



Los Angeles County Department of Children and Family Services v. Superior Court of Los Angeles

2003 | Cited 0 times | California Court of Appeal | July 11, 2003

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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OPINION AND ORDER

GRANTING PEREMPTORY WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Margaret S. Henry, Judge. Petition granted.

The juvenile court erred in terminating jurisdiction over the minors, Peyton C., E.C., and K.C., without considering an expert's report prepared pursuant to Evidence Code section 730.¹

FACTUAL AND PROCEDURAL BACKGROUND

On June 30, 2002, seven-year-old Peyton suffered violent seizures because his mother, Maureen C., had given the minor an injection of her medically prescribed insulin. Although Peyton is not a diabetic, Mother had been injecting Peyton with insulin for the previous six to eight months. Mother was arrested in March 2003, and charged with violation of Penal Code section 273a, subdivision (a), cruelty to a child likely to produce great bodily harm or death. She was released on her own recognizance.

On July 3, the Department of Children and Family Services alleged Mother posed a risk of serious harm to, and failed to protect, Peyton. (Welf. & Inst. Code, § 300.)² Peyton and his siblings were detained and placed in the home of the maternal grandmother.

On August 1, the juvenile court sustained the petition. Over the objection of Mother, the juvenile court ordered an evaluation of both Mother and Father pursuant to Evidence Code section 730 to address the issues of family dynamics and whether Mother suffered from Munchausen Syndrome by Proxy. The parents were ordered to participate in counseling and parenting classes.

At the disposition hearing on September 23, the juvenile court declared the minors dependents of the juvenile court and released them to the custody of their parents. Mother and Father had submitted to



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the Evidence Code section 730 evaluation, but the report was not prepared in time for the hearing.

Mother and Father completed parenting classes. Mother continued counseling with Dr. Susman, who she had been seeing for the past six years.

In November, Mother took Peyton to see Dr. Ronald Miller. Dr. Miller conducted a physical examination and blood tests, all of which were normal. Dr. Miller provided Mother with a neurology referral to rule out a neurological basis for Peyton's symptoms. Mother made an appointment, but did not reschedule when a dependency hearing was scheduled for the same day, May 1, 2003.

In January 2003, Mother took Peyton to see Dr. Ronald Pitts. Mother reported symptoms consistent with hypoglycemia or diabetes, but Dr. Pitts's actual examination of Peyton ruled out diabetes. Dr. Pitts referred Peyton for hypoglycemia tests to the Los Angeles Metabolic Clinic at Children's Hospital. Peyton's appointment was June 30, 2003.

In February 2003, Mother had Dr. Pitts sign a note for school, permitting Peyton "to take a glucose tablet (4 oz.) at any sudden onset of shakiness, nervousness and confusion, trembling and tumbling while walking, or extreme fatigue."

On May 1 and May 14, the juvenile court conducted a section 364 hearing. The expert's report pursuant to Evidence Code section 730 was not completed.³

Dr. Pitts testified that he examined Peyton on three occasions and determined he did not suffer from diabetes or hypoglycemia. However, Dr. Pitts referred Mother to Children's Hospital for a second opinion as to hypoglycemia. During the visits to his office, Mother was anxious. Dr. Pitts further testified that he prescribed glucose pills for Peyton to appease Mother.

The parties stipulated that Peyton did not exhibit any symptoms of hypoglycemia at school.

The case social worker, Nicole Currey, testified that DCFS opposed terminating jurisdiction because even though Peyton's blood tests had been normal, Mother still wanted to medicate Peyton with the glucose tablets. Also, the DCFS believed that Mother may medicate the other two children, even though Mother had not engaged in that type of behavior with them.⁴ Furthermore, the DCFS was concerned Mother may be exhibiting behavior within the parameters of Munchausen Syndrome by Proxy. The DCFS was also concerned that Mother's therapist has known Mother too long to make an accurate assessment.

Mother testified that she was diagnosed five years ago with diabetes and many of her family members have diabetes. Prior to July 2002, Mother was not aware that insulin given to a non-diabetic would cause him or her to go into a seizure or shock. Mother further testified Peyton had never been diagnosed as having diabetes or hypoglycemia. She had taken Peyton to four doctors and was not



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satisfied with any of their diagnoses. Mother was concerned that her older daughter was diabetic, but never gave her any insulin.

On May 14, after the conclusion of testimony and argument of counsel, and without the benefit of an Evidence Code section 730 report, the juvenile court terminated jurisdiction.

We vacated the May 14 ruling and ordered the juvenile court to reassert jurisdiction over the minors.

DISCUSSION

Section 364, subdivision (c), provides that the juvenile court "shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker . . . establishes by a preponderance of evidence that the conditions still exist [that] would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."

"` In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.'" (In re Rocco M. (1991) 1 Cal.App.4th 814, 820.)

There is sufficient evidence that Mother may continue to medicate Peyton for an illness only she imagines that he has. Four doctors that Mother consulted concluded that the minor does not have diabetes or hypoglycemia, and personnel at Peyton's school did not notice that Peyton had any symptoms of diabetes, yet Mother continues in her irrational belief that Peyton suffers from these conditions and she must medicate him. Mother consulted with physicians until she found one that would prescribe pills for Peyton; she refused to follow up on the referrals she received from Drs. Miller and Pitts; and Mother gave Peyton her own glucose pills.

With this evidence of Mother's having acted on her irrational, baseless belief to Peyton's detriment, we conclude that Mother must be examined by a neutral mental health professional. The juvenile court must retain jurisdiction-at a minimum-to review and consider a report prepared pursuant to Evidence Code section 730.

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of May 14, 2003, terminating jurisdiction over Peyton C., E.C., and K.C., and to issue a new and different order maintaining jurisdiction and preparing and considering an Evidence Code section 730 evaluation in Los Angeles Superior Court case No. CK49424, entitled In the Matter of Peyton C., E.C. and K.C.



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SPENCER, P. J.

ORTEGA, J.

VOGEL (MIRIAM A.), J.

1. As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240- 1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222- 1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

2. Unless otherwise indicated, all further references are to the Welfare and Institutions Code.

3. Dr. Perry- Hunter, who had conducted the Evidence Code section 730 evaluation, lost her file and all of the information from her computer hard drive. She was unable to prepare the report.

4. Currey further testified that there had been no problems with unauthorized medications during the six months the children had been home with Mother and Father.

