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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re G. M., a Person Coming Under the
Juvenile Court Law.

B237853

(Los Angeles County
Super. Ct. No. CK81707)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

MARGARET M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Sherri Sobel,
Juvenile Court Referee. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Margaret M. (mother) appeals from orders denying her Welfare and Institutions Code section 388 petition and terminating her parental rights.¹ Mother contends that the juvenile court abused its discretion when it denied her section 388 petition because mother did not receive proper notice of the juvenile court proceedings. Mother further argues that reversal of the order denying her section 388 petition requires reversal of the juvenile court's subsequent order terminating her parental rights. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

1. Initial referral

On March 30, 2010, the Department of Children and Family Services (DCFS) received a referral alleging that mother's four-year-old daughter G. M. was a victim of general neglect and emotional abuse by mother. The referral address was the Union Rescue Mission in downtown Los Angeles. The reporting party alleged that G. was out of control and regularly engaged in physical altercations with unrelated children at the Mission. Mother denied or dismissed G.'s behavior when it was drawn to her attention by Mission staff. The reporting party stated that G. was unable to attend school because she was not toilet trained. Staff at the Mission had tried to work with mother but mother, who appeared to be mentally challenged, refused services. Mother was explosive with other children, always looked disheveled, and constantly talked to herself. Mother and the child had reportedly been living at the shelter for more than two months after arriving in Los Angeles from Las Vegas.

A DCFS social worker responded to the referral and arrived at the Mission to interview mother. Mother acted in a belligerent fashion towards the social worker, demanding to know why the social worker came for the visit and further demanding: "I need your fingerprint, California Identity Card, and your DNA, you are not real and not well dressed." Although the social worker showed mother her business card and her DCFS county badge, mother became explosive, demanding to see the referral report and to know who made the report.

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

Mother informed the social worker that she also had a 15-year-old son who was living with a friend in Las Vegas. Mother claimed that she recently lost her job in Las Vegas, that someone was stealing her welfare checks, and that her children's fathers did not pay her child support.²

Mother denied that G. was behaving aggressively towards other children, insisting instead that other children in the facility were hitting G. She stated: "I allow my daughter to move freely because we are in a shelter, and I am depressed and frustrated." She stated that she purposely did not toilet train G. because she did not want her daughter to use the toilets in the shelter, which she described as disgusting. Mother denied mental illness, but the social worker observed her acting strangely, talking to herself and fidgeting.

The facility dormitory coordinator informed the social worker that mother did not supervise G. and allowed her to roam around and hit other children. Mother did nothing to restrain G. even when the behavior was brought to her attention. Mother was disrespectful to the staff at the shelter. She also constantly talked to herself and made gestures with her hands as if she were stabbing someone with a knife.

The social worker made an assessment that G.'s safety was at risk and placed her in protective custody.

2. Section 300 petition and initial detention hearing

On April 1, 2010, DCFS filed a petition on behalf of G. and Samuel pursuant to section 300, subdivision b, alleging that mother failed to provide G. with proper supervision and that mother demonstrated mental and emotional problems. The petition listed mother's residence as the Union Rescue Mission.

At the detention hearing on April 1, 2010, the juvenile court found a prima facie case for detaining G. from mother's custody. The court ordered mother's visits to be monitored. The court declined to detain Samuel or order a protective custody warrant for the child.

² Mother's 15-year-old son Samuel, and the children's fathers, are not parties to this appeal.

Mother did not appear at the detention hearing. According to the social worker's report, the agency had attempted to notify mother regarding the hearing by calling her on the telephone on March 31, 2010. The social worker left mother a message at the Union Rescue Mission, asking her to return the phone call.

3. Jurisdiction/disposition report and hearings

On April 13, 2010, DCFS's dependency investigator (DI) sent mother notice of the April 22, 2010 hearing on the petition, along with a certified copy of the petition, via certified mail. The DI used mother's address at the Union Rescue Mission. Two days later, the DI telephoned the Mission and spoke with mother's case manager, who indicated that mother had left the shelter two days after G. was detained by DCFS.

On April 15, 2010, a treatment social worker provided the DI with a new telephone number for mother. The same day, the DI called the number and reached Richard, the director of a voluntary housing program where mother was living. He indicated that mother was doing well and said he would give mother the message. The DI spoke with mother on April 16, 2010. Mother's speech was slurred and difficult to follow as "she spoke in a hurried, urgent and agitated manner, jumping from topic to topic and without pausing." Mother refused to meet with the social worker and indicated that she wanted to "take care of this in court." Mother asked the DI if the DI was the one confiscating her child support. Mother stated that she never hurt her kids and that she was going to have her attorney call the DI.

A visit between mother and G. was scheduled for April 14, 2010. G.'s foster mother brought G. for the visit, but mother did not appear. She also did not call to cancel or to reschedule. On April 14, 2010, a social worker interviewed G., who was in foster care. G. was energetic and verbal but her speech was difficult to understand.

G.'s maternal aunt informed DCFS that mother's behavior over the past few years had alarmed her family. People had suggested to mother that she have a mental health evaluation. Maternal aunt described an incident when mother was in the shower and claimed that there were cameras all over the place and cameras in her body. Mother also claimed that there were IRS agents after her.

Mother was not in court for the April 22, 2010 hearing. Maternal uncle was present, and informed the court that he went to mother's place of residence that day to attempt to get her to the court hearing, but she indicated she was not interested in appearing. Maternal uncle informed the court that mother was living at an address on North Fresno Street in Los Angeles.

The juvenile court found that proper notice had not been provided to mother, since notice was mailed to her at a different address from where she was living at the time. The court continued the hearing to May 13, 2010, and ordered DCFS to provide notice of the proceeding to the parents.

For the May 13, 2010 continued hearing, DCFS provided proof of having sent mother notice of the hearing and a copy of the petition on April 23, 2010, to the North Fresno Street address in Los Angeles. DCFS reported that mother had not responded to the social worker's attempts to meet with her. On April 21, 2010, the social worker had telephoned mother and spoken with Richard. She left a message for mother to call her. On April 27, 2010, the social worker made an unannounced visit to mother's residence but mother was not present. The social worker left a business card with Richard. On May 4, 2010, the social worker telephoned mother again, but Richard stated that mother was unavailable.

At the hearing on May 13, 2010, the juvenile court found that notice had been provided to all parties. Mother did not appear for the hearing. The juvenile court dismissed Samuel from the proceedings. As to G., the court sustained the allegations in the section 300 petition regarding mother's mental and emotional problems and mother's failure to supervise the child.

The juvenile court declared G. a dependent of the court pursuant to section 300, subdivision (b), and removed the child from mother's custody. The court stated that mother was "not present but not whereabouts unknown." The court ordered reunification services for mother, including individual counseling, parenting classes, and a psychiatric evaluation. Mother was granted monitored visits with G.

4. Reunification period

G. was placed with her maternal aunt and uncle. G. bonded quickly with her aunt and uncle and expressed gratitude at having “good food” and a “nice bed.” G.’s therapist believed that the child was flourishing in her relatives’ care and that they were the best option for G. given all that she had experienced. On October 28, 2010, the director of G.’s preschool wrote in a letter that, while G. had started preschool behind her peers in terms of her written skills and language recognition, she had made remarkable progress. The director also noted that G.’s self-confidence and sense of security had improved greatly since starting at the preschool.

At the six-month review hearing on November 5, 2010, DCFS reported that it had not had significant contact with mother during the review period. In June 2010, the social worker received several disturbing and scattered telephone messages from mother, who “appeared to be angry, confused, and suffering from severe mental difficulty.” The messages were difficult to understand. The social worker tried to call mother back, but since August 2010, the telephone number for mother’s residence had been out of service.

In September 2010, DCFS received an email from mother through their public inquiries department. The email provided an updated mailing address for mother, care of the Weingart Legal Center on Main Street in downtown Los Angeles. The social worker wrote mother a letter at this new address, asking mother to contact DCFS.

DCFS received no information regarding a new residential address for mother, so the agency believed that mother was likely homeless. In one of her emails, mother claimed that she was attending NYU. She also claimed that she had faxed one of her emails to Homeland Security. The email contained a list of “major predators” who said mother owed them or said she was a bad parent.

G. remained placed with maternal relatives. Mother had neither visited the child nor attempted to arrange a visit.

DCFS sent mother notice of the November 5, 2010 review hearing to the Weingart Legal Center address that mother had designated. The notice indicated that it was DCFS’s recommendation to terminate reunification services. However, DCFS’s report

stated that DCFS's recommendation was to continue reunification services for an additional review period.

At the November 5, 2010 hearing, the court found that notice of the hearing had been provided to all parties as required by law. Mother did not appear at the hearing. The child's attorney set the matter for a contested hearing to dispute DCFS's report, which recommended that mother receive additional reunification services. The child's attorney pointed out that mother had not visited the child during the prior review period.

In a last minute information for the court, DCFS informed the juvenile court that its previous recommendation to allow mother six more months of reunification services was an inadvertent error. At the contested hearing on November 18, 2010, the juvenile court noted that mother had not had any contact with G. during the previous review period. The court terminated mother's reunification services, and the matter was set for a section 366.26 hearing to select a permanent plan for the child.

5. Section 366.26 proceedings

On March 17, 2011, DCFS reported that G.'s aunt and uncle had an approved adoption home study and that adoption was the best permanent plan for the child. DCFS provided the court with a declaration of due diligence showing a thorough search for mother. The juvenile court continued the section 366.26 hearing and ordered DCFS to publish notice of the upcoming hearing for mother.

On July 14, 2011, DCFS submitted a report. Mother had not seen G. since the child was detained over a year earlier. DCFS expressed concern with how the aunt and uncle had been disciplining G., and asked the court to continue the section 366.26 hearing so that the aunt and uncle could participate in a parenting class and enroll G. in therapy.

At the July 14, 2011 hearing, DCFS submitted proof of having published notice of the hearing to mother. The juvenile court found that proper notice had been provided and no further notice was required. The court continued the hearing at the request of DCFS.

For the continued section 366.26 hearing on October 13, 2011, DCFS reported that the child's caregivers had completed the parenting course. G. was in therapy and had a strong attachment to her aunt and uncle. Mother had still not made any attempt to see the

child. DCFS recommended that mother's parental rights be terminated to free G. for adoption by her aunt and uncle.

At the hearing, the juvenile court announced that mother called from Ohio and provided her telephone number. Counsel was appointed for mother and made a special appearance on her behalf. The court continued the hearing for one month.

6. Section 388 petition and continued section 366.26 hearing

On November 7, 2011, mother's counsel filed a section 388 petition alleging that mother had never been served with notice of the jurisdiction/disposition hearing.³ The petition sought to have all findings and orders of the court vacated so that the matter could be litigated de novo. Mother's counsel argued that the change of circumstances required under section 388 had been shown because the record did not contain evidence that mother received notice of the hearing on the petition. Although counsel acknowledged that DCFS had mailed mother notice of the hearing on the petition via certified mail, counsel pointed out that there was no signed receipt in the court file. Mother's counsel argued that pursuant to *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 490-491 (*Ansley*), it is always in the best interest of the minor to allow her parents to have full substantive and procedural due process in dependency court cases.

On November 10, 2011, DCFS reported that the agency had made seven attempts, between October 13 and October 25, 2011, to reach mother using the telephone number that she had provided to the court. The calls triggered a message indicating that no voice mail system was set up for that number. DCFS's adoptions assistant used a reverse directory to obtain an address for mother in Akron, Ohio. DCFS also obtained another address from county counsel and mailed notices of the hearing to both addresses as well as to mother's attorney.

³ Section 388 allows a parent, "upon grounds of change of circumstance or new evidence," to "petition the court . . . to change, modify, or set aside any order of court previously made."

The continued section 366.26 hearing and hearing on mother's section 388 petition took place on November 10, 2011. Mother's attorney made an appearance on her behalf. The attorney reported to the court that his office had not been able to contact mother since the day that he was appointed to represent her, and he had not been able to communicate with mother or determine her location.

County counsel's notes stated that mother came to court one day but refused to enter the courtroom.

The court commented:

“The problem that we have with mentally ill parents -- this is not unusual. The only contact that [mother's attorney] had with the mother was a phone call so obviously she was noticed for the .26. She knew to call here and had a number here. She called in. We called her back. Her conversation with [her attorney] was she didn't like his voice over the phone so she didn't want him to represent her. And we never found her again.”

The juvenile court denied the section 388 petition in its entirety and relieved mother's attorney. The court noted that mother was properly noticed. The court then conducted the section 366.26 hearing. It found by clear and convincing evidence that G. was adoptable, and terminated parental rights.

On November 29, 2011, mother filed a notice of appeal from the section 366.26 findings and orders and from the denial of her section 388 petition.

DISCUSSION

I. Mother's section 388 petition

A. Relevant law and standard of review

Section 388 permits a parent to petition the juvenile court to change or modify a court order. The burden of proving that the requested modification should be granted is on the parent. (Cal. Rules of Court, rule 5.570(h).) The parent must prove, by a preponderance of the evidence, that (1) there has been a change of circumstance or new evidence and (2) the proposed change in order will promote the best interests of the child. (§ 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re B.D.* (2008) 159 Cal.App.4th

1218, 1228.) Section 388 is intended to provide a means for the juvenile court “to address a legitimate change of circumstances while protecting the child’s need for prompt resolution of his custody status.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

A section 388 petition is a proper vehicle for a parent to challenge the juvenile court’s jurisdiction for lack of proper notice. (*Ansley, supra*, 185 Cal.App.3d at p. 481.)

A juvenile court’s denial of a section 388 petition is generally reviewed for abuse of discretion. (*In re Jasmon O., supra*, 8 Cal.4th at p. 415.) Under this standard, the juvenile court’s decision will not be disturbed on appeal absent a clear abuse of discretion. (*Ibid.*)

B. The juvenile court did not abuse its discretion in denying mother’s section 388 petition

In her section 388 petition, mother alleged that the appointment of counsel for mother late in the case, coupled with his discovery of what he believed to be lack of notice, constituted a significant change of circumstances. Mother further alleged that a change of order was in the best interests of G. because, under *Ansley*, it is always in the best interests of the minor to allow her parents to have full substantive and procedural due process in dependency cases.

1. Changed circumstances

We first address mother's allegations of changed circumstances. Mother acknowledges that the juvenile court made a finding that mother was properly noticed for the jurisdictional/dispositional hearing. However, mother argues, the record does not show that mother ever actually received the notice, as the certified mail return receipt was not signed by mother. Thus, mother claims, the record lacks any indication that mother was aware of the date, purpose or potential consequences of the hearing, or of her right to have an attorney appointed to represent her. Once mother made an appearance, her attorney attempted to remedy this error by filing the section 388 petition. Mother argues that her section 388 petition requesting that the judgment be vacated for lack of notice should have been granted.

In contrast to mother's position, the record suggests that DCFS provided mother with notice as required by law. Notice of the April 22, 2010 hearing was mailed to mother at the Union Rescue Mission address on April 13, 2010. A certified return receipt was signed on April 14 by someone at that address other than mother. On April 15, 2010, DCFS learned from mother's case manager that mother had left the shelter two days after G. was detained by DCFS. The juvenile court found that proper notice had not been provided to mother for the April 22, 2010 hearing, since notice was mailed to her at a different address from where she was living at the time. The court continued the hearing to May 13, 2010, and ordered DCFS to provide notice of the proceeding to the parents.

DCFS obtained a new address for mother on Fresno Street in Los Angeles. DCFS also received a new telephone number for mother, which belonged to a man named Richard, who directed a residential program where mother was staying. Richard confirmed that mother resided there. Mother's brother, who was present at the April 22, 2010 hearing, also confirmed that mother was residing at the Fresno Street address. For the May 13, 2010 continued hearing, DCFS submitted proof of having sent mother notice of the hearing and a copy of the section 300 petition, via certified mail, to her new address.

The trial court found that DCFS had provided notice to mother as required by law. Section 291 addresses the notice requirements for a jurisdictional hearing. It requires that, “[i]f the child is detained and the persons required to be noticed are not present at the initial petition hearing, they shall be noticed by personal service or by certified mail, return receipt requested.” (§ 291, subd. (e)(1).) If the child is detained, such notice must be provided at least five days before the hearing, and must include a copy of the section 300 petition. (§291, subds. (c)(1) & (d)(7).) DCFS submitted proof that it sent mother notice of the hearing and a copy of the section 300 petition, via certified mail, to her new Fresno Street address. This notice was mailed on April 23, 2010 -- more than five days before the May 13, 2010 hearing. DCFS’s actions thus complied with the statutory notice requirements.

Mother complains that no signed return receipt is found in the record. However, a finding of proper notice may be made without a signed return receipt. Section 291 does not require that DCFS receive a signed return receipt, nor does it require that DCFS provide the court with a signed return receipt. DCFS submitted a copy of the notice and proof of mailing as required by law. This met the statutory notice requirement.

Mother also takes issue with DCFS’s efforts to notify her of subsequent proceedings. Despite these complaints, the record shows that DCFS continued its efforts to notify mother in conformity with legal requirements. For the six-month review hearing, DCFS had received an email through the public inquiries department with an updated mailing address for mother. Notice of the hearing was mailed to mother at this address. The social worker made several attempts to contact mother during the first six-month reunification period, without success. The court found that notice had been provided to mother as required.

A declaration of due diligence was signed and filed in January 2011. The only address found was the old Fresno Street address, and a letter to that address had been returned. Notice by publication, as ordered by the juvenile court, was provided for the section 366.26 hearing. At the initial section 366.26 hearing, mother telephoned the court from Ohio. This suggests that mother did in fact receive notice of the hearing. At that

time counsel was appointed for mother. Counsel later conceded that he was unable to reach mother and her whereabouts were unknown.

DCFS's efforts were "reasonably calculated, under all the circumstances, to apprise [mother] of the pendency of the action" and afford her an opportunity to present her objections. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418.) Thus, contrary to mother's arguments, her due process rights were not violated.

The record supports the juvenile court's finding that DCFS complied with the relevant notice requirements. Because notice to mother was proper for the jurisdictional hearing and all subsequent proceedings, the juvenile court did not err in determining that there were no changed circumstances warranting a change of order.

2. Best interests of the child

In order to prevail on a section 388 petition, mother was required to show not only significant changed circumstances, but also that a change of order would be in G.'s best interest. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) We have determined that mother failed to show changed circumstances warranting a change of order. We further conclude that even if mother had made such a showing, she failed to demonstrate that an order vacating the jurisdictional and dispositional findings and orders would be in G.'s best interests.

At the time the juvenile court denied mother's section 388 petition, mother had not visited with six-year-old G. or spoken to the child in over a year and a half. Mother had very little contact with DCFS during that time period, with the exception of certain largely unintelligible emails and telephone calls. There was no evidence that mother was in treatment for her mental health issues.

Meanwhile, G. had bonded quickly with her aunt and uncle and was thriving in their care. G. was enrolled in preschool and her performance had improved dramatically. In contrast, while the child lived with mother, she was not even toilet trained and therefore could not attend school. The aunt and uncle had completed parenting education, took G. to therapy, and had been approved to adopt the child. G.'s therapist stated that adoption by her aunt and uncle was "the best option" for G.

Ansley is distinguishable. In *Ansley*, a father filed a section 388 petition seeking to vacate a dependency judgment on the ground that he never received notice of the proceedings and that the Department of Children’s Services had failed to make sufficient efforts to effect such notice. (*Ansley, supra*, 185 Cal.App.3d at p. 482.) The trial court found that the Department “had made no effort to locate or serve petitioner in any manner with notice of the dependency petition.” (*Ibid.*)

Here, in contrast, DCFS made considerable efforts to communicate with mother. As explained above, the trial court correctly found that notice was provided to mother as required by law.

Mother points to the *Ansley* court’s language stating that “it is implicit in the juvenile dependency statutes that it is always in the best interests of a minor to have a dependency adjudication based upon all material facts and circumstances and the participation of all interested parties entitled to notice.” (*Ansley, supra*, 185 Cal.App.3d at pp. 490-491.) This may be so where the agency has made no efforts to give notice to a parent, as was the case in *Ansley*. Where, as here, “reasonable efforts to search for and notice missing parents” have been made, it is not always in the best interests of the child to vacate all previous orders and litigate the matter de novo. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 191.)⁴ The *Justice P.* court took issue with the broad statement made in *Ansley*, explaining:

“To us, the language in *Ansley* is a lofty expression of how the dependency system would work under ideal circumstances, but does not reflect the all too often harsh reality of how these cases proceed. It is not always possible to litigate a dependency case with all parties present. The

⁴ *In re B. G.* (1974) 11 Cal.3d 679 (*B.G.*), is distinguishable for the same reason. In *B. G.*, the mother was a resident of a foreign country. The Court of Appeal found that the juvenile court never established proper jurisdiction over the minors because, although the agency either knew or could have obtained the mother’s address, it “neither made such inquiry . . . nor exerted any effort to deliver notice to the mother.” Instead, the agency “eschewed reasonable efforts to find her and dispensed with any form of notice to her.” (*Id.* at pp. 688-689.) As explained above, in the matter before us, DCFS made reasonable efforts to notify mother.

law recognizes this and requires only reasonable efforts to search for and notice missing parents. Where reasonable efforts have been made, a dependency case properly proceeds. If a missing parent later surfaces, it does not automatically follow that the best interests of the child will be promoted by going back to square one and relitigating the case.” (*In re Justice P.*, *supra*, 123 Cal.App.4th at p. 191.)

DCFS made sufficient efforts to locate and notify mother throughout the proceedings. Mother has made no effort to contact the child or be involved in her life. In short, mother has failed to show that G.’s best interests would be served by vacating every order and litigating the matter de novo.⁵

II. Order terminating parental rights

Mother argues that the notice defect raised in her section 388 petition requires that the court’s jurisdictional and dispositional orders be vacated. Consequently, mother argues, the order terminating parental rights must be vacated for lack of jurisdiction.

We have determined that the trial court did not err in denying mother’s section 388 petition. The juvenile court properly asserted jurisdiction, and the order terminating mother’s parental rights is affirmed.

⁵ The parties disagree as to whether a notice defect requires reversal per se, or whether such error requires application of the harmless error standard set forth in *Chapman v. California* (1967) 386 U.S. 18. Because we have determined that no error occurred, we decline to address this issue.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD