Filed 10/12/16 In re T.V. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

In re T.V., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B268265 (Super. Ct. No. 1378933) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. C.V., Defendant and Appellant; P.V., Defendant and Respondent	

C.V. (Mother) appeals orders of the juvenile court which terminated the juvenile dependency proceeding (Welf. & Inst. Code, § 300, subd. (c))[1] for her daughter T.V., a minor within juvenile court jurisdiction, and denied Mother's section 388 petition without holding an evidentiary hearing. We affirm.

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

FACTS

In May 2014, the Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition. It alleged that Mother had created "a detrimental environment" for her child, who is a victim of Mother's emotional abuse, and the child "now wants to kill herself."

DCFS said that on April 9, 2014, Mother and T.V. were vacationing in New York. While driving back to New York from Connecticut, Mother became angry. DCFS alleged that Mother told her 13-year-old daughter, "[G]et the fuck out of the car. And get the fuck out of my face. You can get raped for all I care. You are in New York City you ungrateful bitch. You don't deserve anything. You deserve to be dumped and put into the streets. I want you out of my car and I want you raped, I want you kidnapped, I don't care. Thanks for reminding me that you suck as a human being. I am ashamed to have you as my daughter."

After learning about this incident, the child's therapist contacted police. The police transported the child to a psychiatric hospital in Los Angeles. The child was not admitted. She returned home with Mother.

On April 21, the child told a social worker that she wanted to die. The child was hospitalized at the UCLA Neuropsychiatric Institute on April 24, 2014.

At a May 20, 2014, hearing, the juvenile court found that 1) the child "is a person described by [section] 300," and that 2) for her physical and emotional health, she must be "removed" from Mother's home and placed with P.V., her father (Father).

At the jurisdictional hearing, the juvenile court found Mother made "threatening and inappropriate remarks towards the child which [impact] has resulted in the child demonstrating suicidal ideation and depression as a result of the emotional abuse." It ordered Mother to receive weekly visits with the child in "a therapeutic setting."

The juvenile court held a contested disposition hearing on December 1, 2014. It declared the child a "dependent child of the court," and found she is "suffering

severe emotional damage." It ordered family reunification services for Mother. The court subsequently transferred the case to Santa Barbara County where Father resides.

On April 14, 2015, Mother filed a section 388 petition requesting that "Family Maintenance be ordered for her and [the child]" so the child could reside with her in Pasadena. On September 25, the juvenile court conducted a six-month review and a hearing on Mother's section 388 petition. It denied Mother's request for an evidentiary hearing on the section 388 petition. It found she made "no showing of changed circumstances" in the best interests of the child.

The Santa Barbara County Child Welfare Services (CWS) recommended that 1) the dependency proceeding be terminated because there was no longer "a safety issue" for the child, and 2) custody and visitation should be determined in family court.

The juvenile court adopted the CWS recommendations. It ruled an evidentiary hearing on the six-month review was not necessary. It terminated dependency jurisdiction and its order incorporated by reference the court's prior orders for custody to Father and supervised visitation for Mother.

DISCUSSION

The Section 388 Petition

Mother contends the juvenile court erred by denying her section 388 petition without conducting an evidentiary hearing. We disagree.

Section 388, subdivision (a) allows a parent to petition to modify an order of the juvenile court. (*In re Andrew L.* (2004) 122 Cal.App.4th 178, 190.) The burden is on the parent to show "'that there is new evidence or that there are changed circumstances that make a change of placement'" or a modified order appropriate. (*Ibid.*) "'The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.'" (*Ibid.*) A showing that there are new facts and changed circumstances by itself is insufficient to obtain section 388 relief. The parent must show the changes sought are in the best interests of the child. (*Ibid.*)

A petition that only shows "changing" circumstances is not sufficient to require an evidentiary hearing. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) Such a hearing is only required where the parent makes a sufficient showing of "changed circumstances" for the benefit of the child. (*Ibid.*) The petition should explain "'the reason the change was not made before.'" (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) "The fact that the parent 'makes relatively last-minute (albeit genuine) changes' does not automatically tip the scale in the parent's favor." (*Ibid.*) A section 388 petition may not be based on a parent's conclusory assertions. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Showing of New Facts and Changed Circumstances

Father contends the juvenile court properly found Mother did not make a sufficient showing of changed circumstances. He claims Mother did not show she successfully overcame the factors that caused her to abuse the child.

In the September 25, 2015, status review report, CWS said that Mother and the child "no longer need a monitor during [visitation]." It also said "the physical care and custody" of the child should remain with Father. CWS attached and "incorporated" by reference a June 17, 2014, assessment by Lynda Fick, Mother's psychotherapist, who stated Mother needed to "increase her understanding in the following areas": 1) "her physical [condition] and how her condition affects her parenting," 2) "the effects of domestic violence on [the child]," 3) "her need as the mother to be accountable for parent-child communication," 4) understanding "a child's expression of suicide," 5) "a child's cutting behavior," 6) the child's "emotional development tasks," 7) the "negative effects of a child's low self-esteem," 8) the "stressors to the child when parental polarization of emotions occurs," and 9) "more effective means of coping and managing stress."

Mother's section 388 petition requested unmonitored visitation or custody. In her nine-page declaration, Mother said, "[F]rom August 1st, 2009, I was [T.V.'s] sole custodial parent, and she lived [] with me until I accompanied her for her voluntary self-admission into UCLA on April 23, 2014." She said, "On April 9, 2014 . . . I had a

terrible, angry outburst. . . . This is the incident that was the basis of the allegation that the court sustained on July 28, 2014." Mother claimed Father enrolled the child in a school which is "not an environment conducive to making new friends." The child "has spoken to me about being 'bored' now." Mother said, "Before [Father] fought to have [T.V.] removed from her life in Pasadena . . . [T.V.] was dealing with issues, she was constantly engaged in exciting and rewarding activities of her choosing: debate, fencing, musical theatre productions, etc. . . . I believe [T.V.] hopes for that life to begin again, just as I and her community of friends in Pasadena do as well."

The claim that Mother's former home environment was better for the child was previously rejected by the juvenile court. The court found the child had to be removed from that environment for her safety. A significant portion of the declaration referred to matters that were not new. Moreover, Mother did not mention the nine factors CWS and Fick said she needed to understand and address. She did not state facts showing she successfully completed therapy. Nor did she specify how she had improved her parenting skills, her understanding of domestic violence, suicidal behavior, and the child's emotional development.

In her section 388 petition, Mother declared that she "has engaged in individual therapy (53 sessions), which *has addressed the behavior* that was the subject of the sustained allegation." (Italics added.) But such a conclusory assertion does not suffice. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) Mother did not state what she had learned in therapy or how she would accomplish anger management. She claimed she had apologized to her daughter and had made progress in therapy. But the juvenile court noted Mother made these same claims prior to the disposition hearing. Where "the reason for the dependency" is "very serious," a parent's awareness of the problems and willingness to take responsibility is not enough to support a section 388 petition. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 447.) Parents must make a satisfactory showing that they have addressed "the causes" of the dependency. (*Ibid.*)

Mother attached an April 10, 2015, declaration by Fick to the section 388 petition. Fick said Mother participated in 53 therapy sessions. "[Mother] has grown

through this process and is highly responsive to suggestions made to her by clinicians. She fully understands she must alter herself to be a better parent to [T.V.] and be able to meet her emotional needs." She "is prepared to resume conjoint therapy with her daughter and eager to move forward with any issue that is an obstacle to their relationship." In a June 30, 2015, letter, Fick said that Mother "appreciates the conjoint sessions with her daughter and feels that they have been able to address issues more deeply with each successive conjoint therapist. [Mother] is currently working on skills designed to help [T.V.] articulate her feelings when she becomes resistant, as teens sometimes do."

But Fick did not say Mother had successfully completed therapy. (*In re Baby Boy L*, *supra*, 24 Cal.App.4th at p. 610 [a showing of "changing" circumstances by itself is not sufficient].) Fick's conclusory statements did not provide the court with specific facts about her progress on each of the nine factors mentioned in the June 17, 2014, assessment. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250; *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1380 [psychological conclusions must be supported by sufficient "foundational facts" to be "probative"].)

A report by William Bauer, Ph. D., was also attached to the section 388 petition. He said, "I do not believe a monitor is necessary to oversee" visitation between Mother and T.V. But he added, "I recommend that for the time being a monitor be assigned to them temporarily. [T]his would be for their mutual benefit . . . ." The subject matter of that report largely involved events that occurred prior to the December 1st disposition hearing. Bauer also filed a short declaration dated April 8, 2015. But much of its subject matter related to "conjoint therapy sessions" between Mother and T.V. in 2014. In conclusory language he mentioned notable "improvement in the mother-child relationship." He described problems he had with a social worker and another therapist. But he did not discuss the nine factors mentioned in the June 17, 2014, assessment. The juvenile court could find Fick's and Bauer's reports discussed Mother's progress in a controlled environment--monitored visitations with the child, but were not sufficient to show Mother's ability to successfully cope in a stressful unsupervised environment.

Showing on the Bests Interests of the Child

Father contends that even if there were changed circumstances, the juvenile court could reasonably find Mother did not show the changes she sought were in the best interests of the child. We agree.

CWS recommended that the child "remain in the physical care and custody of her father . . . ." It noted that Mother felt she could provide a better home for the child in Pasadena. But Mother "has caused trauma to her daughter." "The father has demonstrated the ability to care for the child and provide her a safe home." CWS noted that Father reported that T.V. is working and "attends a fine school." T.V. "has made many friends while living in Santa Barbara." CWS said, "The father has met the minor's emotional, physical and developmental needs and . . . has shown he can adequately supervise the minor. "

The juvenile court could find Mother's claim that the child was bored in Santa Barbara was insufficient to counter the CWS assessment about the current stability of the child's environment in Father's home. Mother claimed she should receive unsupervised visitation. But a Bauer assessment attached to her section 388 petition indicated that a monitor should be assigned "for the time being."

CWS said that "the allegations in Mother's 388 petition do not establish she can apply her newly learned parenting skills on a sustained basis." The child is "stable, safe, healthy, and happy in her father's home. Removing [T.V.] from her father's home, thereby disrupting her stability, to place her back in the home from where she was detained, without any objective evidence that mother can parent [T.V.] without anger and threats, is not in the child's best interest." "'[T]he disruption of an existing psychological bond between dependent children and their caretakers is an extremely important factor . . . on any section 388 motion.'" (*In re D.R.*, *supra*, 193 Cal.App.4th at p. 1512, italics omitted.) Mother has not shown error.

Terminating Dependency Jurisdiction Without An Evidentiary Hearing

Mother contends the juvenile court erred by terminating dependency jurisdiction at the six-month review without granting her an evidentiary hearing. Father

claims the court may dismiss the proceeding without an evidentiary hearing where dependency jurisdiction is no longer necessary and the custody or visitation issues are more properly decided by the family court.

CWS requested the dependency proceeding be "terminated." It said there was no longer "a safety issue" for the child and "[t]his matter needs to be taken to Family Court where the parents can have a mediator to help them develop a visitation schedule for the mother and the minor." The juvenile court followed the CWS recommendation and found the child, "no longer needs the supervision and protection of the Court."

When the juvenile court terminates its jurisdiction over a dependent child, it may "'make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.'" (*In re Chantal S.* (1996) 13 Cal.4th 196, 203.) Here the court found Mother made no showing of changed circumstances in her petition. It consequently incorporated the previously issued custody and monitored visitation orders into its dismissal order.

At the hearing, Mother claimed she had a right to an evidentiary hearing. But the juvenile court has discretion to decide not to hold one. (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1435.) It does not offend "due process to condition the right to a contested evidentiary hearing on an offer of proof . . . ." (*Ibid.*) Here Mother did not make a sufficient offer of proof to show why continued dependency was currently necessary for the child's protection. (*In re Elaine E.* (1990) 221 Cal.App.3d 809, 814.) She claims a CWS report reflects that in July 2015 the child, Father and the child's stepmother were in a car. The child wanted to get out and walk home. Father and the stepmother became angry. Mother notes that the CWS report states, "[T]here seems to be some tension between the child and her stepmother." But it also states, "[T]his tension *doesn't seem to be anything out of the ordinary* with regards to a stepmother/daughter relationship." (Italics added) Moreover, the child indicated that she did not feel unsafe.

The juvenile court could also reasonably infer that nothing in Mother's declaration about the child's life in Santa Barbara showed the CWS assessment for

terminating proceedings was incorrect. Mother did not state sufficient facts to show the child was currently at risk. (*In re Brison C., supra*, 81 Cal.App.4th at p. 1379.)

Mother cites *In re James Q.* (2000) 81 Cal.App.4th 255, 266, where the court said, "[T]he juvenile court cannot require a party to a review hearing to tender an offer of proof as a condition to obtaining a contested hearing." That case has been criticized (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122-1123); it is also distinguishable. In *James Q.*, the juvenile court terminated a parent's family reunification services at the six-month review. The Court of Appeal noted the parent now faced the potential for termination of parental rights. Here, by contrast, the court dismissed the dependency proceeding avoiding that result.

Mother claims she had a right to "a hearing by which she could formally challenge *the propriety of ending her reunification services*." (Italics added.) Father responds: 1) this would subject the child to remain in an unnecessary dependency proceeding, 2) Mother's section 388 petition only sought to modify custody or visitation, and 3) the result Mother seeks would transform a dependency proceeding into a pure custody dispute which should be decided in family court. We agree. (*In re Elaine E., supra*, 221 Cal.App.3d at pp. 813-815.) "The family law court is better suited to handling issues relating to custody and visitation." (*In re Brison C., supra*, 81 Cal.App.4th at p. 1382.)

Mother claims that because the social worker indicated visitation did not have to be monitored, the juvenile court had to either 1) modify its prior visitation order in the dismissal order, or 2) consider the social worker's statement as new evidence requiring an evidentiary hearing. But the court was not required to adopt either option. (*In re Elaine E., supra*, 221 Cal.App.3d at pp. 813-815 [rejecting a similar contention].) CWS and the court properly determined that juvenile court was no longer the proper forum to resolve the custody/visitation issues. Mother suggests she is left without a remedy. But she has "a remedy by moving to modify the order in family court." (*Id.* at p. 815; see also *In re Brison C., supra*, 81 Cal.App.4th at p. 1382.) As Father notes, a Bauer assessment attached to Mother's section 388 petition indicated a visitation monitor

was appropriate "for the time being." CWS noted that in family court "a mediator" can "help them develop a visitation schedule . . . ."

We have reviewed Mother's remaining contentions and we conclude she has not shown grounds for reversal.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Thomas R. Adams, Judge

Superior Court County of Santa Barbara

No appearance for Plaintiff and Respondent.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant C.V.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Respondent P.V.