Filed 5/12/09 In re K.M. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.M., a Person Coming Under the Juvenile Court Law.	B211497 (Los Angeles County Super. Ct. No. CK57523)
R.M., Petitioner, v. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent, LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	

ORIGINAL PROCEEDINGS. Petition for extraordinary writ. Donna Levin, Referee. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Emma Castro, Ellen L. Bacon and Linda Simmons for Petitioner RM.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Frank J. DaVanzo for Real Parties in Interest.

Children's Law Center of Los Angeles CLC 1, Elaine Bradshaw, for Minor.

R.M. (mother) the mother of K.M., born September, 2007, has filed a petition for extraordinary relief seeking to set aside its Welfare and Institutions Code section 300[1] findings and its denial of family reunification services (section 361.5). We deny the petition.

FACTS AND PROCEDURAL HISTORY

K.M. was born in September of 2007. On April 24, 2008, the Department of Children and Family Services (the Department) received a referral that alleged that mother was neglecting K.M. The referral also asserted that mother's home was dirty, piled with trash, and contained roaches.

An emergency services worker went to mother's home and determined that the allegations were unfounded. She detained K.M., however, because of the mother's prior history with the Department concerning the death of K.M.'s sibling, K.S. The detention report stated that mother's live-in companion, and the father of K.S., D.S., had repeatedly severely abused K.S. by striking him with a brush, a comb, a belt and his hands. In addition, D.S. had grabbed K.S. by the legs resulting in K.S. sustaining a bump to his head. Further D.S. repeatedly locked K.S. in a closet when the child cried. D.S.'s actions led to the death of K.S. four months after he was born. The coroner found that K.S. had an acute left parietal skull fracture. Mother was present when D.S. abused his four month old child and took no action to protect K.S. Moreover, mother also repeatedly locked her child, K.S., and her other child, K.B. in a closet. D.S. abused mother's other children,

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[1] All further references are to the Welfare and Institutions Code unless otherwise indicated.

and again, mother did nothing to stop him from physically harming her children. As a result, mother's older children were removed from her custody.

When questioned about the death of the infant, K.S., mother stated: "Now, do I think that he killed the baby? Yes I do. There was always [a] little jealousy about how much attention I was spending with the baby and doing things for the baby. I think he was capable of it." As a result of the investigation, on April 29, 2008, a dependency petition was filed regarding K.M. alleging that she came within the provisions of section 300, subdivisions (a) (b), (f) and (i). A first amended petition was filed on June 24, 2008 and added section 300, subdivision (j), as well as the "alleged father," D.S. Despite the fact that mother believed that D.S. had killed her child, and, as a result the older children had been removed from her custody, she continued to see D.S. She had an encounter with D.S. in December, 2006. Specifically, mother testified that she had met D.S. at a party, "emotions [got] the best of [her] and that's how we ended up having sex." Consequently, D.S. could well be the father of K.M. despite the fact that mother named two other men as the possible father.

On August 7, 2008, the adjudication hearing as to K.M. was held. The juvenile court sustained allegations under section 300, subdivisions (a) (substantial risk child will suffer seriously physical harm, (b) (substantial risk child will suffer serious physical harm or illness due to negligence or failure to supervise), (f) (parent caused death of a child by abuse of neglect), and (j) (sibling has been abused and neglected and risk child will be abused or neglected), as a result finding that mother was complicit in K.S.'s death; that D.S. was not out of mother's life; that there was a substantial risk of harm to K.M. because of D.S.'s access and mother's previous failure to protect her children; and that there was a substantial risk of harm to K.M. The juvenile court continued the matter for disposition.

Following the contested hearing on October 17, 2008, the juvenile court removed the child from the parents' custody pursuant to section 361, subdivision (c), and ordered no reunification services pursuant to section 361.5, subdivisions (b) (4), (6), and (10) and

section 361.5, subdivision (c). The matter was set for a hearing to select and implement a permanent plan under section 366.26. This petition followed.[2]

DISCUSSION

Mother made the following contentions: the juvenile court erred at the dispositional hearing in shifting the burden of proof to the mother, applying the wrong standard, admitting hearsay statements in a social worker's report, and in making a decision that lacked substantial evidence to support it. Mother only challenges the dispositional order on the ground that the jurisdictional order was erroneously granted. We review the juvenile court's jurisdiction and disposition findings and orders for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 111-112; see *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; *In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860. We review the evidence in the light most favorable to the respondent court's findings. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged

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[2] 361.5 (b)(4) provides that no reunification services will be provided to a parent if the parent has caused the death of another child through abuse or neglect; subdivision (b)(6) provides that reunification services will be denied to a parent if the child has been adjudicated a dependent as a result of severe sexual abuse or the infliction of severe physical harm to the child or a sibling and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent. Subdivision (b) (10) provides that reunification services will be denied to a parent when the court had previously denied reunification services for any sibling or half-sibling of the child and the parent has not made a reasonable effort to treat the problems that led to the removal of the child's siblings or half-siblings.

statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

As noted, one of the allegations under section 300 is contained in subdivision (f). Section 300 provides—"Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be dependent child of the court . . . (f). "The child's parent or guardian caused the death of another child through abuse or neglect." The juvenile court stated, "that the F count alone, evidence that the parents caused the death of a sibling, always provides a basis for the court to take jurisdiction over subsequent children." Mother does not argue that there is not substantial evidence to support jurisdiction based on section 300, subdivision (f). As the Department points out, "there was substantial evidence that mother had been responsible for K.S.'s death under section 300, subdivision (f) . . . ."

All of mother's arguments go to the issue of present substantial risk of harm. The issues as to burden of proof, improper standard, admissibility of evidence and substantial evidence all concern the question of substantial risk of harm. We need not address those issues because jurisdiction was established under section 300, subdivision (f). That provision does not require a finding of current risk of harm. As there is no challenge to the disposition order other than as a consequence of the jurisdictional order, and because the jurisdictional order was appropriate, there was no error as to the dispositional order.

DISPOSITION

The petition for extraordinary relief is denied.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.