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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re R.C., a Person Coming Under the
Juvenile Court Law.

R.C.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent,

CONTRA COSTA COUNTY CHILDREN
& FAMILY SERVICES BUREAU et al.,

Real Parties in Interest.

A140796

(Contra Costa County
Super. Ct. No. J12-01271)

Petitioner R.C. (father) seeks extraordinary writ relief from an order terminating his parental rights and setting a permanent placement hearing under Welfare and Institutions Code section 366.26.¹ (Cal. Rules of Court, rule 8.452.) In particular, he challenges the denial of his request that his son, R.C. (the minor), be placed with the paternal grandmother, and contends the court erred in removing the minor from his custody without a section 387 motion. We will deny the petition.

¹ All statutory references are to the Welfare and Institutions Code.

I. FACTS AND PROCEDURAL HISTORY

The minor was born in February 2012. In September 2012, the Contra Costa County Children and Family Services Bureau (Bureau) filed a section 300 petition, alleging the minor was at substantial risk of harm in the care of his mother and father due to their continuing use of marijuana, and mother failed to supervise the minor and provide an appropriate environment because she committed a crime in his presence.

Father and mother did not contest the allegations of the petition and stipulated to jurisdiction. The court sustained the petition as to the risk of harm arising from their drug use, and declared the minor a dependent of the court.

On October 19, 2012, the court ordered the minor to remain with father in the paternal grandmother's home (where father was living) until further court order, and continued the disposition hearing to October 31, 2012.

On October 24, 2012, the Bureau filed a subsequent petition under section 342, based on allegations that (1) mother had violated the October 19 order by taking the minor from the paternal grandmother's home and refusing to return him, and (2) despite the October 19 order, father allowed mother to stay in the home, have free access to the minor, and take him from the home. The social worker explained that she found mother in the home on October 19, both parents acknowledged she was not supposed to be there, and she appeared to be under the influence of a controlled substance. On October 21, the police performed a health and welfare check and found mother in the home with the minor again. On October 22, the paternal grandmother claimed she did not want mother in the home, but father and mother refused to listen to her. It was that day that mother left the paternal grandmother's home with the minor. In addition, the social worker advised, neither father nor mother had been drug testing or engaging in services.

At the detention hearing on the section 342 petition, the court detained the minor from both parents and ordered a jurisdictional hearing. The court thereafter continued the jurisdictional hearing on the section 342 petition, and the disposition hearing on the original petition, to November 28, 2012. On November 28, 2012, the court dismissed the

section 342 petition and set the disposition hearing on the original petition for December 10, 2012.

In an amended disposition report, the Bureau recommended removal of the minor from parental custody and reunification services.

At the contested disposition hearing in December 2012, the court removed the minor from parental custody, placed him in foster care (where he had been since the October 2012 detention hearing), and ordered reunification services.

The Bureau's report for the six-month review hearing recommended that reunification services be terminated for mother and continued for father. The report also noted that the paternal grandmother was approved as a relative caregiver in April 2013, strongly desired to provide a home for the minor, and expressed interest in adoption or guardianship.

At the contested review hearing on June 17, 2013, the court followed the Bureau's recommendations, terminated mother's reunification services, and continued reunification services for father.

The Bureau's October 2013 report for the 12-month review hearing recommended terminating reunification services for father and scheduling a section 366.26 hearing. The Bureau explained that father did not provide proof of attendance at parent education, did not follow through with counseling and anger management services, refused substance abuse treatment, and had not made any noticeable effort to address his case plan. Furthermore, the paternal grandmother was no longer a viable candidate for permanent placement. Although she had been authorized to supervise visitation with father and mother, "due to the verbal altercation [the social worker] witnessed on the telephone on August 14, 2013, the visits were abruptly discontinued at grandmother's home." The social worker concluded: "Due to the on-going hostile feud between [the paternal grandmother] and the child's parents, the paternal grandmother is no longer being considered for legal guardianship." The report noted that the parents stated more than once that they did not want the minor to have visits with the paternal grandmother and were adamantly opposed to her becoming his legal guardian. During an office visit

with the paternal grandmother in July 2013, the paternal grandmother agreed that she was not able to protect the minor and provide him with a safe and stable environment.

The contested 12-month review hearing was held on January 8, 2014. The Bureau submitted a report summarizing father's lack of progress and lack of interest in maintaining a bond with the minor. Although the paternal grandmother had been approved for a relative placement if father moved out, the paternal grandmother informed the social worker that she could not "put her son out," and father did not move until months later. The paternal grandmother admitted she could not provide a safe environment for the minor. The social worker further reported that, in light of the noted verbal exchange in August 2013, visits were discontinued with the parents in the home to avoid traumatizing the minor.

At the review hearing, the paternal grandmother testified that she had been approved for relative placement, but she did not ask father to move out "in the beginning," even though the minor could not be placed with her unless he moved. She added that father had since moved out, and she wanted the minor to be placed with her. The paternal grandmother also recounted her version of the verbal altercation that concerned the social worker.

Father did not object to the termination of reunification services or setting the section 366.26 hearing. Instead, his attorney argued that the minor should be placed with the paternal grandmother because of a statutory preference (§ 361.3) for relative placement. County counsel and counsel for the minor countered that placement with the paternal grandmother would not be suitable and urged the court to set a section 366.26 hearing.

The court terminated reunification services, denied placement with the paternal grandmother, and set a section 366.26 hearing for May 5, 2014. With respect to the denial of placement with the paternal grandmother, the court explained: "And as it appears from page 9, line 5 of this report, the Department did in fact comply in good faith with their obligations and did approve [the paternal grandmother] as the relative caregiver. [¶] However, subsequent events, as is made clear in the December 30th

memorandum and in the report that I've identified, makes clear that that assessment became unraveled and it became unraveled due to several factors. [¶] To mention just two, not in any order of importance, [the paternal grandmother] was unable to control the environment in the home so that it was clear that she could not provide a safe and secure environment without something more occurring. That behavior on the part of the father, and also the mother, in part explained by both of the failures to address problems that gave rise to these issues in their case plan, is what also compounds the grandmother's difficulties. [¶] The argument is made here, not supported by the evidence, that the home has now, by some magical waving of a wand, being—created such that a safe, secure environment can be provided. I disagree that there's any evidence, aside from speculation, before the Court to that effect. In fact, the evidence before the Court is that the request to be the caregiver was essentially, by words and by conduct, withdrawn and has not been renewed. For this and for many other reasons, it would be foolish and not based on any substantial evidence for the Court to go ahead and change the current placement to that of [the paternal grandmother].”

Father thereafter filed his petition for extraordinary writ relief and sought a stay of the 366.26 hearing. Based on the allegations in his petition, we issued an order to show cause, and real party in interest filed an opposition to the petition. Having now reviewed the record in light of both parties' submissions, it is apparent that father's petition mischaracterized the proceedings in this case and omitted material evidence.

II. DISCUSSION

Father contends the court erred by not placing the minor with the paternal grandmother and by removing the minor from his care based on a section 342 petition rather than a section 387 petition. Both contentions are meritless.

A. Relative Placement

Under section 361.3, when a new placement of a dependent child must be made, preferential consideration must be given to suitable relatives who request placement. (§ 361.3, subd. (c)(1).) Father's argument is unavailing, for multiple reasons.

First, father has no standing to appeal the denial of his oral request for relative placement, since he did not object to reunification services being terminated or oppose the setting of the section 366.26 hearing. In short, he has not established that placement with the paternal grandparent could possibly affect his interest in reunification. (*Cesar V. Superior Court* (2001) 91 Cal.App.4th 1023, 1035; see *In re K.C.* (2011) 52 Cal.4th 231, 239.) In fact, he did not even file a section 388 petition to change the court's prior placement order.

Second, substantial evidence supports the conclusion that the paternal grandmother withdrew her request for placement and did not timely renew it. In July 2013, the paternal grandmother admitted to the social worker that she could not make father leave the home, she could not provide a safe environment for the minor, and placing the minor with her would not be a good idea. Father did not request placement with the paternal grandmother, and she did not express renewed interest in placement, until the contested review hearing—which in light of the status of the proceedings and the lack of notice to the court and other parties was plainly too late.

Third, the court duly considered father's oral request for relative placement and did not err in concluding that placement with the paternal grandmother would be inappropriate.

Factors relevant to the suitability of a relative for a potential placement include: (1) the best interest of the child; (2) the wishes of the parents and relatives if appropriate; (3) the relationship between the child and the relative, and the relative's desire to care and provide permanently for the child; (4) the ability to provide a safe, stable environment; and (5) the ability to protect the child from this parent. (§ 361.3, subd. (a).) We review for an abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Here, as discussed *ante*, the minor did not have a strong relationship with the paternal grandmother since he was removed from the parents' custody and into a foster home at around seven months of age; father did not want the minor to be placed with the paternal grandmother until the review hearing; and the paternal grandmother had

admitted, and the social worker observed, that she could not provide a safe and stable environment for the minor or protect him from his parents.

Father argues that the only evidence of the paternal grandmother's unsuitability was the altercation the social worker overheard. He ignores the evidence we set forth *ante*. Father also points out certain evidence he claims is favorable to his position, but he fails to address the evidence favorable to the judgment. In addition, father seizes upon a colloquy at the hearing, in which the court stated, "what I found disturbing was the father's adamant statement on the stand that he was in full compliance"; after father's counsel asserted that father had not testified, the court replied: "Okay. Forgive me. My memory's failing. Maybe it's from watching his body language." However, that colloquy had to do with the father's unwillingness to fulfill the requirements of his case plan. Moreover, taking the record as a whole, including the court's explanation on pages 50 and 51 of the reporter's transcript for its ruling on the placement issue—which father essentially ignores in his petition—there is no error.

B. Disposition Hearing

Father also contends the court erred by removing the minor from his care based on the section 342 subsequent petition rather than a section 387 supplemental petition. He misreads the record. The court *dismissed* the section 342 petition, thereafter held a disposition hearing on the *original* petition in December 2012, and made its placement decision at *that* time. The placement was therefore not made pursuant to the section 342 petition, and no section 387 petition was necessary because no disposition order had issued before December 2012.

C. DISPOSITION

The petition for an extraordinary writ and request for stay are denied on the merits. (Welf. & Inst. Code, § 366.26, subd. (l)(4)(B).) Because the hearing under Welfare and Institutions Code section 366.26 is set for May 5, 2014, this decision shall be final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

NEEDHAM, J.

We concur.

JONES, P.J.

BRUINIERS, J.