

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

C.C.,

Petitioner,

v.

THE SUPERIOR COURT OF MARIN
COUNTY,

Respondent;

MARIN COUNTY HEALTH & HUMAN
SERVICES et al.,

Real Parties in Interest.

A143827

(Marin County
Super. Ct. No. JV25872A)

INTRODUCTION

A.C. is a medically fragile infant who was detained a few days after his birth based on his parents' inability to care for his special needs due to their substance abuse. At the 12-month hearing, the court continued reunification services for another six months. Prior to the 18-month review hearing, Marin County Health and Human Services Department (Department) filed a Welfare and Institutions Code section 388¹ petition asking for termination of reunification services and the setting of a section 366.26 hearing. The court granted the 388 petition and set a 366.26 hearing. A.C.'s mother, C.C. (Mother), now seeks to vacate the court's order. She asserts there is no statutory authority to terminate reunification services outside of a regularly scheduled

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

statutory review hearing, and the Department failed, in any event, to show a change of circumstances or substantial likelihood reunification would not occur. We disagree, and deny her petition.

BACKGROUND

We set forth only those facts relevant to the issues raised in Mother's writ petition.

A.C. was detained in August 2013, when he was less than a week old. He was readmitted to the hospital one day after he was discharged due to dehydration and weight loss. His parents left him at the hospital after stating "We are here to drop off our baby," and did not return until almost noon the following day. His father² admitted using methamphetamine for the past 10 years. Mother stated she stopped using methamphetamine when she discovered she was pregnant, but acknowledged she was in need of drug treatment. A.C. was placed in foster care.

A.C. went from the 63rd percentile for weight at birth to the first percentile at five months of age. He was admitted to Oakland Children's Hospital in January 2014 "for testing to determine why he is failing to gain weight and to grow." He was diagnosed with "Failure to Thrive."

The court ordered reunification services for both parents. This was to include, as to Mother, parenting education, substance abuse testing, and individual therapy.

At the time of the 12-month review hearing in July 2014, parents had made some progress in their reunification plan. They were both employed and were living with A.C.'s maternal grandmother in retirement housing where A.C. was not allowed to live. Mother, however, had failed to show up for two drug tests in June. A.C. continued to have slow weight gain and was receiving feeding therapy and occupational therapy. The Department had completed a home study of the paternal aunt and uncle living in Ohio, and had approved them for placement if necessary. The court followed the Department's recommendation and continued reunification services for six more months, setting the 18-month review hearing for February 2015.

² A.C.'s father has not filed a writ petition.

On October 30, 2014, the Department filed a section 388 petition, asserting “[t]he parents recently have shown extremely poor judgment in the caretaking of this medically fragile, special needs child. In addition, it has come to light that the caregiver provided considerable assistance to the parents to attend visits and doctor appointments. It is clear the parents are unable to ensure his needs are met on their own.” The Department sought to terminate reunification services, set the matter for a section 366.26 hearing, and place A.C. with his paternal aunt and uncle in Ohio.

The Department filed an amended petition that included additional information. The Department stated: “Since the last review hearing, [A.C.] has been hospitalized multiple times for infection and illness, and has been found to have two genetic anomalies in the 5th and 19th chromosomes which are likely the cause of his Failure to Thrive diagnosis and his delayed development. A Stoma has been inserted into [A.C.’s] Stomach so that he is able to be fed via a feeding tube and pump. [A.C.] is hooked up to the pump during his naptime and at night. [A.C.] has iron deficiency, so he is provided with supplements via the pump feedings. Given [A.C.’s] special needs, it is essential that his caregivers are able to keep him on a regular schedule with regards to eating and sleeping.” The social worker indicated she “ha[d] witnessed [A.C.’s father] lift [him] up by his Stomach, despite reminders from the foster mother to lift him, supporting his bottom, in order to take the pressure and pain off the recently inserted Stoma,” and had observed him feed A.C. via his stoma incorrectly. The parents told the social worker “[t]hey d[id] not want to sacrifice their ‘fun time’ with [A.C.] by making him take naps or eat in a high chair.” The parents had missed A.C.’s appointment with the geneticist “because they were doing laundry.” During a full-day visit in September, the parents fed him “only 4 ounces of formula” and denied he was ill or uncomfortable despite the social worker’s instruction to call A.C.’s pediatrician. A.C. “needed to be brought to Children’s Hospital in Oakland the following day, due to a fever and an infection.” The parents had also failed to schedule A.C.’s physical therapy, as instructed. Mother acknowledged failing to purchase recommended feeding tools for A.C. Since the last hearing, Mother

failed to drug test on six occasions. Both parents failed to attend three AA meetings per week, as required by their reunification plan.

A contested hearing was ultimately held in December, at which Mother, her uncle, and A.C.'s foster parent testified. The foster mother, who had a masters degree in "early childhood special education with an emphasis on infants zero to five with special needs," testified A.C. "is probably one of the highest levels [of] special needs babies" she had cared for in her 20 years of being a foster mother. A.C. had "not significantly gained weight or met his milestones." His gastroenterology team at Oakland Children's Hospital implanted a feeding tube in his abdomen in order to feed him using a computerized feeding system, which required special training. The stoma, or abdominal hole, where the feeding tube was inserted is "[e]xtremely sensitive." "[I]t leaks stomach acid onto his skin and cause[s] inflammation," which is treated with a paste of Desitin and Maalox. A.C. also suffers from an "overdevelopment of scar tissue around the opening" of the feeding tube, requiring a "very painful" treatment with silver nitrate. A.C. has been hospitalized twice since the feeding tube was inserted for infections. A.C. has numerous medical appointments, including with his regular pediatrician (every two to four weeks), the gastroenterology team at Children's Hospital, a neurologist, a geneticist, physical therapy, and a feeding specialist twice a week. The foster mother testified the parents had expressed an understanding of A.C.'s medical needs, but she "question[ed] the depth, because in my experience with this child it's a lot of work for me as the primary care provider to provide what I believe this child needs just for weight gain, even with this infant in my care 97 percent of the time . . . I'm still having trouble getting enough weight on him to keep him growing. . . . [¶] I question mom and dad's ability to understand the depth of work it's going to take."

Mother acknowledged she had previously stated A.C. did not have special needs because she did not want him to have a feeding tube. She testified she was now willing to follow the recommendations of his medical professionals. She had not set up physical therapy appointments for A.C. because she "thought that the foster parent was the only one that could do that." Mother testified she was able to feed A.C. through his feeding

tube. She acknowledged an incident in which she removed his feeding tube and returned it uncleaned to the foster mother, but indicated the foster mother “said she didn’t mind cleaning it.” Mother mistakenly testified she had treated A.C. with silver nitrate, when it was apparently the Desitin and Maalox cream. She and A.C.’s father now lived in a townhouse with room for A.C. She acknowledged missing the appointment with A.C.’s geneticist because she was doing laundry, but added they had no money for gas or bridge toll. She also acknowledged only attending AA for six months because “they said it was a 6-month program.” Mother’s uncle, a registered nurse, testified he had observed both parents feed A.C. via his feeding tube correctly.

The court found the parents “have not shown they understand the medical challenges related to [A.C.’s] calorie intake, weight, and napping schedules, along with his other developmental challenges.” The court terminated reunification services, ordered A.C. placed with his paternal relatives, and set a section 366.26 hearing.

DISCUSSION

Mother asserts there was no statutory authority to terminate reunification services. She claims “[w]hen a dependent child is under the age of three at the time of removal, no party can bring an independent action to terminate services if those services are continued beyond the six-month hearing.” Thus, she asserts the Department’s “motion to terminate services between the twelve and eighteen month reviews simply failed on its face to state a cause of action.”

Mother maintains “[t]he only statutory authority to terminate reunification services outside of a regularly scheduled statutory review hearing” is section 388, subdivision (c). That section provides in part: “Any party . . . may petition the court . . . prior to the [six-month review] hearing set pursuant to subdivision (e) of Section 366.21 for a child [under three years] described by subparagraph (B) . . . of paragraph (1) of subdivision (a) of Section 361.5, to terminate court-ordered reunification services . . . *only if one of the following conditions exists:* [¶] (A) It appears that a change of circumstances or new evidence exists that satisfies a condition set forth in subdivision (b) or (e) of Section 361.5 justifying termination of court-ordered reunification services. [¶] (B) The

action or inaction of the parent or guardian creates a substantial likelihood that reunification will not occur” (§ 388 (c)(1)(A)–(B), italics added.) Section 361.5, subdivision (a)(2) provides “[a]ny motion to terminate court-ordered reunification services prior to the [six-month hearing for a child under three years of age at removal] . . . shall be made pursuant to the requirements set forth in subdivision (c) of Section 388. . . .” (§ 361.5, subd. (a)(2).)

On their face, the statutes do not limit a petition to terminate reunification for a child under three years of age to before the six-month hearing. Section 388, subdivision (c)(1) requires instead that, *if* a petition to terminate reunification is made *before* the six-month hearing, one of the conditions set forth in subparagraphs (A) or (B) must exist. Nowhere does it prevent a petition to terminate reunification from being made *after* the six-month review hearing for a child under the age of three.

Mother contends the amendment to section 388, adding the present subdivision (c), was intended to “limit a party’s ability to file . . . a motion [to terminate reunification services]” for a child under three to *before* the six-month review hearing. The legislative history indicates otherwise.

The bill analysis by the Assembly Committee on Human Services explained: “According to the author this bill would ‘clarify the statutory language regarding family reunification timelines. . . .’ The author states, ‘Both federal law and the intent of the California Legislature call for parents and children who have been found eligible and appropriate for a plan of reunification be afforded a *minimum* . . . of 6 months of reunification services for children under three and 12 months of reunification services for children over the age of three.’ The author asserts that recent appellate cases allowing termination of reunification services prior to the end of these timeframes . . . circumvent due process requirements and are inappropriate. (Assem. Com. on Judiciary, Bill Analysis of Assem. Bill No. 2341 (2007–2008 Reg. Sess.) as amended Mar. 28, 2008, p. 2.) The author of the bill was concerned that two appellate cases, *In re Aryanna C.* (2005) 132 Cal.App.4th 1234 and *In re Derrick S.* (2007) 156 Cal.App.4th 436, had suggested the six-month (for a child under three) and 12-month (for a child over three)

statutory timelines in which parents could receive reunification services were “outside limits[s]” rather than “ ‘minimum’ periods of time during which parents were ‘entitled’ to reunification services.” (Assem. Com. on Judiciary, Bill Analysis of Assem. Bill No. 2341 (2007–2008 Reg. Sess.) as amended Mar. 28, 2008, p. 3.) Accordingly, “this bill would continue to allow courts to change, modify or set aside initial orders for reunification services, but would narrow the instances in which the court could use this discretion to those in which changed circumstances or new evidence, if available at the time of the disposition hearing, could have lead [*sic*] the court to bypass reunification services.” (*Id.* at p. 3.) In other words, the bill would continue to allow termination of reunification for a child under three before the six-month review, but only under the conditions set forth in the statute. Neither the plain language of the statute, nor the legislative history, indicate a party cannot petition to terminate reunification services if they have been continued beyond the six-month period.

Mother next claims “even if it were legally proper to consider the [D]epartment’s motion,” the conditions set forth in section 388, subdivision (c) for termination of reunification services were not met. Because section 388, subdivision (c) was inapplicable, the conditions set forth in that section for termination of reunification services prior to the six-month review hearing did not need to be met. Instead, under section 388, subdivision (a), the Department made the requisite showing of change of circumstances and that the proposed change was in the best interests of the child.

The evidence showed A.C.’s special medical needs had drastically increased after the 12-month hearing. He had undergone surgery to create a stoma in his stomach to accommodate a feeding tube, which required specialized and intensive care. His parents did not comprehend the full scope of the medical care he required. Mother’s testimony at the hearing, in which she mistakenly testified she applied silver nitrate to A.C., demonstrated she did not fully understand the treatment he required. The evidence also showed other changed circumstances: Mother had failed to drug test on numerous occasions and had stopped attending AA meetings as required. The paternal aunt and uncle had visited A.C. and were “highly motivated and prepared to provide [A.C.] with

the care that he needs.” The court did not err in finding a change of circumstances, and that termination of reunification services was in A.C.’s best interests.

DISPOSITION

Mother’s petition seeking to vacate the order terminating reunification services and setting a section 366.26 hearing is denied. This decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Banke, J.

We concur:

Humes, P. J.

Margulies, J.