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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A. H., et al.,

Persons Coming Under the Juvenile Court Law.

B235141

(Los Angeles County
Super. Ct. No. CK87612)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALONZO H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
David R. Fields, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and
Respondent.

Appellant Alonzo H. (Father) is the presumed father of A.H. (born in Jan. 2006) and J.H. (born in Aug. 2007). Father challenges the jurisdictional findings and dispositional orders of the juvenile court, including the court's sustaining of a petition pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g).¹ Father further contends that the juvenile court abused its discretion in denying his section 388 petition to set aside the jurisdictional findings made against him because he was not provided notice of the jurisdictional hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Wendy T. (Mother) is the mother of A.H. and J.H. Mother also has a daughter J.G. (born in May 2010), whose father is Miguel G.² The family consisted of the three children, Mother, and Miguel. Father previously had left California to look for work and lost touch with Mother in August 2010.

The children came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in April 2011, when DCFS filed a section 300 petition, alleging a failure to protect (§ 300, subd. (b)) and no provision for support (§ 300, subd. (g)). According to the detention report, A.H. was dropped off at his elementary school at 11:00 a.m. on April 26, 2011, but he was not picked up after school was dismissed. After waiting for two hours after school, school staff took him to a police station, and DCFS was notified.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise designated.

² J.G. is not a subject of this appeal.

A.H. told a caseworker that his stepfather, Miguel, dropped him off at school, but he did not know who was supposed to pick him up. Police officers used the school emergency contact list to call a relative of Miguel's, who said the family used to live with him but had moved out seven months prior. This person emphasized that he wished to remain confidential, but he voiced suspicion that Mother and Miguel were abusing narcotics. Police officers went to the address, but they learned that the family did not live there and did not leave a forwarding address. The officers released A.H. to the caseworker, and he was placed in foster care. No one went to the school or the police to ask about A.H. the following day, but Mother contacted the caseworker by telephone on April 28, 2011.

At the April 29, 2011 detention hearing, the juvenile court found Father to be A.H.'s presumed father and found a prima facie case was established for detaining A.H. and showing he was a person described by section 300, subdivisions (b) and (g). Father's whereabouts were unknown, and he was not represented at the detention hearing. A lawyer was present for Mother, but he stated that Mother was not there because her ride had to leave. The court ordered DCFS to detain A.H. in foster care, with monitored visits by Mother. The court stated that "Father's not in the picture right now. If he wanted to visit, he needs to contact DCFS."

On May 4, 2011, DCFS filed a section 300 petition for J.H. and J.G., alleging, as to Father, that his whereabouts were unknown and that he failed to provide support for J.H. The petition further alleged that Mother and Miguel used methamphetamine in the home. At the May 4 hearing, Mother again was represented by counsel but not present, and Father's whereabouts were still unknown. The juvenile court found a prima facie case was established for

detaining J.H. and J.G. The court ordered DCFS to conduct due diligence in locating Father.

On June 9, 2011, DCFS filed amended section 300 petitions as to all three children, adding allegations of physical abuse of all three children by Mother, domestic violence between Mother and Miguel, and drug use by Mother and Miguel. The petitions indicated that Father's whereabouts were still unknown and alleged that he failed to provide support for A.H. and J.H. According to last minute information for the court, the caseworker was unable to locate Mother at the address Mother had given on April 28, 2011.

According to the June 9, 2011 jurisdiction/disposition report, a database search on Father's name yielded "too many matches." The report indicated that Mother's and Miguel's whereabouts were unknown and that the mobile number Mother had given the caseworker was no longer in service. On May 27, 2011, the caseworker interviewed a maternal great-aunt, Guillermina T., who said that she was unable to find Mother and had not seen her since September 2010. Guillermina told the caseworker that Father had gone to Chicago to look for work. When asked about the allegations that Father failed to provide support, Guillermina stated that Father was good to Mother and was a good provider, and he did not use drugs or engage in domestic violence. The report recommended no family reunification services for Father because his whereabouts were unknown and he was a non-custodial parent.

On June 9, 2011, DCFS filed a declaration of due diligence, indicating that they had unsuccessfully searched several sources to find Father, such as law enforcement records, California DMV records, and Los Angeles County voter registration records. DCFS also mailed record search requests to the Postmaster for several of Father's addresses and was awaiting the results for two addresses.

On June 6, 2011, DCFS sent notices of the June 9 hearing by certified mail to three of Father's last known addresses, in Panorama City, Pacoima, and Duarte, California.

At the June 9 hearing, DCFS stated that both parents' whereabouts were unknown and asked the court to order DCFS to re-notice the parents for the June 21 adjudication hearing. Guillermina and a maternal great cousin, Marisela O., attended the hearing and indicated their interest in having all three children placed with them.

On June 16, 2011, DCFS sent notices of the June 21 hearing by certified mail to two of Father's last known addresses, in Pacoima and Panorama City, California. Last minute information for the court filed on June 21, 2011, indicated 15 different addresses for Mother, but her whereabouts were still unknown. Guillermina told the caseworker that Mother said she would attend the court hearing, but when Guillermina attempted to call her back, the phone number was disconnected, so Guillermina did not know where Mother was.

At the June 21 adjudication hearing, the court found proper notice had been given to all the parties. Counsel for Mother stated that he left a message for Mother on June 9, asking her to call him back, but when he tried calling her again on June 11, the phone number was disconnected. The court sustained all the allegations of the petition, including the allegations that Father failed to provide the necessities of life for A.H. and J.H. pursuant to section 300, subdivisions (b) and (g). The court scheduled a contested disposition hearing for July 15, 2011.

On June 29, 2011, the caseworker received a telephone call from Father, who stated that a maternal aunt had just told him that his children were in DCFS custody. Father met with the caseworker on June 30, 2011, and explained that, when he was in a relationship with Mother, he always provided food and clothing

for his children. However, Mother was very aggressive toward him, falsely accused him of domestic violence, used drugs, and eventually told him to leave. Father said that Mother hit him with a pot, broke a window, stabbed him with a knife, threw all his clothes out, and screamed that he was a dirty mechanic. He did not want to traumatize the children further, so he moved out. Mother moved several times after that and told him not to visit the children any more.

Father moved to Alabama, found a job, and continued to send Mother money until he lost touch with her in August 2010. He did not hear from her and did not have a way to contact her, so he did not know what was happening with the children. He explained to the caseworker that he had a new job and a new life in Alabama, with a new wife. He worked as a mechanic and had a three-bedroom house, and he said that his wife would be able to take care of the children. Based on this information, DCFS requested family reunification services for Father and an assessment of Father's home in Alabama.

Father attended the July 15, 2011 disposition hearing, at which his attorney expressed her intent to look into whether Father had received proper notice of the hearings. She explained that Father was interested in obtaining custody of the children and was in the process of moving back to California in order to do so. The court found Father to be the presumed father of both A.H. and J.H. At the hearing, counsel for A.H. and J.H. objected to the court's intention to proceed to disposition, arguing that, because the allegations sustained against Father regarded failure to provide, he might now be non-offending under the petition. The court continued the hearing to July 26 in order to give Father's newly-appointed counsel time to prepare.

Father filed a section 388 petition, seeking to vacate the juvenile court's orders and findings on the basis that he did not receive notice of the proceedings.

He contended that DCFS's due diligence to locate him was defective because the searches did not include his birth date, and because the postal results as to two of his addresses were still pending.

According to Father's declaration, his children lived with him from their birth until he and Mother separated sometime in 2008. After that time, he saw his children every week and continued to support them. He did not see them after he moved to Alabama in September 2009, but he maintained telephonic contact with them and sent them money until he lost touch with Mother and her relatives in August 2010. He stated that Mother constantly moved and frequently changed her telephone number, so he was unable to maintain contact with her. He had been trying to locate his children for a year before deciding to return to California to find them. After he returned to California, he located Mother's relatives, who put him in touch with the DCFS caseworker.

At the July 26, 2011 hearing, Father's counsel argued that the due diligence search was defective because he has a common name, and the search did not include his birth date. DCFS argued that it did not have his birth date as of June 9, 2011, but the court noted that the June 9 jurisdiction/disposition report had a birth date of December 22, 1984. The court then noticed that Father stated in an interview that his birthday was December 22, 1983, so the court assumed that DCFS did not have the correct birth date until Father was interviewed in June 2011. The court then concluded that the December 22, 1984 birth date would not have helped DCFS in its search because this date was incorrect.

Father's counsel further argued that DCFS failed to wait for the results of searches related to two of Father's known addresses, pointing out that results of the postal searches for two of Father's addresses were pending as of June 21, 2011.

The court rejected this argument, noting that Father was in Alabama at the time, so the results of the postal searches would not have made a difference.

Counsel representing A.H. and J.H. also argued that DCFS's due diligence was incomplete. She argued that Father's section 388 petition should be granted, stating that Father was entitled to his day in court and pointing out that he had been unable to contact Mother because she changed addresses so often. She contended that it was in the children's best interest to have a father who wanted to be involved in their lives no matter what the consequences.

The juvenile court denied the section 388 petition. The court found that DCFS conducted due diligence, noting that there were only two addresses DCFS had not received postal results for, and that, even if DCFS erred, it was harmless because Father was not at either address. The court further reasoned that, even if the notice was inadequate, it was not in the best interests of the children to relitigate the case "given the fact that . . . he was not providing for the children." The court stated that Father had not provided for the children for two years, although counsel pointed out that it actually had been only one year. The court therefore declared the children dependents of the court, ordered DCFS to assess Father's home, and ordered Father to participate in parenting classes, counseling, and drug testing. Father filed a timely notice of appeal.

DISCUSSION

““Since the interest of a parent in the companionship, care, custody, and management of his [or her] children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford him [or her] adequate notice and an opportunity to be heard.

[Citations.]” [Citation.]” (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1463.)

“Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend.’ [Citation.] ‘The child welfare agency must act with diligence to locate a missing parent. [Citation.] Reasonable diligence denotes a thorough, systematic investigation and an inquiry conducted in good faith. [Citation.] [¶] However, there is no due process violation when there has been a good faith attempt to provide notice to a parent who is transient and whose whereabouts are unknown for the majority of the proceedings. [Citations.]’ [Citation.] Thus, where a parent cannot be located notwithstanding a reasonable search effort, the failure to give actual notice will not render the proceedings invalid. [Citation.]” (*In re J.H.* (2007) 158 Cal.App.4th 174, 182.)

“Section 388 permits ‘[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court’ to petition ‘for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court’ on grounds of ‘change of circumstance or new evidence.’ (§ 388, subd. (a).)” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) The petitioner must “establish[] by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a “legitimate change of circumstances” and that undoing the prior order would be in the best interest of the child. [Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959.) “A section 388 motion is a proper vehicle to raise a due process challenge based on lack of notice. [Citation.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189 (*Justice P.*))

“We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. [Citations.] While the abuse of discretion standard gives the trial court substantial latitude, ‘[t]he scope of discretion always resides in the particular law being applied, i.e., in the “legal principles governing the subject of [the] action” Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an “abuse” of discretion. [Citation.]’ [Citation.]” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.)

Appellant contends that the court abused its discretion in finding that DCFS conducted due diligence in searching for him because the court erroneously thought that DCFS either did not have his birth date or thought that DCFS had the incorrect birth year. DCFS responds that there is no evidence that they did not have and use Father’s birth date in conducting its search.

The court and the parties spent several minutes discussing whether DCFS had Father’s birth date as of June 9, 2011. Although DCFS counsel stated that DCFS did not have Father’s birth date as of June 9, 2011, the April 29, 2011 detention report contained A.H.’s and J.H.’s birth certificates. A.H.’s birth certificate contains a birth date of December 22, 1983, for Father, and J.H.’s indicates the same date, but in 1984. In addition, the June 9, 2011 declaration of due diligence indicated that DCFS had received the children’s birth certificates. The record thus indicates that DCFS did have Father’s birth date when it conducted its search for him.

DCFS searched numerous law enforcement records, California DMV records, Los Angeles County voter registration records, Lexis Nexis, and postal records. The record thus indicates that DCFS undertook “a thorough, systematic

investigation and an inquiry conducted in good faith. [Citation.]” (*Justice P.*, *supra*, 123 Cal.App.4th at p. 188.)

Because the record establishes that DCFS had Father’s birth date at the time of the search, and there is no evidence that they did not use his birth date, we agree with the juvenile court that DCFS acted with diligence in attempting to locate Father. Father accordingly has not borne his burden of establishing by a preponderance of the evidence that a change of circumstances requires a changed order.³ (*Justice P.*, *supra*, 123 Cal.App.4th at p. 188.)

Father also contends that the court’s jurisdictional finding is not supported by substantial evidence. “On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.] [Citation.] ‘In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.] [Citation.]’ (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.)

The record establishes that Father was not supporting the children at the time of the jurisdiction hearing and that he had not done so in almost a year. A.H. had been left at school, with no family member asking about him for two days. Given

³ In light of our conclusion that Father has not established changed circumstances, we need not address the juvenile court’s further finding that Father has not met his burden of establishing that the requested change would promote the best interests of the children. (See *Justice P.*, *supra*, 123 Cal.App.4th at pp. 188-189 [if parent does not establish both, the court may summarily deny the section 388 petition].)

this record, we cannot say that the juvenile court's determination exceeded the bounds of reason.

DISPOSITION

The order appealed from is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.