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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re T.B., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

A131457

(Alameda County
Super. Ct. No. OJ10014080)

J.B., mother of T.B., born in September 2005, appeals from a February 24, 2011 post-permanency status review order (Welf. & Inst. Code, § 366.3),¹ arguing that the court erred when it denied her a contested hearing on the issue of her visitation with T.B. Her argument fails in light of our decision in *In re M.T.* (2009) 178 Cal.App.4th 1170 (*M.T.*) and we affirm the order.

I. BACKGROUND

T.B. was detained on January 8, 2010, when police responded to a report of a child crying, and found her home alone at 4:00 a.m. Neither J.B. (Mother) nor a biological relative could be located and T.B. was taken into foster care. Mother’s whereabouts were

¹ Subsequent statutory references are to the Welfare and Institutions Code.

still unknown when the jurisdiction and disposition hearing was held on January 27, 2010. The agency's report for the hearing stated that Mother had an extensive history of drug use, had abandoned her two older children, and those children were permanently placed in foster care. The court adjudged T.B. a dependent child, found that Mother was not entitled to reunification services, ordered a permanent plan of guardianship with a cousin, continued T.B. in foster care pending an assessment of the prospective guardian, and set a section 366.26 (.26) hearing for May 25.

T.B. was turned out of her initial foster placement because of "risky behaviors, including lighting plastic objects on fire" She was referred to the SEED (Services to Enhance Early Development) program for "intensive . . . mental health services" "due to the severity of trauma [she] experienced prior to her detention and the complexity of her emerging mental health symptoms in foster care." The agency reported for the .26 hearing that T.B. "hears 'little people in my head,' four of whom [she has] named; has headaches; has a history of fire-starting, spends about an hour daily singing and/or crying; shows sexualized development such as use of precocious language and showing her underwear; gets into character and acts out several people with different voices, and is very afraid of night-time and bath-time. [She] shows patterns of indiscriminately attaching to others."

Mother contacted the agency in February and participated in a March team meeting about T.B.'s placement. On March 19, T.B. was placed in the foster home of L.B., a prospective adoptive parent. The report prepared for the .26 hearing stated that Mother spoke on the phone with T.B. in March, and that T.B. "was crying, talking to herself and inconsolable for a long period of time" after the call. In a May 24 report, T.B.'s SEED clinician Stephanie Gomez recommended against any contact between T.B. and Mother. Mother had a second phone conversation with T.B. in May, and T.B.'s compulsive behavior after the call suggested to Gomez "that even supervised telephone contact with [Mother was] triggering a traumatic response in [T.B.]" On May 25, the court continued the .26 hearing to September 27, 2010.

Mother petitioned the court under section 388 on the basis of changed circumstances for reunification services and visitation with T.B. Mother supported her application with reports from psychologists Pari Anvar and Patricia Weiss recommending, based on their assessments of Mother, that she be allowed to have contact with T.B. The agency filed a report from Gomez opining that contact with Mother would be detrimental to T.B., and an evaluation of T.B. from psychologist Tricia Fong stating that any contact between Mother and T.B. had to be “thoughtfully and carefully” considered “given the extent and severity of [T.B.’s] posttraumatic stress symptoms, and [T.B.’s] emotional and behavioral dysregulation around trauma reminders.”

The agency report for a July status review hearing stated that L.B. was “unable or unwilling to adopt because of special circumstances but [was] willing to provide [T.B.] with a stable and permanent environment.” On July 21, the court ordered a permanent plan “of placement with a planned permanent living arrangement and a specific goal of termination of parental rights and adoption.”

At a hearing on September 15, the court declined to offer reunification services to Mother, or allow her visitation with T.B. Visitation was withheld in view of T.B.’s “extremely fragile mental health,” and the fact that Mother “ha[d] just begun treatment and therapy for her own mental health and substance abuse issues.” The court’s minute order stated that “[t]he Agency and [T.B.’s] counsel will continue to assess [T.B.’s] readiness to resume contact with [Mother]. . . . ¶ . . . ¶ If and when [T.B.’s] therapists and care providers feel that [T.B.] is stable enough to handle telephone contact with the Mother, and the Mother shows progress in her therapy and substance abuse programs, a supervised phone call will be arranged with therapeutic support.” The .26 hearing set for September 27 was vacated, and a review hearing was scheduled for February 24, 2011.

The agency report for the February hearing advised that L.B. “ha[d] made it increasingly clear” that she could not provide permanency for T.B., and that the agency was looking for her new permanent home. The agency filed a February 15 report from Gomez stating that T.B. had “begun to develop a cohesive narrative regarding her trauma experience and her entry into foster care. She has detailed to both her foster parent and to

this clinician multiple incidents of neglect and abandonment and has repeatedly verbalized her fear of being left again in the care of her mother. [T.B.] is articulate in recalling a long history of neglect, food insecurity, and abandonment, emotional and physical abuse and exposure to inappropriate sexual activity”

The agency reported that there had been no contact between T.B. and Mother since the September hearing, and Gomez opined that consideration of phone calls between them should be deferred until a permanent plan was finalized. Gomez said that, if calls were resumed, “we would expect to see 1) an increase in self-harm behaviors 2) A regression toward dissociate symptoms and auditory hallucinations 3) Dysregulation of affect 4) Increased and repetitive traumatic play themes 5) Increased frequency and intensity of nightmares and regression in sleep regulation.” The agency agreed with Gomez that contact with Mother would not be in T.B.’s best interest. The agency report stated that Mother’s therapist, Loretta Abbot, also agreed “that now would not be an appropriate time to re-initiate contact. This decision was made in part because of [T.B.’s] anticipated change of placement and the desire to maintain as much stability as possible through the process, without adding additional stressors or confusion.”

The agency report attached documents showing that Mother had made progress in substance abuse and mental health treatment, and secured part-time employment. Mother filed a request for visitation with T.B., and documents showing that she had avoided drug and alcohol use, and obtained permanent housing.

At the February 24 hearing Mother’s counsel argued: “We need to have an independent person evaluate both the mother and the child and determine whether there is any more substantial connection that should be preserved; and if that’s not the starting place, then we should at least begin with some therapeutic visits. . . . [¶] . . . I would ask at least at this point to have a hearing where I could argue this. Before that, I would like to have an expert appointed by the Court to allow a full evaluation of the mother-child relationship” Counsel did not want Mother to “go another six months to be away from her child . . . [without] an opportunity [for a full assessment].” Counsel told the court, “I will file a formal motion with supporting documents if you want.”

County counsel and counsel for T.B. objected to a bonding study of Mother and T.B.'s relationship because such a study would require contact between Mother and T.B., which was not in T.B.'s best interest. County counsel stated: "I think if [Mother's counsel] wants to file a JV180 [§ 388 petition to change a court order based on changed circumstances] to ask for services, that's a different story. I think it would be hard for him to prevail on that because of the second prong, that being that the proposed change would be in the best interest of the child. I think there is plenty of evidence that would not support that; but I think that's the appropriate avenue."

Mother's counsel responded that he was not asking for a bonding study or "contact between the mother and child." He reiterated his request for appointment of another expert to evaluate T.B., stating: "[I]n order for me to prevail on a JV180 request for reunification, I would have to have some means to rebut the psychological evaluation [of T.B.] that is presented to you. I don't have any means to do that other than what I have done already, and that is to have two therapists say that my client is fit to visit; but I have no way to contradict their expert. I think I have a right to have the minor examined by someone to see if I can rebut that."

Mother stated that she had met with clinician Gomez at the beginning of the case, called her repeatedly to ask how T.B. was doing, and spoken with her "[v]ery briefly." After hearing Mother's comments and further arguments from counsel, the court said, "Right now [T.B.] can't see her mother. We don't need to even dispute the report."

The court decided "to follow the recommendations of the agency," and identified adoption as the goal of T.B.'s permanent plan. The court added, "I would ask the worker to let Ms. Gomez know that the Court was very interested in her contact with [Mother] and does Ms. Gomez understand all of the progress that [Mother] has made. I would ask her to keep an open mind when speaking about [Mother]." "As a matter of good faith to [Mother]," and over county counsel's objection, the court ordered the parties to return within 90 days for a progress review hearing.

II. DISCUSSION

Mother argues that the court was required to grant her request for a hearing to contest her entitlement to visitation with T.B. She contends that she had a right to a contested hearing under section 366.3 and as a matter of due process. The statute requires a post-permanency review at least every six months of the status of a child who is not placed in the home of a legal guardian. (§ 366.3, subd. (d).) A parent whose parental rights have not been terminated is entitled to “participate in” those hearings. (§ 366.3, subd. (f).)

Visitation is among the issues the parent can raise. “[A]lthough visits are not addressed explicitly in the statute, from other language in subdivision (e) one must infer that visitation is a proper issue to address at the hearing.” (*In re Kelly D.* (2000) 82 Cal.App.4th 433, 438.) Section 366.3 mandates an inquiry into the progress toward provision of a permanent home, consideration of the child’s safety, and determination of a number of issues, including: the continued necessity for the current placement (subd. (e)(1)); the extent of the agency’s compliance with the plan and efforts to return the child home or finalize a permanent plan (subd. (e)(4)); the adequacy of services to the child (subd. (e)(6)); the parent’s progress toward alleviating the need for placement (subd. (e)(7)); and the likely date by which the child may be returned safely home or provided with a different permanent plan (subd. (e)(8)). As Mother observes, “these factors suggest that the Legislature considered the parents an ongoing potential resource for placement.”

The parent bears the burden of proving that visitation is in the child’s best interest. Under section 366.3, subdivision (f), it is “presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child.” (Cf. § 361.5, subd. (f) [visitation must not be detrimental to the child]; § 362.1, subd. (a)(1)(B) [visitation cannot jeopardize the child’s safety].) Parental visitation before a termination of parental rights is plainly an “effort at reunification” within the meaning of section 366.3, subdivision (f). Visitation will, to a large extent, determine whether the

parent is, in Mother’s words, a viable “resource for placement,” i.e., whether the parent and child can reunify. “Without visitation of some sort, it is virtually impossible for a parent to achieve reunification.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1491.)

In *M.T.*, we held that a parent does not necessarily have a right to an evidentiary hearing to contest agency recommendations at a post-permanency status review. “ ‘Different levels of due process protection apply at different stages of dependency proceedings. [Citations.]’ [Citation.] In the initial phases of a dependency proceeding, family preservation is the primary focus and ‘the “parent’s interest in reunification is given precedence over the child’s need for stability and permanency.” [Citation.] ’ [Citation.] ‘However, “[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.” [Citation.]’ [Citation.] Thus, cases holding that a parent has an unfettered due process right to confront and cross-examine adverse witnesses at review hearings held before the permanency planning stage do not compel the identical conclusion with respect to hearings held after reunification services are terminated. [Citations.]” (*M.T.*, *supra*, 178 Cal.App.4th at pp. 1180-1181.)

We concluded in *M.T.* that, before granting a contested hearing, “courts may require offers of proof on issues where the parent has the burden of proof.” (*M.T.*, *supra*, 178 Cal.App.4th at p. 1180.) As we have said, Mother had the burden of proving that T.B. would benefit from visitation with her. Mother made no offer of proof on that issue, and made it clear at the hearing that she could make no such offer. She said she could not refute Gomez’s opinion that T.B. would be harmed by contact with her unless another expert was appointed to evaluate T.B.’s needs.² Mother did not and could not make the

² Mother’s request that she be allowed to retain an independent expert to evaluate T.B. was misplaced. Experts retained by the agency in dependency case are appointed to determine “the appropriate treatment of the child.” (§ 370; *In re Walter E.* (1992) 13 Cal.App.4th 125, 136.) To the extent Mother’s request implies an adversarial relationship between her and the agency, and partisan advocacy on the part of the currently retained experts, it is at odds with the intended role of the agency as an arm of

showing required for a contested hearing under *M.T.* Thus, the court did not violate Mother’s statutory or constitutional rights by declining her request for a hearing on visitation.

Mother attempts to circumvent *M.T.* by maintaining that she “did not seek reunification services and did not claim a statutory right to such services. Instead, she sought to enforce the statutory command [§ 366.3, subd. (3)(6)] that the agency provide services to the child that might assist in finding a permanent home.” However, visitation concerned Mother’s interests as well as those of T.B. (*In re Kelly D., supra*, 28 Cal.app.4th at p. 438 [visitation under § 366.3 “pertains to parental interests as well as those of the minor”].)

If, as Mother claims, she sought solely to advance T.B.’s interest and not her own interest in visitation, she lacked standing to do so. “Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor [citation]; nor can a parent raise the minor’s best interest as a basis for standing [citation]. Without a showing that a parent’s personal rights are affected by a ruling, the parent does not establish standing. [Citation.] . . . In sum, a would be appellant ‘lacks standing to raise issues affecting another person’s interests.’ [Citation.]” (*In re D.S* (2007) 156 Cal.App.4th 671, 674.)

the court and representative of the state charged with protecting the best interests of the dependent minor. (*Id.* at p. 137.)

III. DISPOSITION

The February 24, 2011 order is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.