Filed 1/23/13 In re A.R. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.R. et al., Minors. _____ ANGELINA R., Petitioner, v. SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	B242213 (Los Angeles County Super. Ct. No. CK550631)

ORIGINAL PROCEEDINGS in mandate. Timothy Saito, Judge. Petition Denied.

Angelina R., in pro. per., for Appellant.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Melinda S. White-Svec, Deputy County Counsel, for Real Parties in Interest.

Angelina R. (Mother) is the mother of twin girls, A.R. and R.R., born in February 2010. She seeks writ intervention by this court to overturn the trial court's order terminating reunification services and setting an implementation hearing under Welfare and Institutions Code section 366.26.[1] As we shall explain, Mother has not presented a sufficient basis to justify intervention, and we shall deny her petition.[2]

In its answer to Mother's petition, the Department of Children and Family Services (DCFS) points out, Mother's petition fails to follow the requirements of California Rules of Court, rule 8.452, subd. (b), applicable to her petition. It neither includes a factual summary nor refers to relevant case law. The petition does address drug testing. In that respect, Mother claims that some of the drug tests in which positive findings were reported are erroneous because the results actually were negative. She also disputes the trial court's conclusions that DCFS made reasonable efforts to reunify her with her children in that it did not liberalize visitation. Mother was represented by counsel before the trial court, but is representing herself before this court. While we make some allowance as to her failure to fully comply with rule 8.452, we cannot reweigh the evidence. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) We have reviewed the record before the trial court, and find the challenged ruling is supported by the record and well within the trial court's discretion.

We briefly summarize some of the major points. A toxicology screen taken of the children at birth was positive for phencyclidine (PCP and benzodiazepine), indicating that Mother had ingested those drugs while pregnant and shortly before birth. Her parental rights with respect to another child, Keith, had been terminated in an earlier dependency proceeding. Mother had a long-standing drug problem, going back as long as 19 years, during which she used methamphetamine, PCP and other drugs. The reunification period had been problematic, to say the least. It had extended over a 27-month period, far beyond the normal, and had involved eight placements. The reunification plan required

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[1] All further statutory references are to this code.

[2] Mother also has asked that we consider new evidence, and that we stay pending trial court proceedings in this dependency case. We deny those requests.

drug testing. Mother's record for that was mixed. There were periods during which she regularly reported for testing, and for which the tests were negative. But there also were positive tests, at least one of which was quite recent, and a large number of no-shows. Mother completed some programs, but was uncooperative with DCFS and program personnel at others. A psychologist, Dr. Shah, had provided a favorable evaluation, but asked that it be disregarded because it was entirely based on information provided by Mother, who had been selective and had declined further interviews.

Mother did not physically appear at the hearing at which the court made the ruling from which the present petition is taken. But she did inform her attorney that she wanted to "fire" her. The court conducted a *Marsden* hearing (based on *People v. Marsden* (1970) 2 Cal.3d 118) in which she presented her reasons at an in camera hearing where she appeared by telephone); her request was denied. Her attorney asked the court to take the extraordinary step of ordering further reunification services despite the more than 2-year period during which they already had been furnished. Father's counsel joined in that request.[3] Counsel for the children and for DCFS each argued against the requested extension, and urged the court to set a hearing for termination of parental rights. The trial court denied Mother's request and set the case for the section 366.26 hearing. Referring to Mother's section 388 request for reconsideration of its earlier ruling terminating reunification services, the court summarized its reasons in the following terms:

> "With regards to the 388, the court, based on the evidence presented in this case, doesn't find changed circumstances nor is it in the best interests of the children to grant this motion.
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> "It's unfortunate in this case, the unforeseen circumstances in this case with regards to the change in returning, Mother's MRSA.[4] In this case there was evidence in this case that she may have had MRSA, which was contagious at the time, as well as County Counsel's medical emergency in this case did delay this case to some extent.

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[3] Father is not a party to this writ proceeding.

[4] "Methicillin-resistant staphylococcus aureus", a contagious disease.

"However, based on the evidence that was presented, based on the testimony, based on the documentation that was reviewed—the court has read and considered that and admits into evidence the evidence that we just went over with regards to the Department as well as the mother. Court finds continuing jurisdiction is necessary because conditions continue to exist which justified the court taking pursuant [to] Welfare and Institutions Code 300.

"Court finds by a preponderance of the evidence that return of the children to the physical custody of parents would create a substantial risk of detriment to the safety, protection, or physical, or emotional well-being of the children, creating a continuing necessity for and appropriateness of the current placement.

"Parents were ordered to participate in programs in this case. They have tried to participate in some of the programs. However, the court finds, by clear and convincing evidence, that the progress made towards alleviating or mitigating the causes necessitating placement by the parents has been partial in the case.

"The court finds that the department has complied with the case plan by making reasonable efforts.

"Court further notes that with regards to the evidence that was presented, Mother has been testing in this case; and, as counsel indicated, has been going through programs and has been testing. However, the results of those tests and her progress in the testing and the fact that there is a positive test for both methamphetamine and amphetamine just recently sheds light on her ability to be able to address the concerns that brought this matter to the court's attention Mother has been testing for approximately over a year. Results have been sporadic and mixed, negative and no-shows. Even as recent as April of this year her testing has not been consistent, with a no-show on 4-19-12.

"Mother has only recently enrolled in an aftercare program, per the report in this case. But her involvement has not been very well. And, as noted in the report, she was on the brink of termination.

"Visits by the mother have been inconsistent, missed visits, late visits, cancelled visits. Even recently Mother had no visits from April to May. As recent as May 16th, 2012, Mother did not show up for her visit—again, due to unforeseen circumstances in the case.

"Mother has had over two years of family reunification services. And, as noted, the children need to have stability in this case."

"Based on the overall evidence in this case, the track record and lack of insight with regards to the issues that brought this matter to this court's attention, as well as the most recent positive test for amphetamine and methamphetamines by the mother in the case, the court is going to terminate family reunification for the parents.

"The court finds it's in the best interest of the children to set a .26 hearing.

"The matter is set for a .26 hearing pursuant to Welfare and Institutions Code 366.26 on October 9th; R.P.P., 12-11-12."

Based on the record, this is a fair summary of the proceedings. Mother was in fact in only partial compliance with the reunification plan, and there is ample support for the conclusion that the best interests of the children were served by the ruling and would not have been by a further period of reunification services. That, after all, is the principal issue in dependency cases. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

DISPOSITION

The petition for writ intervention is denied, as is Mother's request to stay trial court proceedings.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.