T.G.* does not support Mother's position that the finding is appealable.

T.G. also questioned *Melinda K.*'s holding in light of *In re S.B.*, *supra,* 46 Cal.4th 529. *In re S.B., supra,* resolved a conflict among the courts of appeal about whether a parent could appeal from the trial court's finding that the parent's children were probably adoptable and its order that efforts be made to locate an appropriate adoptive family. The Supreme Court held that the parent can appeal from the "order that efforts be made to locate an appropriate adoptive family" (§ 366.26 (c)(3)) and on that appeal contest the predicate finding of probable adoptability because the interests of the parent(s) and child are substantially affected by the order. (*Id*. at pp. 536-537.) We disagree with *T.G.* that the Supreme Court's holding undermines *Melinda K. In re S.B., supra,* held simply that the parent could appeal from an order (not a finding) potentially adverse to the parent. *Melinda K.,* on the other hand, held that a parent cannot appeal from a trial

court finding (not an order) that reasonable services had been provided because it had no adverse affect upon the parent. These two holdings are not inconsistent.

DISPOSITION

The appeal from the trial court's May 3, 2012 order is dismissed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.