Filed 3/27/12 In re E.S. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In Re E.S., a Minor Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. P.A., Defendant and Appellant.	C066050 (Super. Ct. No. JD229481)

Paula A. (mother) appeals from the juvenile court's orders terminating dependency and awarding sole physical custody and joint legal custody of her son, E.S. (minor) to his father (father). (Welf. & Inst. Code,[1] §§ 358, 360, 395.) Mother contends the juvenile court erred by placing minor with father

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

and terminating dependency jurisdiction. We disagree and shall affirm.

FACTUAL[2] AND PROCEDURAL BACKGROUND

The Sacramento County Department of Health and Human Services (DHHS) filed a section 300 petition on behalf of minor on March 27, 2009, due to physical abuse in the home of mother and her live-in boyfriend, Juan L. At the time, minor was eight years old.[3] DHHS located minor's father, who appeared at the April 22, 2009, prejurisdiction hearing. He was living in San Jose, and had not been involved in minor's life for approximately two years, but he was paying child support in the amount of $671 a month. He indicated he was interested in having minor placed with him.

At the July 21, 2009, combined jurisdiction and disposition hearing, minor and the other children were returned to mother's home with supervision and services. Father was granted visitation.

On December 1, 2009, a second petition (§§ 342, 387) was filed, alleging Juan L. had been in a fight and shot in front of

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[2] We provide additional facts in the discussion as relevant to the issues.

[3] The juvenile court detained minor and his younger half sibling (in a related case). Juan L.'s three children, who had also been living in the home, were also detained. Mother has another child, R.S., who is a younger, full sibling of minor and lives with his maternal grandmother. Juan L. also has two other children, who live with their maternal grandmother. Only minor is the subject of the instant appeal.

the house. The children had been sent inside prior to the shooting but were aware of the circumstances. Minor and the other children were again detained.

After the children were detained and placed in foster care the second time, they began disclosing various incidents of mother's physical abuse. Some of the reported abuse took place after the children had been returned to mother's home and after she had been participating in services. The petition was amended to include allegations of mother's physical abuse.

Although father had not been visiting minor since the July 2009 order placing minor with mother,[4] he appeared at the January 29, 2010, placement hearing and asked for placement. Father was employed, had available daycare arranged with family members, had no criminal history, and had no history of substance abuse. DHHS did not think placement with father would be detrimental to minor's safety, protection or physical well-being.

Minor's counsel, however, opposed placement with father, due to concerns about father's failure to visit and develop a relationship with minor over the previous seven months. The juvenile court acknowledged that it had been difficult for father to visit but, particularly in light of minor's need for continuity with services, father would need to become involved in minor's life before minor would be placed with him.

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[4] Father had difficulties with Juan L. who, like mother, did not want him involved in minor's life.

Father began visiting minor that day. The social worker observed that, during the first visit, “it was apparent the child knew the father and they shared a past bond.” Thereafter, during a visit February 11, 2010, minor asked father if father could protect him if he disclosed something. Minor then disclosed that mother had hit him and his siblings with hangers and a belt all over his body, including his face, and that she had choked him. He said he was afraid of mother, asked if the police could protect him in court, and asked father to attend court if he had to go again.

Father and minor had an unsupervised weekend visit from February 12 to February 15, 2010. Thereafter, minor’s foster parent reported minor had not stopped talking about the time he spent with father and the next time he would be able to visit. Minor, however, was at risk of another placement change due to his aggressive and defiant behavior. He was placed with one of Juan L.’s children, but they were combative and not positively bonded. Father was still seeking placement.

At the February 26, 2010, placement hearing, the juvenile court concluded it was in minor’s best interests to be placed with father. Minor’s counsel now supported placement as father and minor had bonded, and it would benefit minor to be removed from foster care. Minor was placed in father’s home over mother’s objection, and the case was set for a contested jurisdiction and disposition hearing.

On March 28, 2010, the social worker visited minor, who informed her that he was happy living with father, and had been

making friends and visiting his brother. Father reported minor had not exhibited any aggressive or out of control behavior since being placed in his care.

A protracted contested jurisdiction and disposition hearing began May 13, 2010, and ended on August 27, 2010. During the hearing, minor testified he was afraid of mother. He testified about the numerous occasions mother had hit him, including in retaliation for telling his friend mother had hit him with a belt. Mother hit him with a belt and her hand after his return to her home from foster care. He had decided to tell father about being hit because he was scared mother would hit him again, and because he felt safe with his father and wanted to continue living with him.

Three of the other children also testified about mother's infliction of physical abuse on them. Mother denied she ever hit, kicked or choked any of the children. She had completed her case plan services, including anger management, parenting and individual counseling.

In a comprehensive statement of decision, the juvenile court thoroughly discussed the evidence and details about the witnesses' credibility. The juvenile court dismissed the allegations in the petition regarding the shooting incident, but sustained the physical abuse allegations. The court found there would be a substantial risk of detriment to minor were he returned to mother's custody, but there was no detriment to placement of minor with father and termination of dependency. The juvenile court granted full physical custody and joint legal

custody to father, with supervised visits for mother at least once per month.

DISCUSSION

Mother contends the juvenile court erred in placing minor with father and terminating dependency jurisdiction.

A. Representing the Record

We first take note that, in making her arguments, mother persistently misstates the record. We do not condone this behavior, nor do we consider it to be a legitimate tactic, even in emotionally-charged proceedings such as these.[5]

"An attorney has an unqualified duty to refrain from acts which mislead the court. (Bus. & Prof. Code, §§ 6068, 6128, subd. (a).) The representation to a court of facts known to be false is presumed intentional and is a violation of the

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[5] For example, although mother represents that she "raised [minor] for his entire life," the record reflects that minor lived with (thus presumably was "raised by") his aunt for the first four years of his life. Further, minor lived with mother, a sibling, and *father* in minor's maternal grandparents' home for a significant period of time (the record is unclear as to how long) before 2007, and the grandparents helped to raise minor during that timeframe. Further, our review of the record reveals that, contrary to mother's repeated assertions that minor's father "had never visited him or provided for him," father maintained a relationship with minor until approximately three years before the filing of the section 300 petition in March 2009 and had been paying $671 in monthly child support (plus $100 in arrears) since at least March of 2007. He was also providing minor's health insurance. He had also visited with minor regularly, including an overnight visit, during the four weeks before minor was placed with him. By the time of the order from which mother appeals, minor had been living with father for six months.

attorney's duties as an officer of the court. [Citations.]" (*Jackson v. State Bar* (1979) 23 Cal.3d 509, 513; *Williams v. Superior Court* (1996) 46 Cal.App.4th 320, 330; Rules Prof. Conduct, rule 5-200(B).) "Even if [appellate counsel's] misconduct were not willful and dishonest, gross carelessness and negligence constitute a violation of an attorney's oath faithfully to discharge his duties." (*Jackson v. State Bar*, *supra*, 23 Cal.3d at p. 513.) We caution careful adherence to the record by *all* counsel in *all* proceedings.

We now address mother's contentions on the merits.

B. Placing Minor with Father/Terminating Jurisdiction

Father, as "a nonoffending parent," has "a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent's choices will be 'detrimental to the safety, protection, or physical or emotional well-being of the child.' (§ 361.2, subd. (a) . . . .)" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 697.)

When a nonoffending, noncustodial parent requests custody of a minor who has been removed from the home, as father did here, "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) "If no detriment exists, the court orders placement of the child with that parent." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.)

“If the court places the child with the noncustodial parent, the court initially has three alternatives. The court may order the noncustodial parent to assume custody of the child, terminate juvenile court jurisdiction and enter a custody order. (§ 361.2, subd. (b)(1).) It may continue juvenile court jurisdiction and require a home visit within three months, after which the court may make orders as provided in subdivision (b)(1), (2) or (3). (§ 361.2, subd. (b)(2).) Or the court may order reunification services to be provided to either or both parents and determine at a later review hearing under section 366.3 which parent, if either, shall have custody of the child. (§ 361.2, subd. (b)(3).)” (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55.)

When deciding whether to terminate jurisdiction, the court must determine whether there is a need for continued supervision. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451.) The court’s discretion to deny reunification services to the former custodial parent and to terminate jurisdiction hinges on the fact that when the home of the previously noncustodial parent is found to be an appropriate permanent placement, the statutory goal of providing the child a secure home with a parent has been satisfied. (See *In re Erika W.* (1994) 28 Cal.App.4th 470, 476-478; *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1501-1503.) We review that determination for substantial evidence. (*In re Austin P.*, *supra*, 118 Cal.App.4th at p. 1134.)

Here, the court placed minor with father, the nonoffending parent, as there was nothing to suggest it would be detrimental to minor's safety, protection, or physical or emotional well-being. Father was employed, had available daycare, had no criminal history, and no history of substance abuse. Although father had not seen minor for several years preceding these dependency proceedings, he did have significant previous relationship with minor. Once father began regular visitation in January 2010, minor quickly bonded with him and, soon after, disclosed mother's physical abuse to father, even though he had been afraid to do so in the past. He sought further comfort from father by asking him to attend court with him.

After spending some time in father's home, minor reported that he was happy living with father, and had been making friends and visiting his brother. Father reported minor had not exhibited any aggressive or out of control behavior since being placed in his care, which had been a problem prior to placement in father's home.

In sum, minor was happy and doing well in father's home, where he had been successfully placed for six months by the time of disposition. The evidence amply supports the juvenile court's decision to terminate dependency jurisdiction.

C. Services

Although mother argues that, with services, she would be the better parent, we are not persuaded. Further, mother misses the point. Two of the most important goals underlying dependency laws are to promptly resolve the child's custody

status and to provide the child with a stable environment in which to develop. (*In re Erika W.*, *supra*, 28 Cal.App.4th at p. 476.) "[T]he purpose of reunification services is to facilitate the return of a dependent child to *parental* custody." (*In re Jodi B*. (1991) 227 Cal.App.3d 1322, 1326; cf. *In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308.) When a child is placed in nonparental custody, reunification services are necessary to promote a possible return of the child to parental custody. However, when a child is placed in parental custody, this goal has already been met and therefore reunification services are not necessary. (*In re Erika W.*, *supra*, at p. 478.) From the state's perspective, the family is reunified when a child is placed with a parent. (*Id.* at p. 476.)

Here, minor was placed in father's custody and jurisdiction terminated. Thus, reunification services for mother were unnecessary.

Mother notes the juvenile court provided no justification for ordering services for her as a parent of minor's half sibling but not for minor. But the justification was clear--minor's nonoffending father sought and achieved placement.[6] Services to mother need only be considered if it appeared father

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[6] Juan L., the half sibling's presumed father, was provided reunification services when his child was removed. Mother was ordered to submit to a psychological evaluation to determine whether she would receive reunification services for the half sibling.

may not be able to provide permanency, which was not the case here. (*In re Erika W.*, *supra*, 28 Cal.App.4th at pp. 476-477.)

D. Counseling

Finally, mother contends that the juvenile court's orders did not ensure that minor would be provided with counseling in the future by making it a condition of the custody exit order.

In support of her argument, mother emphasizes the juvenile court's closing remarks. Father had requested the court specify on its exit order that mother was to visit minor by herself, without other people. Mother then indicated she wanted Juan L. to be able to visit minor.

Addressing the issue of whether Juan L. would be permitted, at some point, to visit minor, the juvenile court indicated its belief that minor would soon be in counseling and that the matter should be discussed with the counselor.[7] The court further explained that it would not enter any order regarding visitation with Juan L., as he was not a party to the case. When mother expressed concern that father would not ensure that minor received counseling, the juvenile court suggested counsel should follow up on the issue of counseling and possibly file a motion to reconsider, "and maybe the Court needs to keep supervision."

The parties disagree as to whether the juvenile court had the authority to order minor into counseling as a condition of

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[7] DHHS reported that father was working with his private medical insurer to try to obtain counseling for minor.

the custody exit order. Assuming the juvenile court was authorized to make such an exit order (see *In re Chantal S.* (1996) 13 Cal.4th 196), the court did not abuse its discretion in *declining* to order counseling a condition of the custody exit order.

Minor did have significant behavioral and emotional difficulties in May 2009, after his initial placement in foster care. Accordingly, he was referred to counseling services and was diagnosed with an adjustment disorder with anxiety. The behavioral difficulties reportedly continued through September 2009. The case plan, submitted to the court in January 2010 projected that minor would complete counseling services by June 2010. Minor continued to participate in counseling from June 2009 until February 27, 2010, when he was placed with father.[8]

While minor did not engage in counseling after placement with father, his behavioral problems resolved and he thrived. There is nothing in the record contradicting the juvenile court's finding that minor's mental health needs were being met.[9] As we have discussed, substantial evidence supports the juvenile

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[8] There was a brief interruption of counseling for a period of approximately a month in September 2009, due to temporary Medi-Cal eligibility problems.

[9] Although the social worker testified on July 20, 2010, that she believed minor needed counseling, she did not provide a reason for that opinion and she did not request the juvenile court order it in her reports or proposed orders. In fact, she proposed the juvenile court find, as it did, that minor's mental health needs were being met.

court's finding that dependency supervision was no longer necessary. Father was able to provide minor with a safe, stable, and permanent home. The juvenile court's decision to *not* specifically order counseling is supported by the evidence.

DISPOSITION

The orders of the juvenile court are affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

NICHOLSON, J.