Filed 9/26/12 In re Brooklyn W. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re BROOKLYN W., a Person Coming Under the Juvenile Court Law.	B237429 (Los Angeles County Super. Ct. No. CK81952)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ALEXIS W., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Alexis W. (Mother) appeals from the order terminating her parental rights over her daughter Brooklyn W. Mother contends that the jurisdictional and dispositional orders must be reversed because she was not given proper notice of the hearings at which those orders were made. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and David W.[1] (Father) are the parents of Brooklyn W. They have never been married and have not been together for some time.

Prior Petition

On April 22, 2010, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code[2] section 300 petition on behalf of Brooklyn, then 21 months old, alleging that she was a dependent of the court under subdivisions (a) (serious physical harm) and (b) (failure to protect).

On May 25, 2010, the juvenile court sustained counts a-1 and b-2, which, as amended, alleged that the parents have a history of engaging in domestic violence in front of Brooklyn, as well as count b-1, which alleged that Mother endangered Brooklyn by failing to place her in a car seat and by driving recklessly resulting in injury to Brooklyn. On April 6, 2011, the juvenile court terminated jurisdiction with a family law order granting each parent equal custody over Brooklyn.

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1 Father is not a party to this appeal.

2 All further statutory references are to the Welfare and Institutions Code.

Current Petition

On July 27, 2011, DCFS received a referral that Mother had physically abused Brooklyn, who was three years old. On August 31, after investigating the matter and determining that Mother had hit Brooklyn with a belt, DCFS took Brooklyn into protective custody and placed her with Father, who was nonoffending.

On September 6, 2011, DCFS filed a petition alleging that Brooklyn was a dependent child within the meaning of subdivisions (a) and (b) of section 300 as a result of Mother's physical abuse of Brooklyn (counts a-1 & b-1) and prior physical abuse of Mother's younger brother, Austin L.[3] (counts a-2 & b-2). The factual allegations in counts a-1 and b-1 were identical, as were the allegations set forth in counts a-2 and b-2.

DCFS gave Mother and Father telephonic notice of the date, time and location of the detention hearing to be held on September 6, 2011. DCFS also informed them of the current allegations. Both parents stated they were aware of the hearing and agreed to be present. Father appeared at the detention hearing; Mother did not. The court found that notice of the proceedings had been given as required by law, ordered Brooklyn detained from Mother and released to Father. The court further noted it would order monitored visitation for Mother "once she makes herself available to" DCFS. The court continued the matter to October 7 for a pretrial resolution conference and ordered DCFS to notice Mother.

On September 22, 2011, DCFS notified Mother and Father that a jurisdiction/disposition hearing would be held on October 7 at 8:30 a.m. The notice further advised the parents that "[a] petition has been filed . . . on behalf of [Brooklyn], alleging that said minor comes within the provisions of subdivision[] b of section 300." Reference to subdivision (a) of section 300 was inadvertently omitted. In addition, the notice stated, "The court may proceed with this hearing whether or not you are present.

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[3] In December 2006, Mother's minor brother was removed from Mother's care after DCFS received a referral that Mother had struck brother with a belt on at least two occasions. Mother admitted she had done so, and DCFS substantiated the referral.

At the hearing on the petition, the court may receive evidence and determine whether the allegations are true. If any of the allegations are found true, the court may proceed to disposition, declare the child(ren) to be dependent child(ren) of the juvenile court, remove custody from the parents or guardians, and make orders regarding placement, visitation and services."

On September 27, 2011, Father informed DCFS that Mother dropped off Brooklyn's clothes and toys that had been at her home on Father's front porch. On October 3, 2011, DCFS received the police report which noted that Mother stated she had gone through the same situation with DCFS in the past and lost everything. Mother said she was not going through that again and that Father could just have Brooklyn.

In its jurisdiction/disposition report, DCFS noted that during an interview on September 27, 2011, Mother "stated that she is not going to attend any court hearings in Children's court in regards to child, Brooklyn." Mother further stated that "she is not going to complete any services for DCFS or any court ordered services" and that "she is not going to visit" Brooklyn. (Bold and underscoring omitted.) Finally, Mother stated "that she is going to step away from child . . . and allow father to care for her child at this time."

On October 7, 2011, Father appeared in court. Mother did not. The court found that notice of the proceedings had been given to all parties. In response to a query by the juvenile court, counsel for DCFS stated: "Well, Your Honor, we're here for a [pretrial resolution conference]. If the court's comfortable with going forward, we can do that, or, if the court prefers, to set it for adjudication and notice Mother." The court was not inclined to delay, explaining: "Well, my view is that we've noticed Mother repeatedly, and she's rather adamant that she's not going to participate. She's not going to come in. So I don't know that continuing it anymore is going to get us any further in the process. It's just going to age the case." Counsel for DCFS and Brooklyn stated they were ready to proceed with the adjudication. Brooklyn's counsel, however, noted that the "only issue is going to be with dispo[sition] because I would like to terminate with a custody order." The court replied, "All right. Then why don't we go ahead and do the

adjudication, and then the Department can notice for the dispo[sition] just to ensure that there are no problems."

The court found counts a-1 and a-2 to be true as pled and dismissed counts b-1 and b-2. The court found Brooklyn to be a person described by section 300. The court then continued the matter to November 4, 2011 for disposition.

On November 4, 2011, the court found that notice of the proceedings had been given as required by law. Mother again did not appear. Counsel for Father and Brooklyn asked the court to terminate jurisdiction with a family law order. Counsel for DCFS requested a continuance of two weeks to hold a team decision meeting to address terminating jurisdiction with an exit order. Following a discussion regarding the various options, the court declared Brooklyn a dependent of the court under subdivision (a) of section 300, ordered her removal from Mother and placed her with her Father. The court terminated jurisdiction with a family law order giving Father sole legal and sole physical custody of Brooklyn and granted Mother monitored visitation. The court then continued the matter to November 10, 2011, for submission of a family law order.

On November 10, 2011, Mother finally made an appearance. The court advised her, "Today was the date I was signing the family law order. I have in fact already terminated jurisdiction in this case and before I sign the family law [order], I was having you come in to let you know that." The court explained that Father would be given sole legal and sole physical custody of Brooklyn and that Mother would have visitation.

The juvenile court confirmed with Mother that she previously had been represented by "Miss Humphrey" and then asked Miss Humphrey to come into the courtroom. The court then stated, "Miss Humphrey is now present in court. She previously represented [Mother] who is present in court, however, she was not reappointed when this petition was submitted because [Mother] never came to court. [¶] Miss Humphrey, I was explaining to [Mother] that I'm getting — I have already terminated jurisdiction. I'm getting ready to sign the [family law order]. I called you in because since she was your client, if she has any questions or you have any questions, now would be the time." When the court asked Mother if she wanted to speak to Miss

Humphrey before it signed the family law order, Mother said, "No, Ma'am." The court then signed the order, provided Mother with a copy and noted that the case was "now closed."

This appeal followed.

DISCUSSION

Notice of Jurisdiction Hearing

Mother acknowledges that she was given notice of the jurisdictional hearing but contends the notice was defective in two particulars. First, she claims the notice was defective because it failed to set forth each subdivision under which the proceedings had been initiated as required by section 291, subdivision (d)(3). Second, she maintains notice was defective because a copy of the petition was not attached to the notice as required by section 291, subdivision (d)(7).[4]

"Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend." (*In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1114; accord, *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106.) "Unless there is no attempt to serve notice on a parent, in which case the error has been held to be reversible per se [citations], errors in notice do not automatically require reversal but are subject to the harmless beyond a reasonable doubt

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[4] Section 291 states in relevant part: "After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner: [¶] (a) Notice of the hearing shall be given to the following persons: [¶] (1) The mother. [¶] . . . [¶] (d) The notice shall include all of the following: [¶] . . . [¶] (3) Each section and subdivision under which the proceeding has been initiated. [¶] . . . [¶] (7) A copy of the petition. [¶] (e) Service of the notice of hearing shall be given in the following manner: [¶] (1) If the child is detained the persons required to be noticed are not present at the initial petition hearing, they shall be noticed by personal service or by certified mail, return receipt requested."

standard of prejudice. [Citations.]" (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.) Thus, the lack of strict compliance with notice requirements in a dependency proceeding does not render subsequent proceedings void in the absence of prejudice. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 625-626; *In re Daniel S.* (2004) 115 Cal.App.4th 903, 912-913.)

With regard to the DCFS's inadvertent failure to list subdivision (a) of section 300 on the notice and its failure to attach a copy of the petition to the notice, Mother fails to explain how she suffered prejudice from these oversights. Prior to Brooklyn's detention and the filing of the petition, a DCFS social worker met with Mother and interviewed her about the allegations of physical abuse of Brooklyn and her maternal uncle. During this interview, Mother admitted that she struck Brooklyn, albeit denying that she used a belt, and that she disciplined her minor brother by hitting him with a belt. Moreover, as early as September 2, 2011, DCFS informed Mother of the current allegations, which included both serious physical harm to Brooklyn and her maternal uncle and failure to protect Brooklyn. Inasmuch as the factual allegations in counts a-1 and b-1 were identical, and the allegations in counts a-2 and b-2 were identical, Mother had full notice of the factual predicate for the allegations against her. She suffered no prejudice and, as such, the defects in notice were harmless beyond a reasonable doubt. (*In re J.H.*, *supra*, 158 Cal.App.4th at p. 183; *In re Daniel S.*, *supra*, 115 Cal.App.4th at pp. 912-913.)

Notice of Disposition Hearing

Mother contends that reversal is mandated because DCFS failed to give her any notice of the disposition hearing. We disagree and further note that Mother's characterization of the facts is not quite accurate.

As detailed above, DCFS gave Mother notice that a jurisdiction/disposition hearing would be held on October 7, 2011 at 8:30 a.m. The notice advised Mother that the court could proceed with the hearing if she did not appear. It further advised that if the court found any of the allegations to be true, it could proceed to disposition, declare Brooklyn to be a dependent child, remove her from Mother's custody, and make necessary orders regarding placement, visitation and services. Rather than conducting

the disposition hearing on October 7, however, the court continued it to November 4 and directed DCFS to give Mother notice of the continued hearing date.

Although the juvenile court's minute order of November 4, 2011 states that notice of the proceedings had been given as required by law, the reporter's transcript reflects no such finding. Indeed, there is no evidence in the record that DCFS sent out a separate notice for the November 4 hearing, and, on appeal, DCFS concedes no such notice was given.

When a properly noticed dependency hearing is continued, and notice of the continued hearing is not given to the parent, a constitutional error has been committed. However, the error does not implicate the fundamental fairness of the dependency proceedings and thus is not a structural error, requiring reversal per se. Rather, the error is a trial error subject to review under the *Chapman*[5] harmless beyond a reasonable doubt standard. (*In re Angela C.* (2002) 99 Cal.App.4th 389, 392-396 [failure to give notice of continued section 366.26 hearing].)

In this case, DCFS gave Mother notice of the initial jurisdiction/disposition hearing. Its failure, therefore, to notify her of the continued disposition hearing is a trial error subject only to the harmless-error standard of *Chapman*. (*In re Angela C.*, *supra*, 99 Cal.App.4th at pp. 392-396.) Application of this standard compels the conclusion that the trial error under review here was harmless beyond a reasonable doubt.

Early in the proceedings, Mother made it very clear that she had no intention of participating in her daughter's case. Moreover, when Mother finally appeared in court on November 10, 2011 and the court stated that counsel had not been appointed for her because she never came to court, Mother never claimed she had no knowledge of the various hearings or that she would have appeared if proper notice would have been given. Indeed, when given an opportunity to confer with her former attorney, she declined. Mother's actions at all times were consistent with prior statements "that she is not going to attend any court hearings in Children's court in regards to child, Brooklyn," that "she

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5 *Chapman v. California* (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed.2d 705].

is not going to complete any services for DCFS or any court ordered services," that "she is not going to visit Brooklyn" and "that she is going to step away from child . . . and allow father to care for her child at this time." We conclude that DCFS's failure to give Mother notice of the continued disposition hearing was harmless beyond a reasonable doubt. (*In re James F.* (2008) 42 Cal.4th 901, 918 ["If the outcome of a proceeding has not been affected, denial of a right to notice and hearing may be deemed harmless and reversal is not required."].) We also note that Mother, by intentionally refusing to participate in the dependency proceedings, can be said to have forfeited her lack of notice claim.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.