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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ORLANDO E.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party In Interest.

B241574

(Los Angeles County
Super. Ct. No. CK81350)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Terry T. Truong, Juvenile Court Referee. Petition denied.

Kate M. Chandler, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Real Party in Interest.

Children's Law Center of Los Angeles and Tamara Dennis for Minor Ariana E.

* * * * *

Orlando E. (father) has filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452), challenging an order of the juvenile court denying his request to have his child Ariana E. placed with Patricia O. (paternal grandmother).¹ The Los Angeles County Department of Children and Family Services (DCFS) opposes father's petition, and counsel for Ariana has joined in that opposition. We deny the petition.

BACKGROUND

A. Initial Detention and Jurisdiction Proceedings

Ariana, who was seven months old at the time, came to the attention of DCFS in April 2011, when appellant's landlord reported that she had a black eye and scratch on her face. At the time, Ariana's mother was her primary caretaker. Ariana's three-year-old sibling Lauren E., was under the legal guardianship of paternal grandmother, but was being cared for by father with paternal grandmother's permission.

A DCFS investigation revealed no scratches or black eye. Nevertheless, DCFS filed a petition under Welfare and Institutions Code section 300² alleging that mother had tested positive for methamphetamines, that she had a history of illicit drug abuse, and that Ariana's half sibling Vincent B. was receiving permanent placement services due to mother's illicit drug abuse. The juvenile court sustained an amended petition, removed Ariana from mother's custody, and placed her in father's custody. Father was ordered to undergo family maintenance services and cooperate with unannounced visits by DCFS.

¹ On March 14, 2012, father filed a notice of appeal challenging the juvenile court's orders terminating reunification services for father, setting the matter for a permanency planning hearing (Welf. & Inst. Code, § 366.26), and denying his request to have Ariana placed with paternal grandmother. Pursuant to a request by father, this court construed father's notice of appeal as a notice of intent to file a petition for extraordinary writ (Cal. Rules of Court, rule 8.450). Father no longer challenges the termination of reunification services or the setting of the permanency planning hearing. Accordingly, we only address father's challenge to Ariana's placement.

² All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

The court granted mother supervised visits with Ariana, but specified that no one under the influence of drugs or alcohol could visit with Ariana.

Approximately a month later, DCFS filed a dependency petition against father pursuant to section 342.³ The petition alleged that Ariana's physical health and safety were at risk because father abused marijuana, was in possession of drug pipes, and allowed mother to have overnight and unsupervised visits with Ariana in violation of prior court orders.

DCFS reported the following in its detention report: On June 16, 2011, at approximately 6:30 a.m., the Pomona Police Department executed a search warrant on father's one-bedroom apartment based on a suspicion that he was selling methamphetamines. Father, mother, Lauren, Ariana, and an adult male were present in the apartment at the time. Officers seized two scales from the kitchen cupboards, three methamphetamine pipes (one in a closet near the kitchen, one in a drawer in the bedroom, and one in the bedroom closet), and several baggies with methamphetamine residue. Father was found in the bathroom in what appeared to be an attempt to flush drugs down the toilet. Officers arrested father for possession of drug paraphernalia and mother for outstanding warrants. One officer reported that father admitted to having "a problem with meth." Another officer noted that there was enough of Lauren's clothing in father's apartment to indicate that she was living there. Paternal grandmother arrived at father's home after his arrest and took Ariana and Lauren into her care.

A social worker interviewed father and mother separately after their arrests. Father stated during his interview that he understood mother was prohibited from spending the night at his residence, but that he had allowed her to spend the night after she came over to put the children to bed. Father stated that he cared for Lauren two to three times a week, but maintained that Lauren resided with paternal grandmother. According to father, he smoked marijuana after the children went to bed to relieve stress.

³ Section 342 permits DCFS to file a subsequent dependency petition that alleges "new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300"

Mother stated during her interview that she “used to live” with father and claimed that most of the drug paraphernalia belonged to her.⁴ In contrast to what father stated, mother maintained that she had not spent the night prior to the search, and had arrived at father’s apartment to visit the children approximately 30 minutes before the officers entered.

The social worker also interviewed paternal grandmother who explained that she worked the graveyard shift (from 10:00 p.m. to 6:30 a.m.) at the post office. Because of her work schedule, Lauren spent the night with father once or twice a week, and father took care of Lauren during the day when paternal grandmother slept. She denied any knowledge of drug paraphernalia at father’s residence, or of father’s marijuana use.

DCFS stated in its report that any reasonable parent would and should have known about the risks associated with openly visible narcotics and paraphernalia, and that paternal grandmother’s actions appeared more consistent with protecting father than with safeguarding the well being of Ariana and Lauren. Based on this assessment, DCFS detained Ariana from father’s custody and Lauren from paternal grandmother’s custody. On June 16, 2011, DCFS placed Ariana in the foster home where her half sibling Vincent was living.

At the detention hearing on June 21, 2011, the court released Lauren to paternal grandmother’s custody. It detained Ariana from mother and father, continued placement in Ariana’s current foster home, and ordered DCFS to assess the possibility of placing Ariana with a relative, including maternal grandmother and paternal grandmother.

The combined jurisdiction/disposition report prepared by DCFS stated the following: Paternal grandmother maintained in a subsequent interview that she “had no idea” that father was using drugs and noted that every time she visited father’s residence, it was clean. She described father as “lazy” insofar as he had difficulty maintaining a job, but she “never knew drugs were a problem.” Paternal grandmother maintained that she did not know mother was living at father’s residence or that mother was spending the

⁴ Mother, however, stated to one of the officers involved in the search that the methamphetamine pipes belonged to father, and that she “practically live[d]” at the apartment with father and the two children before they were detained.

nights. Paternal grandmother insisted that she “ha[d] no control” over mother’s habits of staying at father’s place. When asked whether she wanted to care for Ariana, paternal grandmother stated that she did not think she would be able to care for both Ariana and Lauren because Lauren is a “very active [child].” She advised DCFS to contact maternal grandmother to see if maternal grandmother could care for Ariana.

DCFS interviewed maternal grandmother and her husband in July 2011. Both expressed a desire to care for Ariana, but because they both had prior criminal convictions, waivers (also referred to as criminal exemptions) and AFSA⁵ approval would be required before Ariana could be placed in their home. DCFS provided them with the paperwork necessary to obtain the waivers.

At a hearing on July 20, 2011, the juvenile court adopted a recommendation by DCFS that the section 300 petition filed on behalf of Lauren be dismissed without prejudice.⁶ Father requested that the juvenile court place Ariana with paternal grandmother. Counsel for paternal grandmother stated that paternal grandmother was willing and able to care for Ariana. The juvenile court ordered DCFS to assess the suitability of placing Ariana in paternal grandmother’s care and report back with its progress at a hearing scheduled for August 9, 2011.

In preparation for that hearing, DCFS reported that paternal grandmother was willing to care for Ariana if Ariana could not be placed with maternal grandmother, and that paternal grandmother would undergo a Live Scan check. Meanwhile, maternal grandmother’s waiver was still pending.

⁵ As explained by DCFS, “the Adoption and Safe Families Act . . . or ‘AFSA’ establishes federal guidelines for relative care of children who are dependents of the juvenile court.”

⁶ Counsel for DCFS did not go into detail as to why he made this recommendation. He simply explained that “since the child Lauren is back in the custody and care of her legal guardian, at this time, the department [would like to] dismiss the 300 petition without prejudice in the interest of justice.”

At the August 9, 2011 hearing, the juvenile court sustained an amended version of the section 342 petition filed against father, ordered family reunification services for father, and continued Ariana's placement with her foster parents.

In an interim review report dated August 18, 2011, DCFS stated that maternal grandmother's waiver had not been approved because her application was missing necessary documentation from law enforcement agencies. Additionally, the results of paternal grandmother's Live Scan check revealed that she would also require a waiver and AFSA approval before Ariana could be placed in her care. According to DCFS, on August 8, 2011, it informed paternal grandmother of the paperwork necessary to obtain the waiver, e.g., counseling documentation, police reports, court docket information, and letters of recommendation. DCFS explained that it would need a waiver in place before it could inspect and approve her home for placement.

On August 23, 2011, the juvenile court ordered Ariana to remain in her foster home and instructed DCFS to continue its efforts to place Ariana with a relative.

B. Six-Month Status Review Hearing

In preparation for the six-month status review hearing scheduled for February 9, 2012, DCFS reported the following: Ariana was thriving in her foster home where she had been residing for almost eight months, meeting all of her developmental milestones, and bonding with her half sibling Vincent. When Ariana was first detained, she had received only one set of immunizations and measured in the seventh percentile in weight. In contrast, Ariana was now caught up on her immunizations, measured in the 45th percentile in weight, and appeared to be "a bright, happy child." Her foster parents, who were in the process of adopting Vincent and had an approved adoption home study on file, expressed a desire to adopt Ariana as well.

As to paternal grandmother, DCFS reported that her waiver had recently been approved and that DCFS had scheduled a team decision meeting (referred to as "TDM" in the record) "to consider replacement" and "discuss issues related to the best interest of Ariana at this time." DCFS stated that it was "concerned about paternal grandmother[']s lack of consistent visit[s] . . . with Ariana" and noted that paternal grandmother had not

regularly visited with Ariana until December 2011, when a case social worker advised her about the importance of consistent visitation. The report revealed that paternal grandmother had visited Ariana on July 26, 2011, and not again until December 13, 2011. During this five-month period, Ariana also did not have any contact with Lauren. Because of DCFS's concern about paternal grandmother's inconsistent visits, DCFS requested time to complete an adoption assessment to consider long-term permanency plans for Ariana.

Also in preparation for the six-month status review hearing, Ariana's foster parents provided the following update: When Ariana first came to their home, she was an "unusually sedate . . . baby," "was extremely quiet," and "only [made] small grunting or whining sounds when hungry, soiled, or in need of comfort or attention." In contrast, Ariana now fully interacted with all members of the family, responded to communication with smiles and affection, and felt secure enough to make her needs and opinions known. Additionally, Ariana had formed a "critical bond" with her foster family and exhibited a "close and strong" relationship with Vincent. She and Vincent communicated in their own language, played together, and gave hugs and kisses to each other. Ariana initially suffered from a chronic diaper rash that was extreme and painful. After several pediatric and dermatological appointments, the foster parents learned that Ariana was allergic to dairy products. Since switching to soy products, Ariana's diaper rash has been resolved.

The foster agency social worker who regularly monitored Ariana submitted a letter in which she "strongly recommend[ed]" that Ariana remain with her foster parents, who had provided stability and safety for over seven months. The social worker maintained that a change in placement at this juncture in Ariana's life would prove "difficult and disruptive . . . as she is at a critical point in her development."

In connection with the upcoming six-month status review hearing, paternal grandmother and the foster parents filed separate requests to be named Ariana's de facto parent(s).

At the six-month status review hearing, counsel for father requested that Ariana be placed with paternal grandmother, citing paternal grandmother's history of caring for

Ariana and her status as current caretaker for Lauren. Ariana's counsel opposed the request. Ariana's counsel argued that the foster parents were providing appropriate care for Ariana and that moving her would be "detrimental." Counsel for DCFS joined in minor's counsel's recommendation to keep Ariana placed with her foster parents. The juvenile court stated that although there is a general preference for placing a dependent child with a relative, that preference is not mandatory. The juvenile court exercised its discretion to keep Ariana placed with her foster parents, finding that "it would be detrimental to Ariana, and it is not in her best interest [for] this court [to] place her with her paternal grandmother." The juvenile court indicated that its decision was based in part on paternal grandmother's lack of participation in Ariana's life. The termination of reunification services for father was set for a contested hearing on March 14, 2012.

C. Termination of Reunification Services and Subsequent Placement

In preparation for the contested hearing, DCFS submitted a "last minute information" report for the juvenile court to consider. According to the report, DCFS conducted a team decision meeting on March 6, 2012, that was attended by the case social workers, paternal grandmother, and mother. Paternal grandmother explained at the meeting that she would have visited Ariana sooner if she had known that the criminal waiver process would take so long and reaffirmed her desire to care for Ariana until mother and/or father were capable of caring for Ariana on their own. She expressed a willingness to do "whatever [was] necessary to keep Ariana with family," including adoption. Paternal grandmother stated that she would move in order to be closer to her sister so that her sister could care for Ariana and Lauren at night when paternal grandmother went to work. DCFS's final recommendation on where Ariana should be placed was somewhat ambiguous: "It is the department's recommendation that the child's placement needs are best served by family. [¶] With regard to the de facto petitions filed by current caretakers and paternal grandmother, at this time DCFS

recommends that neither party be granted de facto status. DCFS is recommending a possible placement and therefore the issue of placement move is not resolved.”⁷

The foster parents also submitted a caregiver information form in which they reported that Ariana recently had her first unmonitored offsite visit with paternal grandmother. After the four-hour visit, Ariana was inconsolable on the ride home and clingy. She wanted to be held by her foster mother and experienced disrupted sleep that night.

At the March 14, 2012 contested hearing, father testified about his minimal compliance with the court-ordered case plan and reunification services. At the conclusion of his testimony and counsels’ arguments, the juvenile court terminated reunification services for father and set the matter for a permanency planning hearing. The juvenile court next considered the requests made for de facto parent status. It granted the request as to the foster parents, citing factors such as Ariana’s psychological bond with them and their assumption of parental duties on a day-to-day basis. The juvenile court was troubled by paternal grandmother’s failure to visit with Ariana for over five months, and expressed concern that if Ariana were placed with paternal grandmother, paternal grandmother would allow father, who still had an unresolved drug addiction, to have uncontrolled access to Ariana.

Father filed a notice of appeal from the juvenile court’s orders terminating reunification services for him, setting the matter for a permanency planning hearing, and denying his request to have Ariana placed with paternal grandmother. Pursuant to a request by father, this court construed his notice of appeal as a notice of intent to file a

⁷ In its answer to father’s petition for extraordinary writ, DCFS maintains that “DCFS never recommended that Ariana be placed with paternal grandmother, nor did it support paternal grandmother’s petition for de facto parent status.” Instead, when DCFS reported that Ariana’s needs were best served by family, it was merely echoing the general preference for relative placement.

petition for extraordinary writ (Cal. Rules of Court, rule 8.450), and took judicial notice of the appellate record.⁸

DISCUSSION

Father challenges the juvenile court's order denying his request to have Ariana placed with paternal grandmother on two grounds: (1) the juvenile court abused its discretion by failing to apply the relative placement preference to paternal grandmother; and (2) DCFS improperly delayed investigating paternal grandmother's suitability for placement. As we explain below, both arguments are unpersuasive. As a threshold matter, we turn to DCFS's argument that father lacks standing to challenge the juvenile court's placement decision.

According to DCFS, the juvenile court's order declining to place Ariana in paternal grandmother's care is an order that strictly pertains to paternal grandmother, and thus father lacks standing to challenge that placement decision. It is settled, however, that "[u]ntil parental rights are terminated, a parent retains a fundamental interest in his or her child's companionship, custody, management and care." (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053; see also *In re H.G.* (2006) 146 Cal.App.4th 1, 9 ["Although parent-child reunification was no longer a goal of the dependency proceedings, the parents retained a fundamental interest in [the minor's] companionship, custody, management and care"].) At this juncture, father's parental rights have not been terminated and he retains a fundamental interest in who cares for Ariana. He therefore has standing to challenge a court order that may injuriously affect this fundamental right.

⁸ At one point in the proceedings, paternal grandmother filed a motion, pursuant to section 388, requesting that the juvenile court remove Ariana from her foster home and place her in the care of paternal grandmother. On April 25, 2012, the juvenile court denied paternal grandmother's motion, finding that a change in placement would not promote Ariana's best interests. Paternal grandmother has filed a notice of appeal from that order (case No. B241042).

(See *In re H.G.*, *supra*, at p. 9 [“We liberally construe the issue of standing and resolve doubts in favor of the right to appeal”].)⁹

We now turn to the merits of father’s arguments.

1. The juvenile court did not abuse its discretion in refusing to place Ariana with paternal grandmother.

Section 361.3, subdivision (a) provides in relevant part: “In any case in which a child is removed from the physical custody of his or her parents . . . preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” “‘Preferential consideration’ means that the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).)

In deciding whether placement with a relative is appropriate, the juvenile court shall consider a number of factors including “[t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs,” “[p]lacement of siblings and half siblings in the same home, if that placement is found to be in the best interest of each of the children,” “[t]he nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful,” and “[t]he ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child [and] [¶] (D) Protect the child from his or her parents.” (§ 361.3, subds. (a)(1), (a)(4), (a)(6) & (a)(7)(A)-(D).)

We review the juvenile court’s placement decision for an abuse of discretion. (*In re N.V.* (2010) 189 Cal.App.4th 25, 31.)

Here, there was evidence that Ariana was happy and thriving in her foster home. She received the nutrition necessary for healthy weight and height gain, was meeting all

⁹ Because neither party raises the issue, we assume, without deciding, that a petition for extraordinary writ filed pursuant to California Rules of Court, rule 8.452 is the proper vehicle to challenge Ariana’s placement order.

of her developmental milestones, and felt secure enough to vocally express her needs in a productive and effective manner. A social worker who visited with Ariana and her foster parents on a regular basis maintained that a change in placement would prove “difficult and disruptive” as Ariana was “at a critical point in her development.” Ariana had formed a clear bond with her foster parents, a bond that was undoubtedly strengthened by their assumption of her day-to-day care. Additionally, Ariana had formed a strong attachment to Vincent, her half sibling, while living with her foster parents. They played together, were affectionate with each other, and even shared their own language.

In contrast to this daily interaction, paternal grandmother was initially reluctant to care for Ariana and insisted that DCFS investigate the possibility of placing Ariana with her maternal grandmother. Even after it became clear that Ariana would not be placed with the maternal grandmother, paternal grandmother still did not visit Ariana for five months. This extended period of time is especially significant when one considers that Ariana was less than a year old when she was first placed with her foster parents. Although paternal grandmother began to visit with Ariana more regularly after being advised to do so, the fact that Ariana reacted negatively after an extended unmonitored visit with her indicated that a meaningful bond had not formed between them.

Additionally, there was evidence that paternal grandmother would be unable, or perhaps unwilling, to protect Ariana from her parents, both of whom had unresolved drug addictions and related criminal behavior. Paternal grandmother should have been aware that Ariana and Lauren were living (part of the time at least) in an apartment that contained illicit drugs and drug paraphernalia, and possibly served as a site for the sale of methamphetamines. Although paternal grandmother maintained that she did not know father used drugs or that the mother was spending the nights at the apartment, the juvenile court was entitled to believe DCFS’s assessment that paternal grandmother was simply turning a blind eye to activities that threatened the safety of Ariana and Lauren.

Father implores this court to consider the following points: paternal grandmother did not visit with Ariana for five months because she was too busy preparing a good home environment for Ariana; paternal grandmother had cared for Ariana on a day-to-

day basis for the first 10 months of her life; and Ariana and her sister Lauren spent their infancy together and Lauren missed Ariana. But even if we were to assume all these points to be true, we find compelling that grandmother visited Ariana inconsistently, that Ariana had formed a strong attachment to her foster parents and half sibling, and that paternal grandmother appeared unable or unwilling to protect Ariana from the dangerous environment created by father's drug addiction and related criminal activities.

2. There is no evidence that DCFS improperly delayed its investigation of paternal grandmother's suitability.

Father asserts that DCFS dragged its heels during the criminal waiver and AFSA approval process. The record belies father's contention. At the outset of the dependency proceedings, paternal grandmother expressed reluctance to care for Ariana. It was not until July or August 2011, when it became clear that maternal grandmother's waiver would not go through, that paternal grandmother expressed a willingness to have Ariana placed with her. Shortly after DCFS discovered that the results of paternal grandmother's Live Scan check required a criminal waiver, on August 8, 2011, it discussed the documentation necessary to obtain that waiver with her. Service logs indicate that on September 8, paternal grandmother submitted some of the required documents, but failed to include other required information on the waiver form. On the same day DCFS informed her of the need to complete the waiver form. When paternal grandmother did not comply, DCFS left a message for her on September 26.

On October 4, 2011, DCFS informed paternal grandmother that a waiver had been granted, but because paternal grandmother was in the process of moving, DCFS required the new address before AFSA approval could be obtained. It appears that almost a month went by and paternal grandmother did not contact DCFS. On November 1, 2011, father came into a DCFS office to secure a bus pass and inquire about the status of Ariana's placement with paternal grandmother. The case social worker explained that AFSA approval could not be obtained until grandmother was residing at the home in which she sought approval. On November 30, 2011, DCFS conducted an assessment of paternal grandmother's residence and observed that there was a door connecting her residence

with another residence. DCFS explained that final approval could not be obtained until the door was permanently sealed. The record indicates that throughout the month of December 2011, and into early January 2012, DCFS kept paternal grandmother apprised of her approval status.

We are satisfied that DCFS made reasonable efforts to keep the waiver and AFSA approval process on track. More to the point, there is nothing in the record to indicate that any actions by DCFS prevented paternal grandmother from visiting Ariana on a regular basis, or from bringing Lauren to visit Ariana.

In sum, we conclude that DCFS appropriately investigated paternal grandmother's suitability for placement, and find no abuse of discretion in the juvenile court's decision refusing to place Ariana with paternal grandmother.

DISPOSITION

The petition for extraordinary writ is denied. The temporary stay issued on June 6, 2012, of the section 366.26 hearing is hereby dissolved. Pursuant to California Rules of Court, rule 8.264(b)(3), this opinion is made final forthwith.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
DOI TODD

We concur:

_____, J.
ASHMANN-GERST

_____, J.
CHAVEZ