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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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

C074233

SHASTA COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

(Super. Ct. No.
11 JV SQ 2907401)

Plaintiff and Respondent,

v.

ANGELA B.,

Defendant and Appellant.

Angela B., the mother of 14-year-old Roy B., appeals from an order of the Shasta County Juvenile Court terminating her reunification services and selecting a permanent plan of long term foster care.

On appeal, mother contends the trial court committed reversible error when it found a substantial risk of detriment if Roy were returned to mother. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Originating Circumstances

In October 2011, Roy's then 17-year-old sister Katrina B. reported that mother was selling prescription medications and methamphetamine from the family home.¹ Mother had accused Katrina of stealing her methamphetamine and had searched Katrina for the missing drugs. As a result, Katrina did not feel safe in the home. Shasta County Sheriff's officers placed Katrina and Roy in protective custody due to mother's mental health problems and substance abuse. The matter was referred to the Shasta County Health and Human Services Agency (Agency).

Petition

On November 1, 2011, the Agency filed a petition alleging mother had a mental health problem and her drug problem put her children at risk of serious physical harm or illness.² Mother had been diagnosed with depression and posttraumatic stress disorder and was not taking prescribed medications. She admitted recent use of methamphetamine and expressed intent to sell the drug. Mother had two recent altercations with each child. The incidents included mother striking Roy, mother throwing water in Roy's face, and Roy throwing a hair dryer at mother.

Detention

Katrina told the social worker mother makes false accusations against her at least once a month and exhibits other bizarre behaviors such as hearing voices, talking to herself, accusing the children of saying things they did not say, appearing to be disoriented or groggy, spontaneously crying, and being unresponsive. Katrina attributed mother's behaviors in part to her unresolved mental health problems, her prescription

¹ Katrina has reached the age of majority and is not a party to this appeal.

² The petition alleged mother had sole custody of the children and their father had supervised visitation. Father is not a party to this appeal.

medications, and her use of other drugs. Katrina did not feel safe in the home and did not want to return.

Roy told the social worker Katrina was being “ ‘melodramatic’ ” and he “wanted to ‘have everything be normal like a regular family.’ ” He believed the fighting in the home, the accusations of stealing things, and some other behaviors needed to stop.

Echoing Roy, mother told the social worker that Katrina was being “ ‘melodramatic’ ” about the methamphetamine incident. But mother later admitted possessing methamphetamine in the home and intending to sell it. She did not follow through because she did not know to whom she could sell it without getting caught. Mother admitted a history of methamphetamine use and a relapse two weeks previously. Mother stated she was on several pain medications due to multiple medical conditions that caused physical pain. She was not happy with her medications and believed her methadone, in particular, was too strong and was causing her to “ ‘nod off.’ ” She had diagnoses of posttraumatic stress disorder, “ ‘mood swings,’ ” and postpartum depression following Roy’s birth. Mother said several medications had been stolen from her home and an acquaintance had overdosed after mistaking mother’s methadone for cough syrup.

On November 2, 2011, the juvenile court detained Roy and placed him with his maternal grandparents. Mother was granted supervised visitation.

Jurisdiction and Disposition

The December 2011 report for the jurisdiction hearing confirmed that Roy was placed with his grandparents. The January 2012 report for the disposition hearing noted that mother had been cooperative with the Agency. She attended a mental health screening and an alcohol and drug assessment. The results had not yet been received. Mother failed to perform a drug test but two days later she performed a test that was clean.

Roy was in danger of failing the eighth grade. The social worker arranged for weekly tutoring to assist him with improving his grades. He was seeing a psychiatrist,

taking medications for hyperactivity and impulsivity, and receiving weekly therapy sessions.

The report recommended Roy be declared a dependent of the court and his custody be transferred from mother to the Agency for suitable placement. The report recommended mother receive reunification services including counseling if recommended by the mental health assessment, and substance abuse treatment if recommended by the alcohol and drug assessment.

Mother's alcohol and drug assessment concluded she was impaired in many areas of her life. The impairment appeared to result from her physical condition and possible mental health issues. The report recommended mother abstain from the use of alcohol and unlawful drugs and submit to random drug testing.

A February 2012 addendum reported Roy had serious temper problems and had been referred for individualized treatment. He had been expelled or suspended from school for grabbing a deaf child by the throat and hitting him several times because he would not move over as Roy had told him to do.

Mother had missed several visits with Roy. She was testing positive for amphetamines and opiates. Because she had been prescribed several opiate medications for pain, it was uncertain whether the tests reflected her use of methamphetamine.

On February 24, 2012, mother submitted the jurisdiction and disposition issues on the basis of the social worker's reports. Roy was removed from mother's physical custody and the Agency was directed to provide services for mother.

Six-Month Review

The August 2012 report for the six-month review hearing stated mother was participating in all components of her case plan. She had decreased her use of a pain medication and her opiate levels were decreasing. Mother was attending weekly counseling sessions and believed they were beneficial. She was attending parenting classes and substance abuse treatment. She also was attending one to five 12-step

meetings per month although two meetings per week had been recommended. Mother was visiting Roy weekly and no problems with the visits were noted. Roy was in the ninth grade and performing at or above grade level. Roy remained on psychotropic medications for hyperactivity and impulsivity.

The Agency recommended an additional six months of reunification services. At the review hearing in August 2012, the parties submitted the matter on the basis of the social worker's report and the juvenile court adopted the Agency's recommendation as its order.

Twelve-Month Review

The December 2012 report for the 12-month review hearing stated mother had steadily decreased her reliance on pain medication and her opiate levels had fallen significantly. She relapsed on methamphetamine in September 2012 but her drug tests since that time have been clean. Mother consistently attended weekly therapy sessions and substance abuse treatment. She completed her parenting classes and improved her attendance at 12-step meetings.

The report noted Roy had been living with his grandparents since he first entered foster care. He could be a difficult child with temper problems. He had problems on the school bus. His grandparents worked closely with the school and worked diligently at home to try to teach Roy respect for other children as well as adults. Roy could be very disrespectful to adults and is defiant. He was then in weekly counseling to address his problems.

The Agency was preparing to allow mother overnight visits with Roy.

The report recommended continuing reunification services for six more months. At the review hearing in December 2012, the parties submitted the matter on the basis of the report and the juvenile court adopted the recommendation as its order.

Eighteen-Month Review

The April 2013 report for the 18-month review stated: “Roy was sent home to his mother on a trial home visit on [March 15, 2013]. Roy was subsequently removed from his mother’s home and placed back with his grandparents on [April 26, 2013,] after interviews with the grandparents, Roy, and [mother]. [¶] Roy had a cell phone to use as part of a safety plan in case of an emergency or [if] he did not feel safe. The day before he was placed back with his grandparents, he was in an argument with [mother] at their home. He sent a text to his grandfather saying ‘HELP’ and sent multiple recordings of his mother yelling and screaming, calling him names, and being out of control. It was difficult to hear what was being said but swear words could be made out in the recordings and it was obvious she was out of control. When Roy was interviewed, he reported that he did not feel safe when his mother reacted this way and that is why he sent his grandfather the text and recordings. [Mother] reported to the social worker that she was speaking to someone on the phone in her room and it was not in front of Roy. When [the social worker] spoke to [mother] about the inappropriateness of calling Roy names and screaming where he could hear her, she said he should not have been listening.”

The review report continued: “A Student Study Team meeting was held on [March 6, 2013,] at which time school officials reported that Roy’s behavior had improved dramatically in the past couple of months and he had not been suspended for a while. He was receiving at least 95 out of 100 possible points on the majority of days in school. [¶] After Roy went home on [March 15, 2013], he was suspended once again on [March 21, 2013,] for defiant behavior towards his teacher.^[3] He has not been suspended since he was removed from the [Trial] Home Visit with his mother.”

³ The review report included a letter from the school principal that described the incident as follows: “Roy has been talking back in class the last two days and today he strung dental floss from the fountain to a railing. In class the aide was talking with girls

The review report explained the need for continued out of home placement as follows: “The Agency is worried that [mother] continues to have behaviors such as yelling, screaming, and cussing at Roy when he misbehaves and Roy reported he felt unsafe at home when his mother acted this way. This behavior puts Roy at risk of further emotional abuse. [¶] The Agency is also worried that Roy continues to use marijuana and that when he is angry, he yells and cusses at his mother. [Mother] responds to Roy’s behaviors by yelling, screaming, name calling, and isolating herself. [Mother] is not able to safely protect Roy from his own dangerous behaviors and Roy is at risk of further substance abuse and angry outbursts at home and at school that could lead to suspension or even arrests.”

In May 2013, the Court Appointed Special Advocate (CASA) for Roy reported that he had met with Roy who “agreed that he would be better suited to living with younger and healthier guardians who could keep up with his busy schedule.” The CASA added that “Roy, who is aware of and understands his mother’s mental state, also wants to remain in foster care until his mother finds a more effective treatment.” The CASA recommended that Roy attend a school with a stronger academic program and sever his ties with friends who use drugs.

At the review hearing in May 2013, mother was the only witness. She testified the reunification process had not succeeded in opening lines of communication with Roy prior to the trial visit in March 2013. She was given two weeks’ notice of Roy’s impending return, which evidently was inadequate because she was living “on a fixed income.”

and said that she was a girl also. Roy responded, ‘Are you sure?’ He was sent to the office and he came back to the class demanding his iPod. I said he could have it when his mother arrived. He refused to leave the room. Security was called and another teacher and he still refused. His mother arrived and when they walked to their car he punched my vehicle.”

Mother testified that Roy was suspended from school because he had strung dental floss between two poles and because, during an art project, Roy had said the words, “ ‘Oh, yeah’ ” or “ ‘oh, really’ ” at the same time an instructional aide was speaking to some female students and the aide or classroom teacher interpreted the words as defiance. In a meeting following the incident, Roy apologized to the teacher and the teacher apologized to Roy. The record does not support the Agency’s appellate claim that mother “tried to explain away Roy’s suspension from school as an art project.”

Mother claimed her first method of discipline -- taking away Roy’s cell phone so he could not play the games on his phone -- had been thwarted because the Agency’s “safety plan” required the phone would remain available to him.

Mother testified she “had an intuition” that Roy was using drugs. On one occasion he brought home marijuana in his belongings and “wound up getting stoned.” On a second occasion Roy came home “stoned and drunk,” and mother alerted her counseling agency.

The third time Roy was “stoned” he did not want to go to counseling. Roy began swearing at mother. In response, mother repeated what Roy had said to her “in a heightened mannerism.” She told him, “Don’t ever do that to me again.” She was “screaming at him, don’t call me this, don’t call me that, repeating everything he said.” Mother walked to her bathroom, telephoned her 12-step sponsor, and told her what Roy had said. Mother assured the sponsor that Roy was not overhearing their conversation. But unknown to Mother, Roy made a tape recording of mother’s portion of the conversation. The maternal grandparents got hold of the tape and gave it to the Agency.

On cross-examination, mother testified her yelling at Roy had been a mistake. She should have waited until Roy had sobered up, and she should not have spoken to him in a loud manner. Mother took responsibility for the incident and believed the counseling sessions during the ensuing two and a half months had made her better equipped to handle Roy.

After hearing the parties' arguments, the juvenile court stated it was "particularly struck" by Roy's "great needs." Roy has "particular issues" regarding "testing limits, and learning how to make [his] own decisions questioning authority." The court found that, while mother "has made progress in addressing her issues," the progress was "insufficient so that Roy can be returned to her care in safety." The court was "particularly concerned for [Roy's] emotional well-being. He needs the guidance of someone with mature judgment that he can model and learn to use himself. And there just seems to be -- there's a suggestion that there's so much history between the three corners in this triangle -- mom, grandparents, and Roy -- that it's just not possible for mom to provide what he needs at least at this time." The court also was "struck" by the CASA's recommendation that Roy would do better with parents who were more active and able to track a teenager. In summary, the court found "that [Roy] cannot be returned in safety to his mother."

DISCUSSION

Mother contends the juvenile court committed reversible error when it found a substantial risk of detriment if Roy were returned to mother. She argues the social worker, who did not testify at the hearing, offered only one comment why Roy should not be returned: mother continued to yell, scream, and curse at Roy when he misbehaved, causing Roy to feel unsafe and putting him at risk for further emotional abuse. Citing *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, mother argues Roy's fears, anxiety, and unhappiness about returning home are insufficient to overcome the presumption that the child will be returned. (See *id.* at p. 1401 [child's dislike of parent's living arrangement in a shelter does not, without more, create a substantial risk of detriment].) We disagree.

"[T]he Legislature has determined a child's need for stability and security within a definitive time frame becomes paramount. The cutoff date for fostering family reunification is the 18-month status review. At this hearing, the court must return children to their parents and thereby achieve the goal of family preservation or terminate

services and proceed to devising a permanent plan for the children. [Citation.] ‘The focus during the prepermanent planning stages is preserving the family whenever possible [citation] whereas the focus after the permanent planning hearing is to provide the dependent children with stable, permanent homes.’ [Citation.]” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788.)

Thus, “[a]t an 18-month permanency review hearing, the court must order the child’s return unless the social worker responsible for managing the case can demonstrate, by a preponderance of evidence, that such return ‘would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.’ ([Welf. & Inst. Code,] § 366.22, subd. (a).)” (*In re Ethan C.* (2012) 54 Cal.4th 610, 626.)

“In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of [the child’s CASA]; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided . . . ; and shall make appropriate findings” (Welf. & Inst. Code, § 366.22, subd. (a).)

“When the sufficiency of the evidence to support a finding or order is challenged on appeal, . . . the reviewing court must determine if there is any substantial evidence -- that is, evidence which is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. [Citations.] In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. [Citations.] The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. [Citation.]” (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75 (*Jasmine C.*).

The Agency provided two reasons -- not one as mother claims -- why Roy should not be returned to mother. First, mother continued to yell, scream, and swear at Roy

when he misbehaved, and Roy felt unsafe at home when his mother did all those things. Such parental misconduct put Roy at risk of further emotional abuse. Second, Roy continued to use marijuana and when he was angry he yelled and swore. Mother was not able to protect Roy from his own dangerous misconduct and Roy was at risk of further substance abuse and angry outbursts at home and at school that could lead to suspension or even arrest.

Mother does not address the Agency's second reason (her inability to protect Roy from his own misconduct) or make any argument that it is insufficient to support the juvenile court's order. Thus, mother has forfeited her claim the order is not supported by sufficient evidence. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

In any event, such a contention would lack merit. Mother acknowledges that "Roy was known to have a substance abuse problem even while he was living with his grandparents. The problem was severe enough that a special hearing took place and it resulted in the court ordering Roy to randomly drug test for the Agency." Mother further acknowledges that "Roy had long-standing behavioral problems including anger management problems, all of which were being addressed and treated while Roy was in placement."

None of these problems had been resolved by the time of the trial placement with mother. Roy's three episodes of being under the influence during the placement support the Agency's conclusion mother is not able to protect Roy from his own dangerous misconduct in the form of substance abuse. Mother's testimony Roy swore at her during the third episode supports the Agency's conclusion mother is not able to protect Roy from his own dangerous misconduct in the form of angry outbursts. The principal's letter noting Roy punched the principal's vehicle while being escorted from school grounds supports the Agency's conclusion Roy's uncontrolled outbursts put him at risk of suspension or arrest. The trial court's finding Roy "cannot be returned in safety to his

mother” is supported by substantial evidence. (*Jasmine C.*, *supra*, 70 Cal.App.4th at p. 75.)

This brings us to the Agency’s first reason -- the only one addressed by mother. As noted, the Agency characterized the relevant misconduct as mother “yelling, screaming, and cussing at Roy when he misbehaves.” Roy’s recordings showed mother “yelling and screaming, calling [Roy] names, and being out of control.”

In her testimony at the hearing, mother vigorously disputed that interpretation of her remarks. She claimed it was Roy who had sworn at her; she merely repeated Roy’s words in the course of instructing him, “Don’t ever do that to [her] again,” and in the course of her conversation with her 12-step sponsor.

Although the juvenile court did not resolve this conflict expressly, our standard of review requires us to resolve it in favor of the Agency as the prevailing party. (*Jasmine C.*, *supra*, 70 Cal.App.4th at p. 75.)

Mother replies even if her “yelling and screaming, calling him names, and being out of control” were “accepted as completely true,” it was “insufficient evidence to permanently remove [Roy] from” her. She argues “Roy’s version” is less compelling than the evidence in *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689 (*Constance K.*), which included a lengthy and detailed psychological evaluation of the mother and children as well as written reports from two foster care agencies and a therapist’s recommendation that parental rights be terminated. (*Id.* at pp. 695, 697-699.) But *Constance K.* does not purport to erect an evidentiary floor beneath which no showing of detriment may fall. The fact *Constance K.* arguably involved a more severe showing of detriment does not require reversal of the juvenile court’s order.

Unlike *In re Yvonne W.*, *supra*, 165 Cal.App.4th 1394, in which the child’s dislike of the parent’s living arrangement in a shelter did not, without more, create a substantial risk of detriment, here Roy legitimately feared further abuse from mother if he were returned to her care. (See *In re Joseph B.* (1996) 42 Cal.App.4th 890, 901-902

[emotional trauma caused in part by fear of further abuse if returned to parental custody].) None of mother's authorities holds Roy's expressions of fear are insufficient absent "professional evaluations" substantiating his claims of fear. We reject mother's claim the Agency failed to present sufficient evidence of "real detriment."

Mother reminds us a natural parent has a constitutional right to the care, custody, and control of her children. (Citing, e.g., *Meyer v. Nebraska* (1923) 262 U.S. 390, 399-400 [67 L.Ed. 1042, 1045]; *Santosky v. Kramer* (1982) 455 U.S. 745, 753 [71 L.Ed.2d 599, 606].) But at this stage of the proceedings, mother's right does not trump Roy's right to stability and security. "Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

DISPOSITION

The order of the juvenile court is affirmed.

NICHOLSON, Acting P. J.

We concur:

HULL, J.

HOCH, J.