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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

J.B.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G047823

(Super. Ct. No. DP022509)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Deborah Servino, Judge. Petition denied.

Law Office of Patricia Smeets Rossmeisl and Patricia Smeets Rossmeisl for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

Law Office of Harold LaFlamme and Linda O'Neil for Real Party in Interest N.B.

* * *

INTRODUCTION

Three-month-old A.B. died as a result of nonaccidental trauma. A.B.'s sister, N.B., then age two years and nine months, was removed from the custody and care of her parents, J.B. (mother) and Al.B. (father). The juvenile court found true by a preponderance of the evidence that N.B. was within the court's jurisdiction, pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (f). (All further statutory references are to the Welfare and Institutions Code.) The court further found that reunification services should be denied to mother and father, pursuant to section 361.5, subdivision (b)(4) and (6), and that reunification would not be in N.B.'s best interests. The court then set a hearing to determine a permanent plan of placement for N.B. (§ 366.26.) Mother filed a petition for a writ of mandate.¹

Substantial evidence supported the juvenile court's finding that reunification services were not required to be provided to mother, pursuant to section 361.5, subdivision (b)(4). Mother did not establish reunification would be in N.B.'s best interests. The juvenile court did not err; mother's petition is therefore denied.

STATEMENT OF FACTS

Mother was the primary caretaker of A.B. and N.B.; father worked Monday through Saturday. When A.B. was about one month old, mother observed a lump on her forehead, which mother attributed to N.B. playing roughly with her. At an appointment

¹ Father has not been heard from since the beginning of the dependency proceeding. He has not filed any challenge to the juvenile court's order.

with her pediatrician on March 29, 2012, A.B. was observed to be healthy and doing well.

In the days preceding April 30, 2012, A.B. had a cold and had been fussy. On April 24, mother noticed a bruise under A.B.'s arm; when she told father about it, he said the bruise could have been caused by the seatbelt of A.B.'s car seat. On April 29, A.B. was sleepy and had little appetite. On April 30, A.B. slept from about 10:30 a.m. to 4:00 p.m. Mother went for a walk around 5:30 p.m., while father stayed home with A.B. While mother was on her walk, father claimed he dropped A.B.² After holding A.B. briefly, Father said he set her down and took a shower. Father also claimed that when he got out of the shower, A.B. was choking. Father called mother on her cell phone. They left for the hospital when she returned home.

When mother and father arrived at the hospital with A.B., she was in full cardiac arrest. A.B. was diagnosed with a large left skull fracture, a large intercranial bleed, multiple healing rib fractures, and bilateral retinal hemorrhages. Those injuries were consistent with shaken baby syndrome, shaken impact syndrome, or blunt force trauma. The treating doctor explained the injuries were not consistent with father dropping A.B.

A.B. died as a result of her injuries on May 2, 2012. The coroner ruled A.B.'s death a homicide due to blunt force trauma to her head.

N.B. showed no signs of injury or abuse. She was detained and placed in the care of her maternal grandparents, and mother was given monitored visitation. Mother consistently attended visits with N.B. N.B. was happy to see mother, but would get sad and cry at the end of the visits; over time, it became easier to comfort N.B. after visits with mother.

² Father originally told hospital personnel and the police that A.B. had been in bed, surrounded by pillows, since he had returned home from work. Father later told the police and a hospital social worker he lied because he was scared.

Mother enrolled in the C.A.R.E. Counseling Center's child abusers' program, attended consistently, was on time, and participated in a child abuse batterer's treatment program. Mother also participated in individual counseling; she attended all sessions, was cooperative, and was making progress in her therapy.

At the joint jurisdiction/disposition hearing, the social worker testified she believed mother was responsible for A.B.'s injuries. The social worker believed mother was neglectful by failing to notice or act on A.B.'s older injuries, and by failing to recognize that A.B. sleeping six hours on April 30 was a sign of a problem. The social worker testified that, under the circumstances, it would not be in N.B.'s best interests to give mother reunification services.

The maternal grandmother supervised all of mother's visits with N.B., and testified that N.B. was always happy to see mother, and sad and crying at the end of the visits. The maternal grandmother did not believe mother had injured A.B., and had never witnessed any violence on the part of father or mother.

Mother's therapist testified mother was making progress in therapy. The therapist believed that in six or seven months, N.B. could be returned to mother's care without further supervision by the court.

PROCEDURAL HISTORY

The Orange County Social Services Agency (SSA) filed an amended juvenile dependency petition alleging N.B. came within the juvenile court's jurisdiction pursuant to section 300, subdivisions (a), (b), and (f).³ The court further amended the petition by interlineation after the jurisdiction hearing.⁴

³ The original petition alleged N.B. came within the juvenile court's jurisdiction pursuant to section 300, subdivisions (a) and (b), and A.B. came within the court's jurisdiction pursuant to section 300, subdivisions (a), (b), (e), and (i).

⁴ The juvenile court deleted the allegations that mother and father demonstrated a "blatant disregard" for A.B.'s well-being by driving her to the hospital rather than calling 911 or administering lifesaving measures themselves.

After the jurisdiction hearing, the juvenile court found by a preponderance of the evidence that N.B. came within section 300, subdivisions (a), (b), and (f). After the disposition hearing, the court found by clear and convincing evidence that reunification services need not be provided to mother, based on section 361.5, subdivision (b)(4) and (6). The court stated on the record that it did not find by clear and convincing evidence that providing reunification services to mother would be in N.B.'s best interests. The court then set the matter for a hearing to determine a permanent plan for N.B., under section 366.26. Mother timely filed a notice of intent to file a writ petition.

DISCUSSION

I.

THE JUVENILE COURT DID NOT ERR IN DETERMINING REUNIFICATION SERVICES WERE NOT REQUIRED UNDER SECTION 361.5, SUBDIVISION (b)(4).

Mother argues the juvenile court erred when it denied her reunification services because she was not an offending parent, under section 361.5, subdivision (b)(4) or (6). We review an order denying reunification services under section 361.5, subdivision (b) for substantial evidence. (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.)

Although reunification services are normally provided to the parents of children declared to be dependents of the juvenile court, section 361.5, subdivision (b) sets forth circumstances under which the juvenile court may deny such services. As is relevant in this case, the statute provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.” (§ 361.5, subd. (b)(4).) The reason for this provision is clear: “[W]hen child abuse results in the death of a child, such abuse ‘is simply too shocking to ignore’ in determining whether the

offending parent should be offered services aimed at reunification with a surviving child. ‘The fact of a death and a subsequent petition . . . arising out of that death simply obliterates almost any possibility of reunification’ [Citation.]” (*In re Ethan N.B.* (2004) 122 Cal.App.4th 55, 65.)

In this case, substantial evidence supports the juvenile court’s finding that A.B.’s death was the result of mother’s abuse or neglect, and that reunification services therefore were not required. The allegations of the amended juvenile dependency petition, which were found true by a preponderance of the evidence, include the following: “On or prior to April 30, 2012, the child’s sibling, A[.]B[.], suffered multiple non-accidental injuries to include, but not limited to a large left side skull fracture, a large intracranial bleed, healing right lateral rib fractures #3 to 6, a healing left rib fracture, and bilateral retinal hemorrhages. Said injuries are indicative of non-accidental trauma and occurred while the child was in the sole and primary care of her parents, [father] and [mother], placing the child, N[.]B[.], at significant risk of physical harm, abuse, and/or death.”

The juvenile court impliedly found mother and father caused A.B.’s death through abuse or neglect when it found by clear and convincing evidence that section 361.5, subdivision (b)(4) applied. Substantial evidence supports that finding. (See *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83-84 [failure of court to make express determination does not require reversal if there is substantial evidence that would have supported such a determination if it had been made].) A.B. was in the primary and sole custody of mother and father when her death from nonaccidental trauma occurred. Either mother or father caused A.B.’s fatal injuries. The coroner determined A.B.’s death was a homicide. In addition to the injuries sustained on April 30, 2012, A.B. was found to have broken ribs which were in various stages of healing. Mother admitted she had previously observed a lump on A.B.’s head, and a bruise under her arm, for which no reasonable explanations were provided. Mother told her therapist that father was verbally

abusive, had difficulty caring for A.B., and was less patient with A.B. than with N.B. On April 30, 2012, A.B. had slept for an unusually long time, which should have caused mother and father to suspect something more was wrong with her than a cold. The evidence before the juvenile court was sufficient to support a finding that mother caused A.B.'s death through abuse or neglect. At a minimum, mother was neglectful in not fully investigating the cause of A.B.'s previous injuries and listlessness, and in leaving A.B. alone with father despite concerns mother should have had about the possibility that father had injured A.B.

Mother argues a finding of criminal neglect is necessary to support the juvenile court's finding that section 361.5, subdivision (b)(4) applies. In support of this argument, mother cites *Patricia O. v. Superior Court* (1999) 69 Cal.App.4th 933, 942, in which the court concluded the evidence supported a finding that "mother's neglect rose to a level of criminal culpability." Recently, however, our Supreme Court has held that sections 300, subdivision (f) and 361.5, subdivision (b)(4) may apply although the parent's neglect does not rise to the level of criminal neglect. (*In re Ethan C.* (2012) 54 Cal.4th 610, 636-637.)

Mother also argues that because father was the perpetrator of the abuse against A.B., and the juvenile court did not make any separate finding that mother was neglectful or had any reason to know of the abuse, she could not be denied reunification services under section 361.5, subdivision (b)(4). We disagree. The juvenile court made a true finding on the allegations that A.B. suffered nonaccidental injuries while she "was in the sole and primary care of her parents, [father] and [mother]." The court therefore found that mother caused A.B.'s death by abuse or neglect.

If the evidence supports the juvenile court's denial of reunification services on any one of multiple grounds, we need not consider other grounds on which it relied. (See *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) Therefore, because we have concluded the juvenile court properly determined reunification services were not required

to be provided under section 361.5, subdivision (b)(4), we need not consider whether the court's decision regarding section 361.5, subdivision (b)(6) was correct.

II.

THE JUVENILE COURT DID NOT ERR IN DETERMINING REUNIFICATION WOULD NOT BE IN N.B.'S BEST INTERESTS.

Once the juvenile court made its finding that reunification services were not required, pursuant to section 361.5, subdivision (b)(4), it could only order such services if it found by clear and convincing evidence that reunification would be in N.B.'s best interests. (§ 361.5, subd. (c).)⁵ Mother argues the juvenile court erred by denying reunification services because reunification with mother was in N.B.'s best interests. We review the juvenile court's refusal to order reunification services under section 361.5, subdivision (c) for abuse of discretion. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96, fn. 6.)

We find no abuse of discretion by the juvenile court. The court made the following statements on the record at the disposition hearing: "The court does not find by clear and convincing evidence that providing reunification services is in the best interest of the child. [¶] The court has considered the factors as specified in 361.5(i), specifically that the act or omissions comprising the severe physical harm inflicted on the minor sibling A[B.], the circumstances under which the abuse or harm was inflicted, the likelihood that that child may be safely returned to the care of the offending parents as defined by case law, the court has even considered the evidence relating to the progress and services, the child's attachment to the parent as testified to by the grandmother, the maternal grandmother, the lack of history with social services, and the testimony by the therapist . . . about mother's ability to benefit from services, and also the court has

⁵ "The court shall not order reunification for a parent or guardian described in paragraph . . . (4) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).)

considered that mother and father are no longer living together at this time. [¶] Even with all of that in consideration, the court does not find by clear and convincing evidence that providing reunification services is in the best interest of the child.”

The court fully considered all of the factors identified in section 361.5, subdivision (i). Indeed, the court made clear it had considered additional factors weighing in favor of mother, as well. All of that evidence did not rise to the level of clear and convincing evidence sufficient to establish reunification would be in N.B.’s best interests. Mother’s argument in her writ petition simply reargues the weight of the evidence. Mother contends the cause of the physical harm to A.B. has been resolved, as father is no longer living with mother, and she was “com[ing] to terms with the possibility father may have killed A[B.]”

As discussed *ante*, the juvenile court’s finding was that one of A.B.’s parents caused her injuries; therefore, father’s disappearance and mother’s acceptance of father’s potential abuse do not resolve one of the possible causes of A.B.’s injuries—that mother inflicted them. Further, at a minimum, substantial evidence supports a finding that mother’s neglect caused A.B.’s death; mother’s neglect cannot be resolved by removing father from the home. Mother also argues A.B. died of acute injuries inflicted while mother was out of the house. This argument is inconsistent with the juvenile court’s finding that *either* mother or father caused A.B.’s injuries. Additionally, although A.B. suffered from acute injuries on April 30, she also had older rib fractures, and had earlier suffered from a lump on her head and a bruise under her arm. Given the serious and significant injuries seen when A.B. was treated at the hospital, the excessive sleepiness and fussiness A.B. exhibited in the days before her death might not have been due to a cold, as mother claimed.

Mother further argues, and SSA agrees, that N.B. suffered no emotional trauma due to A.B.’s death; mother is forced to admit, however, that A.B. herself suffered severe emotional trauma, and the trauma suffered by the child’s sibling is equally

important in this calculation. All parties agree that there is no history of mother abusing other children. Mother also argues there was a great likelihood that N.B. would be returned to her care within 12 months without continuing supervision, based on the opinion of her therapist. Mother fails to consider that the therapist was treating mother as a victim of father's abuse, had not addressed mother's role in A.B.'s abuse, and was not aware of what mother might need to do in terms of classes or other treatment or services to have N.B. safely returned to her. Mother contends N.B. desired to be reunified with mother. While N.B. was unquestionably sad and missed mother, the evidence showed she was doing well in the care of her maternal grandparents, and she was not as sad on being separated from mother as she had originally been.

In this appellate proceeding, N.B.'s counsel joins SSA's arguments, and requests that this court deny the writ petition.

We conclude the juvenile court did not abuse its discretion in considering the factors set forth in section 361.5, subdivision (i), or in concluding mother had not established by clear and convincing evidence that reunification would be in N.B.'s best interests.

DISPOSITION

The petition for a writ of mandate is denied.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.