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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re A.V. et al., Persons Coming Under the
Juvenile Court Law.

MERCED COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JESSICA V.,

Defendant and Appellant.

F071816

(Merced Super. Ct. No. JP000877)

OPINION

APPEAL from orders of the Superior Court of Merced County. Brian L. McCabe,
Judge.

Neale Bachmann Gold, under appointment by the Court of Appeal, for Defendant
and Appellant.

James Fincher, County Counsel, and Kimberly Helms, Deputy County Counsel,
for Plaintiff and Respondent.

Mother Jessica V. claims the dependency court abused its discretion in denying her request for a continuance after she failed to appear for a Welfare and Institutions Code section 366.26¹ hearing. She also claims the court erroneously failed to grant her an evidentiary hearing on a request to change a court order she had filed around the same time. We reject both claims and affirm.

FACTS

A. Dependency Petition and its Allegations

On August 19, 2013, the Merced County Human Services Agency (the Agency)² filed a juvenile dependency petition alleging that Mother's children Ar.C. (newborn girl), Al.C. (13-month old boy), and A.V. (23-month old boy) came within the jurisdiction of the juvenile court. The petition identified Guadalupe H. as the father of A.V. and Alejandro C. as the father of Ar.C. and Al.C. Mother had not been in contact with Guadalupe H. for an unspecified length of time and Guadalupe H.'s whereabouts were unknown. Given Guadalupe H.'s lack of involvement in this case, we refer to Alejandro C. as "Father."

July 2013

In July 2013, Mother gave birth to Ar.C., and they both tested positive for methamphetamine. Two days later, Mother and Father submitted to hair follicle and urine drug screens, the results of which indicated that they used drugs with "medium" frequency.³ Mother did not "follow[] through" with voluntary maintenance services to address her substance abuse issues and did not receive treatment at that time.

¹ All further undesignated statutory references are to the Welfare and Institutions Code unless otherwise stated.

² We use the term the "Agency" to refer to the Merced County Human Services Agency and Merced Child Welfare Services.

³ The petition indicates that " 'medium use' ... is considered 'daily/weekends.' "

August 13, 2013

On August 13, 2013, the Agency received a report that Alejandro C., the father of Ar.C. and Al.C, had choked Mother and that she was afraid for her life. The report also indicated that Father had choked A.V., causing marks on his neck. That same day, a social worker and two police officers responded to Mother's home. A small red mark was found on A.V.'s neck. Mother denied that Father had choked her or A.V. However, Mother did say Father had threatened to kill her by choking her with a cord and that she had found an extension cord underneath her pillow. Mother also said that Father was "not in his right state of mind" when on drugs. Mother "reluctantly" agreed to obtain a restraining order against Father but refused to check into a safe house. Mother was "instructed" to cease all contact with Father.

August 15, 2013

On August 15, 2013, it was reported to the Agency that Father had caused injuries on the left side of A.V.'s head. A social worker received information from "several anonymous parties" that Father had left with "two of the children for a period of time." A.V.'s maternal grandfather, B.V., "had picked up [A.V.] to protect him from any further risk of harm." The social worker "observed and photographed a fresh bruise on [A.V.]'s left cheek, two scratches on the left side of his head and several scrapes along the left side of his forehead and hairline."

Unnamed family members showed the social worker photographs taken from the day before. The social worker reported the photographs "appear[ed]" to depict a fresh slap mark and that the size and shape of the mark indicated it was caused by the hand of an adult. The unnamed family members said Father had "blamed it on 'hot [C]heetos.'"

That day, the social worker and a police officer went to Mother's apartment to detain Al.C. and Ar.C. Mother "said that the red 'slap mark' on [A.V.]'s face was from 'juice.'" Mother then said the mark was from "hot [C]heetos." Mother could not

explain A.V.'s bruise, scratches and scrapes, but denied causing them herself. She denied that Father had been at the apartment.

All three children were detained.

August 16, 2013

The next day, Mother admitted Father had been at the apartment on August 14, 2013, and that he had taken A.V. and Ar.C. to the park for 40 minutes. Mother said she suspected Father had caused A.V.'s injuries. Mother let Father take the children to the park instead of calling police “ ‘because he wanted to see his kids and I was scared to tell him no because he'd probably get mad.’ ” Mother said she did not know what Father was capable of while on drugs.

Father denied the allegations of physical abuse. He did not know why Mother had filed for a restraining order or why his children had been detained. Father suggested that A.V. could have been injured because he is cross-eyed and runs into things. Father also said that A.V. spends a lot of time with his maternal grandfather, B.V., which the social worker understood as insinuating B.V. had caused the injuries.

B. Detention Hearing

At the detention hearing, Mother denied the allegations but submitted on the petition. The court found that the Agency had made a sufficient prima facie showing that all three children fell under subdivision (b) of section 300. The court found that A.V. additionally fell under subdivisions (a) and (g) of section 300. The court found there was substantial danger to the physical health of the children and no reasonable means to protect the children without removing them from their parents' custody. The court vested temporary placement and care of the children with the Agency. The court also ordered Mother and Father to submit to urinalyses and hair follicle drug testing “as directed by the Agency.”

C. Jurisdiction/Disposition Hearing

The jurisdiction/disposition hearing was held on October 9, 2013.

Mother again denied the allegations but submitted the matter without offering evidence or argument. The court advised Mother that since the children were under three years old, her parental rights could be terminated in six months. The court told Mother that it was important she “get engaged in services right away, follow through.”

The court found that all three children fell under subdivisions (a), (b) and (g) of section 300. The court found that there was clear and convincing evidence the children faced a substantial danger to their well-being or physical health and safety if returned home. (See § 361, subd. (c)(1).) The court based its finding on “the untreated substance abuse of the parents and neglect of the children, physical abuse of the minor, and the domestic violence in the home.” The court placed the children with the Agency.

The court ordered that Mother would have weekly supervised visits with the children.

D. Six-Month Review Hearing

The six-month review hearing was initially set for April 7, 2014, but was trailed several times and eventually held in May 2014. The court found that Mother had partially complied with her case plan. Mother tested negative for illegal substances and was reported to be an active participant in her parenting and domestic violence classes.⁴

E. 12-Month Status Report

On December 18, 2014, the Agency filed a status review report. The report indicated that, beginning in May 2014, the Agency had begun to increase the frequency of Mother’s visits with the children and allowed unsupervised visits with Ar.C. On June 24, 2014, the Agency approved a 30-day trial visit where the children would stay with

⁴ Father was found to have made “minimal to no progress with his case plan components”; “failed to meet any of his case plan objectives and has not completed any of his services”; “did not make himself available for his random drug tests”; “has not visited or contacted his children since December 2013” and “was arrested twice since his children’s detention and is currently incarcerated for being a felon carrying a loaded firearm.”

Mother at a sober living residence called New Beginnings. On July 14, 2014, the house manager of New Beginnings informed the Agency that Mother had been “leaving her children with various women in the home to babysit and taking at least one child with her wherever she was going.” The house manager “suspected that [Mother] was abusing substances while away from the home and in the presence of her children.” When Mother had been asked to submit to a random drug test, she tried to purchase another woman’s urine.

On July 7, 2014, Mother admitted to using methamphetamines and alcohol. She then tested positive for methamphetamines and was “kicked ... out” of New Beginnings for 24 hours.⁵ That day, the house manager watched Mother drive her vehicle with her children inside “while under the influence.” Mother admitted to a social worker that she had consumed beer and methamphetamines that day.

Mother failed to submit to drug tests on the following dates in 2014: July 24, August 13, September 16, October 1, November 18, December 15.⁶ Mother told the social worker she did not test on July 24 because she had “ ‘back slid on Wednesday’ ” and that her test would be “ ‘dirty.’ ”

The children were placed back in foster care.

1. Visitations from July 14, 2014 to October 28, 2014

From July 14, 2014, through October 28, 2014, Mother participated in weekly supervised visits with the children. She was 10 minutes late to half of the visits. The social worker concluded that Mother displayed “fair to poor parenting skills during her supervised visits.” Mother would ignore Ar.C. for long periods of time, while paying “special attention” to her two boys. She would bring gifts for the boys, but nothing for

⁵ Later that month, Mother left New Beginnings “against program recommendation” and began living in a home that she said was too small for her children.

⁶ In a subsequent filing, Mother acknowledged that she relapsed during her trial visit and claimed she had “maintained [her] sobriety since May 16, 2015.”

Ar.C.⁷ Mother allowed her boys to “bang on mirrors or jump on chairs and couches without regard for their safety” causing the social worker to intervene.

2. Visitations from October 28, 2014, to December 8, 2014

From October 28, 2014, to December 8, 2014, Mother “missed 5 out of 7 of her visits” with the children “using a variety of excuses and calling at the last minute to cancel.”

3. Services

The 12-month status report indicated that Mother was not in compliance with her case plan. Mother completed 14 weeks of group counseling but did not participate in the recommended 10 weeks of individual counseling.

Mother completed parenting classes, but “failed to demonstrate that she understands how her lifestyle choices and continued substance abuse affects her children.” The social worker referred Mother to different parenting classes, but Mother did not “follow[] through.”

After her relapse on July 7, 2014, Mother did not participate in any alcohol and drug program. She also failed to submit to random drug testing.

F. 12-Month Status Hearing

The 12-month status hearing was continued several times. At one point, the hearing was set for December 11, 2014. Though the hearing was scheduled for 8:30 a.m., Mother did not appear in court until 9:55 a.m. The hearing was continued and eventually scheduled for January 27, 2015. Mother did not appear at the hearing, and her counsel indicated she was in the hospital. The Agency said it had not been advised Mother was in the hospital. The hearing was continued to February 3, 2015.

Mother failed to appear at the hearing on February 3, 2015. Her counsel requested a continuance and said, “I have had no communication with my client.” The request for a

⁷ We note that Ar.C. was only one year old at this time.

continuance was denied. Counsel for Mother and Father denied the allegations of the petition and submitted the matter to the court.

The court found that Mother and Father “failed to participate regularly and make substantive progress in a Court-ordered treatment plan.” The court terminated reunification services and set a section 366.26 hearing. The court permitted Mother and Father to make a limited number of visitations pending the section 366.26 hearing.

G. Section 366.26 Hearing, Mother’s Section 388 Request and Related Proceedings

The Agency prepared a section 366.26 hearing report, which recommended terminating Mother and Father’s parental rights, and designating the children’s current confidential caretakers to be their prospective adoptive parents. At the permanency plan review hearing on May 28, 2015, Mother requested a continuance because she had received the Agency’s report only two days prior. The court set a continued, uncontested hearing for June 4, 2015.

At the June 4, 2015, hearing, Mother requested the case be set for a contested section 366.26 hearing. The court scheduled a contested hearing for June 23, 2015.

On June 22, 2015, Mother filed a request to change a court order. (See § 388.) In the request, Mother asked the court to order family maintenance services or to place the children with her and dismiss the dependency case. Mother indicated that she had now completed the components of her case plan and had been sober since May 16, 2015.

A cover letter to the request asked the court clerk to schedule it to be heard on the same day as the June 23, 2015, section 366.26 hearing.

Mother failed to appear at the contested hearing on June 23, 2015. The matter had been set for 8:30 a.m., and the court waited until 10:45 a.m. to give Mother additional time to appear, but she never did. Her counsel stated:

“Your Honor, my client is not present. I have had a lot of communication with her this morning via texting. [¶] I would summarize it by saying Mother indicated she had transportation problems and is asking that the

court continue this hearing because she had not yet been able to make it this morning. It is now ten to 11:00. She has been unable to make it. [¶] The last message I had from Mother was at approximately 10:30 when she indicated she was walking from Smiley's Gas Station. However, she continued to ask that this hearing be continued. So I am making that request on Mother's behalf."

The court denied the request for a continuance. The court denied Mother's request for change of court order, and terminated Mother and Father's parental rights. Mother now appeals.

DISCUSSION

I. THE COURT DID NOT ABUSE ITS DISCRETION IN DENYING MOTHER'S REQUEST FOR A CONTINUANCE

Mother contends the court erred in denying her request to continue the section 366.26 hearing.

Continuances are discouraged in dependency cases. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481.) A request for continuance must be denied if it is contrary to the interests of the minor. (§ 352, subd. (a).) "In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (*Ibid.*)

"We review the court's ruling on a continuance request for an abuse of discretion. [Citation.]" (*In re Mary B., supra*, 218 Cal.App.4th at p. 1481.) We find no abuse of discretion here.

In this case, granting a continuance would have been contrary to the interests of the minor. It necessarily would have militated against the minors' "need for prompt resolution" of their custody status. (See § 352, subd. (a).) Moreover, if the court had granted the continuance, it would have delayed a ruling on whether to designate the minors' caretakers as prospective adoptive parents. This would have been at odds with the statute's requirement that the court give substantial weight to "the need to provide

children with stable environments, and the damage to a minor of prolonged temporary placements.” (*Ibid.*)

Additionally, Mother did not present a timely, compelling request for a continuance. Instead, Mother’s counsel conveyed to the court her vague claim that she was having “transportation problems.” However, there was no evidence or explanation as to why Mother could not have either (1) secured an adequate means of transportation ahead of time, or (2) requested a continuance before the hearing when and if she indeed was having problems securing transportation. Additionally, Mother’s history of missing or arriving significantly late at court hearings – and shirking other court-mandated responsibilities like drug testing – undermines the trustworthiness of her implicit claim that she was a helpless victim of circumstances beyond her control. We cannot say the dependency court abused its discretion here.

II. THE COURT DID NOT ERRONEOUSLY DENY MOTHER’S REQUEST TO CHANGE A COURT ORDER WITHOUT A HEARING

Mother argues the court erred in denying her request to change a court order without an evidentiary hearing. (See § 388, subd. (d); Cal. Rules of Court, rule 5.570(d).) She argues her request presented a prima facie showing, which warranted an evidentiary hearing. She claims the court’s failure to grant such a hearing was prejudicial error under the standard set forth in cases like *In re Zachary G.* (1999) 77 Cal.App.4th 799.

But before we analyze whether the court properly denied an evidentiary hearing under cases like *In re Zachary G.*, *supra*, 77 Cal.App.4th 799, we must first determine whether the court actually did deny Mother an evidentiary hearing. That is, a necessary premise to Mother’s argument is that the court in fact failed to afford her an evidentiary hearing. Our view of the record does not support this essential premise. Mother requested the court hear her request on the same day as the section 366.26 hearing (i.e., June 23, 2015). A hearing was indeed held on that date, at which time the court (1) indicated it “received, read, and considered” the request, (2) solicited the positions of the

parties as to Mother's request, and (3) issued its ruling denying the request. There is nothing to suggest Mother would not have been permitted to testify at the hearing had she attended it. We conclude the court did not deny Mother an evidentiary hearing; rather, Mother failed to avail herself of the opportunity to present evidence at the hearing that she was indeed afforded. Her claim that the court improperly denied her an evidentiary hearing must therefore fail.

DISPOSITION

The orders are affirmed.

POOCHIGIAN, J.

WE CONCUR:

KANE, Acting P.J.

SMITH, J.