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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

M.M.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G053846

(Super. Ct. No. DP026190)

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, Gary L. Moorhead, 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.

Rebecca Captain for Real Party in Interest J.M.

* * *

INTRODUCTION

M.M. (Mother), who is the mother of now almost 21-month-old J.M., suffers from bipolar I disorder with psychotic features. She has refused to cooperate in obtaining medical treatment and taking medication for her mental illness.

In our prior opinion, *In re J.M.* (Oct. 11, 2016, G053490) (nonpub. opn.) (*In re J.M.*), we affirmed the juvenile court's order terminating reunification services for Mother as to J.M. Mother argued the juvenile court had erred by failing to appoint a guardian ad litem for her. We held, inter alia, that any such error was not prejudicial because it was clear Mother had refused, and would continue to refuse, medical treatment, including medication, for her bipolar I disorder and that there was no probability the court would have continued reunification services, with or without a guardian ad litem.

Mother filed a request under Welfare and Institutions Code section 388, seeking the return of J.M. to her care under a plan of family maintenance or an order for further reunification services (the section 388 request). (All further statutory references are to the Welfare and Institutions Code.) The juvenile court summarily denied the section 388 request and Mother filed the instant petition for a peremptory writ of mandate challenging that order.

We deny Mother's petition. The section 388 request does not make a prima facie showing of changed, rather than changing, circumstances. Therefore, the juvenile court did not err in denying the section 388 request without a hearing.

BACKGROUND

We quote at length from our discussion of the facts in *In re J.M.*

“In May 2015, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition which, as amended in July 2015 (the amended petition), alleged that then two-month-old J.M. came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b) (failure to protect). (All further statutory references are to the Welfare and Institutions Code unless otherwise specified.) The amended petition alleged that Mother [(M.M.)] engaged in a physical altercation with the maternal grandmother while she was holding J.M. Law enforcement officers described Mother’s behavior as ‘violent,’ and Mother was ‘subsequently involuntarily psychiatrically hospitalized pursuant to Welfare and Institutions Code section 5150.’

“The amended petition further stated Mother has unresolved mental health issues. She had been diagnosed as suffering from bipolar disorder with psychotic features and has been involuntarily psychiatrically hospitalized on approximately 13 occasions. She also has a history of noncompliance with her prescribed psychotropic medication. Mother was seeking mental health treatment.

“The amended petition also alleged Mother has a criminal history and an unresolved domestic violence problem with J.M.’s father (Father).¹ Law enforcement officers had responded to multiple incidents of Mother and Father engaging in physical altercations. [¶] . . . [¶]

“At the jurisdiction hearing, Mother pleaded no contest to the allegations of the amended petition. The juvenile court found a factual basis for the plea and found the

¹ Father is not a party to this appeal. We only refer to him as relevant to the issues presented in this appeal.”

allegations of the amended petition true by a preponderance of the evidence. The court ordered two Evidence Code section 730 evaluations for Mother.

“Mother was first evaluated by psychologist Dr. Alan D. Liberman, who stated in his evaluation report that, in addition to Mother suffering from bipolar I disorder, he suspected Mother suffered from posttraumatic stress disorder that was caused by her older adoptive brother’s sexual and physical abuse of her when she was in elementary school. Liberman stated Mother’s bipolar I disorder is ‘a chronic condition that can be disabling characterized by periods of mood instability defined by the occurrence of at least one manic episode and commonly characterized by repeated episodes of major depression.’ He further stated Mother ‘has had periods of stability. For example she was able to complete college, but she has also had significant periods of mental instability characterized by violent and delusional behavior, resulting in numerous psychiatric hospitalizations.’ Liberman reported that Mother acknowledged she had anger management problems ‘but blamed her medication for this and all her psychiatric hospitalizations, claiming she was allergic to the medications.’ He concluded Mother’s mental disorder rendered her incapable of benefiting from reunification services unless she took her prescribed medication and continued counseling services.

“Mother was also evaluated by psychologist Dr. Ryan J. Jordan. In his evaluation report, Jordan described Mother as having intelligence in the average range and ‘alert and oriented to person, place, time, and situation.’ He stated he believed her ‘thought processes were mostly logical and linear.’ Jordan further stated that, notwithstanding Mother’s diagnosis of having ‘a severe mental illness, Bipolar I Disorder, most recent episode Manic with psychotic features,’ coupled with the fact that the court required her to accept treatment for this illness, ‘she indicated [she was] no longer participating in any form of mental health care. Additionally, she is not taking prescribed psychotropic medications for her illness and, according to the records, has an

extensive history of medication non-compliance even when actively involved in mental health treatment.’

“Jordan concluded that given Mother’s ‘untreated severe mental illness, her history of treatment non-compliance and psychiatric decompensation leading to involuntary hospitalization, her reported unpredictability and violence during psychiatric decompensation, and her unsafe/unstable home environment, the potential for abuse/neglect appears unreasonably high at this time.’ (Underscoring omitted.) He stated Mother’s ‘untreated mental illness continues to interfere with her ability to effectively and safely parent [J.M.] and also ‘renders her incapable of benefitting from reunification services within the next 12 months.’ (Underscoring omitted.)

“At the disposition hearing on September 1, 2015, after considering and accepting into evidence, inter alia, Liberman’s and Jordan’s Evidence Code section 730 evaluation reports, the juvenile court declared J.M. a dependent child of the court and vested custody with SSA. The court also ordered reunification services for Mother. The court ordered Mother to sign releases of medication information. Mother’s case plan required that she undergo a medication evaluation by a board-certified psychiatrist, participate in counseling, and complete parent education and anger management or domestic violence classes. [¶] . . . [¶]

“In an interim review report dated December 7, 2015, SSA reported that from September through November 2015, on at least seven separate occasions, Mother contacted the police to come to her apartment; in most instances, Mother reported domestic violence with Father. The Santa Ana Police Department had responded to Mother’s apartment a total of 12 times since September 1, 2015. The report stated Mother had refused to sign the case plan or other documents provided by SSA. On November 15, 2015, Mother was involuntarily hospitalized and placed on a section 5150 hold after she was ‘yelling and screaming on the street.’ Mother and her therapist reported that Mother was not taking psychotropic medications. Mother’s visitation with

J.M. was ‘sporadic’ and she often did not confirm her visits. SSA recommended the termination of Mother’s reunification services.

“At a progress review hearing on December 8, 2015, Mother requested that homeopathic remedies fulfill the court’s requirement that she receive traditional treatment for mental health issues. The court did not grant Mother’s request. The court ordered Mother ‘to follow psychiatric treatment including medications required by psychiatrist in addition to homeopathic treatments.’ SSA filed a request pursuant to section 388, seeking termination of Mother’s reunification services and the setting of a permanency hearing.² [¶] . . . [¶]

“At the six-month review hearing, the juvenile court considered, inter alia, Mother’s testimony, multiple reports, and exhibits. The court found Mother had made minimal progress toward alleviating or mitigating the causes necessitating placement of J.M. The court stated: ‘Mother has an extensive mental health history having been diagnosed as long ago as 2004 as bipolar with psychotic features requiring involuntary psychiatric hospitalizations on more than 13 occasions.’ The court further stated: ‘The sad and frustrating assessment by the court is that [Mother] is an obviously intelligent young woman who loves her child but is a mother who remains in complete denial over the severity of her mental health issues and refuses to take western medication to treat and control her bipolar condition.’ The court observed that the maternal grandmother reported Mother is safe and rational while on her psychotropic medications; however, Mother ‘has steadfastly refused to take them since before the incident that brought this child before the court.’ Although Mother claimed that she had stopped taking lithium due to a severe allergic reaction, the court noted that no documentation of any such allergic reaction had been provided to the court.

² SSA withdrew its section 388 request after the court had not ruled on it before the six-month review hearing at which the court addressed the issues in the section 388 request.”

“The court acknowledged the Evidence Code section 730 evaluation reports. In each report, the evaluating psychologist opined that Mother would not likely benefit from family reunification services unless she remained compliant with her bipolar medication. The court continued: ‘While [M]other has complied with some of her case plan services including parenting classes and anger management classes and has visited her child on a consistent although still monitored basis, she has continued to dodge the focal issue that brought this matter to the court and the main concern this court has for the well-being of her child, her bipolar condition with psychotic features.’

“As for the court’s requirement that Mother submit to a medication evaluation by a psychiatrist, the court stated it ‘believes that [M]other has apparently recently realized that unless she was seen by a psychiatrist her chances at this hearing were unfavorable as evaluation by a psychiatrist for medication evaluation was an integral part of her case plan to reunite with her child.’ The court also stated that Mother had ‘irregular contact’ with a psychiatrist whom she had not seen since her evaluation. She refused to execute an unrestricted referral for SSA to interact with the psychiatrist and confirm she had seen a psychiatrist. The court noted the psychiatrist whom Mother had seen likely had minimal, if any, historical information on Mother’s bipolar condition or prior treatment. When asked why she had to be seen, Mother reported to the psychiatrist that she had no mental health symptoms. The court stated, ‘[b]ased on that limited interaction[,] no medications were prescribed and voila, [M]other claims compliance with the case plan and psychiatric evaluation. This gamesmanship is revealing.’

“The court further found: ‘While perhaps not perfect in their interactions with [M]other, [SSA] has acted diligently and reasonably in attempting to help [M]other address her bipolar condition. Rather than embrace this offered assistance, [M]other has been antagonistic and defiant with the social workers. She has to date indicated that she will not take psychotropic medications. [¶] Unless [M]other participates in a complete

psychiatric evaluation for her long-standing bipolar condition with a psychotropic medication evaluation after a thorough and complete history is provided to that physician, the court believes that [M]other will continue to be a significant risk of injury and harm to her child. [¶] She has not substantially complied with her case plan in this regard and apparently will not do so. Her bipolar condition with psychotic episodes manifested by aggression brought this matter before the court. Those episodes likely contributed to the history of documented domestic violence between [M]other and [F]ather. Mother's failure to obtain appropriate treatment for her bipolar condition is not the result of [SSA]'s failure to provide reasonable services in this regard. [¶] Based on these factors it is the opinion of this court that [SSA] has met its burden of proof with respect to the termination of her [family reunification] services and finds that further services to [M]other would not be productive and orders them terminated.” (*In re J.M., supra*, G053490.)

Mother appealed from the juvenile court's order terminating reunification services. We affirmed the court's order in *In re J.M.*

In a status review report dated July 7, 2016, the Orange County Social Services Agency reported that Mother's visits with J.M. had not been consistent and “her behavior has been erratic.” On June 17, Mother had violated a restraining order against her. The report stated J.M. remained placed with the maternal grandparents who are both “equally involved with caring for the child. . . . The child appears to be well-adjusted in placement as evidenced by the way she cuddles with the maternal grandparents and her happy demeanor. The maternal grandparents provide a safe, stable and caring environment for the child. The child's medical, physical and emotional needs continue to be met in this placement.”

In August 2016, Mother filed the section 388 request seeking to change the court's order terminating her reunification services. Mother's request stated the following changes had occurred since the court's order terminating reunification services:

“Mother completed an 8 hour Anger Management Class and a 4 hour Parenting Class. Mother sought a consultation/evaluation at Health Care Agency and sought treatment with a Holis[ti]c Psychiatrist.” Mother requested that “the Court return the minor, to her care under a plan of Family Maintenance or order Family Reunification Services and set an appropriate review hearing in six months. Court to order a minimum of twice weekly visitation with the child to occur at a location in the community. Court to set aside/vacate/modify restraining order protecting maternal grandmother.”

In response to the question “[w]hy would the changes you are requesting be better for the child,” Mother responded, “Mother has sought to change her circumstances and show the court that she has made strides to parent her child.”

Mother’s request was supported by her declaration stating she was able to care for and support J.M. emotionally, physically, and mentally, and provide food, clothing, and shelter for her. Mother stated her “mental health has improved tremendously” as she “was able to get the correct mental health treatment and services necessary to stabilize.” She stated she “learned that nobody can make you feel so angry that they can control you” and “learned how to calm down and let [her] frustration dissipate.” In her declaration, Mother further stated she had started a full-time job; as of August 1, 2016, she would be “receiving SSI in the amount of [\$]948.40, each month”; and she was under the care of a child and adult psychiatrist.

Certificates of anger management course and parenting course enrollment and completion and medical information authorization forms signed by Mother were attached to her declaration. Also attached to Mother’s declaration was a Department of Motor Vehicles (DMV) driver medical evaluation form, which had been partially filled out by a psychiatrist and stated in part that Mother “has history of Post-Traumatic Stress Disorder & possible bipolar disorder, was in treatment with therapy & medications. She is off psychotropic meds for one year, in full remission, stable. She continues regular therapy & is participating at Wellness Center. Collateral contact from her friend

indicated that she's been stable with fair judgement, functional on daily basis. Psychological screening scales did not show any impairment due to anxiety or depression or other mental illnesses. During psychiatric evaluation, she was calm, collected, alert & oriented with normal speech, behaviors & fair cognition." The psychiatrist stated Mother's medical condition did not affect safe driving. The psychiatrist neither currently advised against her driving nor recommended a driving test be given to her by the DMV.

At the 12-month review hearing, the juvenile court summarily denied the section 388 request. The court found Mother was attempting to make changes but ordered no change at that time. The court stated: "The court congratulates [Mother] on her efforts to address her mental health issues. However, the court finds that these documents that have been submitted reflect that the mother is attempting to make changes or is changing with respect to her mental health conditions, not that the mental health conditions have changed. And there's a significant difference between the two. [¶] In order to sustain a 388 the court must find that the prior circumstances including mother's mental health have completely changed or are significantly changed. All these documents suggest is that mother is making an effort to change those circumstances. [¶] The agency as far as the court is aware has not had an opportunity to review Dr. Dang's records or the records from Dr. Daluski. All we have is reports. One is a D.M.V. report or evaluation, and the other is a letter which, as minor's counsel pointed out, was authored prior to the termination of mother's reunification services. So until the agency has an opportunity to correspond with those mental health providers, there simply is not enough in there to sustain a 388 on the basis that circumstances have changed."

The juvenile court set a permanency hearing. Mother filed a notice of intent to file a writ petition to review the order setting a permanency hearing, followed by the writ petition itself.

DISCUSSION

“The grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed on appeal unless an abuse of discretion is clearly established.” (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) We may not reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) We affirm the order unless it ““exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) The juvenile court’s decision will not be disturbed unless the court ““has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*In re Stephanie M., supra*, at p. 318.)

To succeed on a section 388 petition, a parent must show changed circumstances establishing that the proposed modification would be in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.) “The parent seeking modification [through a section 388 petition] must ‘make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]’ [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Mother asserts the following change of circumstances or new evidence: “Mother declared that her mental health had improved tremendously. Mother was able to get the correct mental health treatment and services necessary to stabilize. . . . Mother supplied the name of her treating psychiatrist. . . . Mother’s psychiatrist filled out a form

with the Department of Motor Vehicles to have her driver's license reinstated. . . . The psychiatrist stated [M]other was calm, collected, alert and oriented, with normal speech, behavior, and fair cognition. . . . A holistic psychiatrist was also evaluating Mother. . . . Mother signed a release of information for the Health Care Agency so the court could have information about her new evaluation. . . . Mother completed an eight-hour anger management course and received a certificate of completion. . . . Mother was able to articulate what she learned in anger management. Mother learned how to control her anger and let her frustration dissipate. Mother learned how [to] address situations that would trigger her anger by breathing techniques and meditation. . . . Mother also completed a four-hour parenting course and received a certificate of completion.” Mother also states she was employed and had a place to live and thus was able to provide for J.M.'s needs.

The juvenile court terminated reunification services in April 2016, after concluding Mother was in denial about the severity of her mental health issues and continued to refuse to cooperate in obtaining mental health treatment and medication. The section 388 request did not state changed circumstances because it did not show that Mother has gained an understanding about her mental health issues or that she has begun, much less substantially complied with, any mental health treatment plan, including medication.

Instead, in support of the section 388 request, Mother submitted her own declaration, concluding that she was able to support J.M. and Mother's mental health had “improved tremendously.” Mother's documentation submitted in support of the section 388 request includes a psychiatrist's statements on a DMV medical evaluation form dated July 14, 2016, which include the statement that Mother had been “in treatment with therapy & medications. She's off psychotropic meds for one year, in full remission, stable.” The psychiatrist's statements are inconsistent with the juvenile court's record showing that as of April 2016, Mother required psychiatric evaluation, treatment, and

medication to all of which she failed to submit, thereby suggesting the psychiatrist had not been provided complete information about Mother's mental health history. In any event, the section 388 request did not include any details regarding any psychiatric evaluation, therapy, or medication that Mother might have received since the juvenile court terminated her reunification services. The juvenile court did not err by concluding the section 388 request and proffered evidence did not rise to the level of a change of circumstances within the meaning of section 388 to state a prima facie case. The court therefore did not err by summarily denying the section 388 request.

DISPOSITION

The petition for writ of mandate is denied.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.