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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B246332
(Los Angeles County
Super. Ct. No. CK68784)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Anthony A. Trendacosta, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Appellant Jessica M. (mother) appeals from the juvenile court's order terminating her parental rights as to her son, Jayden G. (Jayden) (born in Aug. 2010). Mother contends that she did not receive proper notice of the hearings held pursuant to Welfare and Institutions Code sections 300 and 366.26,¹ and that the juvenile court abused its discretion when it denied placement of Jayden with the boyfriend of the maternal grandmother. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

By the time the Los Angeles County Department of Children and Family Services (DCFS) received a referral in January 2012 regarding Jayden, mother's parental rights to her four older children had already been terminated due to her substance abuse.² According to the referral, mother was seen through an open hotel door injecting drugs into her arm and then throwing the needle on the floor while Jayden was in the room. When DCFS finally met with mother in March 2012, she denied taking drugs and agreed to take an on-demand drug test. The results of the drug test were positive for vicodin and morphine. Mother failed to attend a scheduled meeting with social workers to address her case.

The Petition

On May 2, 2012, DCFS filed a petition on behalf of Jayden under section 300, subdivision (b), alleging that mother had a nine-year history of substance abuse that rendered her incapable of providing regular care and supervision of Jayden. The petition

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

² Mother filed a prior appeal challenging the juvenile court's order terminating her parental rights in regard to one of these four children and the denial of her section 388 petition as to all four children. We affirmed the findings and orders of the juvenile court. (*In re Julian E.* (Aug. 17, 2011, B229722) [nonpub. opn.])

also alleged that Jayden's father, Eric G. (father), had a history of substance abuse and a criminal history involving possession of drugs.³

Detention and Progress Hearings

Both parents attended the May 2, 2012, detention hearing with Jayden, who was physically removed from them in the courtroom. The parents indicated they lived together, and the juvenile court admonished them to keep DCFS informed if they moved or changed addresses. The court set a progress hearing for May 10, 2012, ordered the parents to return without any further notice, order or subpoena, and set the adjudication hearing for July 2, 2012. The parents were given monitored visits. Jayden was placed with the foster parents who were already caring for his four siblings and who were expected to finalize adoption of the siblings in the near future. The parents attended the progress hearing on May 10, 2012, with Ismael T. (Ismael), who was identified as the maternal grandfather. DCFS was ordered to assess placement of Jayden with him. The court set a pretrial resolution conference for June 4, 2012.

Mailing of Notice

A "Notice of Hearing on Petition" and a copy of the section 300 petition were mailed via first class on May 15, 2012, to the address mother had given in court. The notice identified the hearing date of June 4, 2012.

Adjudication and Disposition Report

DCFS prepared a combined jurisdiction and disposition report, which recommended that family reunification services be terminated. The report noted that on May 25, 2012, the social worker made an unannounced visit at the parents' apartment. Mother admitted she was using heroin daily. The social worker observed needle marks on both mother's and father's arms. Although mother and father agreed to take a drug test, they failed to submit to testing.

³ Father is not a party to this appeal. He is the biological father of one of mother's older children, Jefferson G. (Jefferson), and his and mother's parental rights as to Jefferson were terminated in July 2011.

The social worker investigated placement of Jayden with Ismael. The maternal grandmother referred to Ismael as her “common-law” husband of three years. He is not biologically related to mother or Jayden. He lives with the maternal grandmother, who indicated that she would be caring for Jayden if he was placed in their home since Ismael works. The maternal grandmother was previously investigated by the FBI for harboring a fugitive who was wanted for operating a sex trafficking operation involving minor immigrant girls. The maternal grandmother considered the federal case baseless, even though three of her own children were declared dependent children of the juvenile court as a result of her neglectful conduct and were removed from her custody. Jayden’s older siblings were also removed from her custody as a result of this incident. The maternal grandmother stated that mother came to her home every few days and that mother had admitted using heroin. Father also spent a week at the maternal grandmother’s home trying to “detox” from heroin.

June 4, 2012 Hearing

The parents did not attend the June 4, 2012, hearing set for the pretrial resolution conference. At the hearing, the attorneys signed a stipulation continuing the case to the adjudication hearing already scheduled for July 2, 2012. According to the minute order, the juvenile court found notice of the proceedings had been given as required by law.

Adjudication and Disposition Hearing

The parents did not attend the July 2, 2012, adjudication and disposition hearing. In preparation for the hearing, DCFS reported that the parents had been evicted from their apartment, and had not had any contact with DCFS since their interview on May 25, 2012. The parents had not seen Jayden since the detention hearing. They failed to appear for two scheduled drug tests. The social worker made an unannounced visit at the parents’ last known address on June 21, 2012, but no one answered the door. The social worker’s efforts to locate the parents by contacting the maternal grandmother were unsuccessful. The maternal grandmother was present at the hearing. Mother’s attorney requested that the hearing be continued due to mother’s absence. The juvenile court denied the request, noting that the parents had not appeared at the pretrial resolution

conference, despite being ordered to appear. Mother's attorney admitted her last contact with mother was at the detention hearing. The court sustained the section 300 petition.

The juvenile court proceeded to disposition. The court denied family reunification services, finding that section 361.5, subdivisions (b)(10), (11) and (13) applied. The court then set a section 366.26 permanent placement hearing for October 29, 2012. The court clerk mailed a copy of the July 2, 2012 minute order, notification of rights form, notice of intention to file writ petition, and advisement of rights to mother's last known address.

Section 366.26 Report

DCFS reported that the parents had not seen Jayden since the detention hearing and had not requested any visits with him. Jayden was strongly attached to his foster parents and close to all his siblings, especially Jefferson, with whom he was inseparable. DCFS recommended termination of parental rights.

On August 13, 2012, DCFS personally served both parents with the notice of the section 366.26 hearing and DCFS's recommendation to terminate parental rights. The service took place at a hotel where the parents were living, and a photograph of a business card from the hotel was attached to mother's proof of service. The proofs of service contain both mother's and father's signatures. The proofs of service also contain a handwritten notation that the section 366.26 report was mailed to the parents at two different addresses. One of the addresses listed was the hotel where the parents were personally served.

Section 366.26 Hearing

The parents did not appear at the section 366.26 hearing on October 29, 2012. The attorneys for both parents indicated they had no direction from their clients. The juvenile court found that notice was proper by way of personal service, and admitted the section 366.26 report into evidence without objection. The attorneys for both parents declined to make arguments. The juvenile court proceeded to terminate mother's and father's parental rights as to Jayden. Mother's appeal followed.

DISCUSSION

I. Notice of Hearings

Mother contends that she did not receive proper notice of either the section 300 hearing or the section 366.26 hearing.

A. Section 300 Hearing

Once the jurisdictional hearing is set, notice must be given to a parent and must include, among other things, the date, time and place of the hearing, each section and subdivision under which the proceeding has been initiated, that the court may proceed in the parent's absence, and a copy of the section 300 petition. (§ 291, subs. (d)(1)-(7).) When DCFS recommends that a parent not receive family reunification services pursuant to section 361.5, subdivision (b), the parent must be so notified, and must be informed that if such services are not given, parental rights may be terminated. (§ 358, subd. (a)(3).) The reasons a parent may not be provided with reunification services include the parent's failure to reunify with a sibling of the dependent child, the parent's parental rights to a sibling have been terminated, or the parent has a history of extensive, abusive, and chronic use of drugs during a three-year period immediately prior to the filing of the petition. (§ 361.5, subs. (b)(10), (11), (13).)

Mother claims she did not receive proper notice of the section 300 hearing, because she was not informed that her parental rights could be terminated if reunification services were not offered. But mother concedes that the notice sent to her specifically stated at paragraph 8 that DCFS "may seek an order pursuant to [section] 361.5 that no reunification services be provided to the parent(s). . . . If the Court does not order reunification services for the parents, a permanency planning hearing will be held which may result in the termination of parental rights with a permanent plan of adoption. . . ." The notice further advised mother that the court could proceed in her absence and that it could remove the child from her custody and make orders regarding placement, visitation and services. Thus, mother cannot claim she had no notice of the possible outcome of this case.

Mother complains that the adjudication and disposition report, in which DCFS recommended termination of family reunification services, was not attached to the notice. She points out that the report is dated May 30, 2012, while the notice was sent on May 15, 2012. But she cites no authority requiring that a copy of DCFS's investigative report be mailed to a parent along with notice of the section 300 hearing. In any event, the record shows that the adjudication and disposition report was received in court on May 31, 2012, giving mother's attorney ample time to prepare for the adjudication hearing scheduled for July 2, 2012, during which the report was admitted into evidence without objection from mother's attorney.

Mother also complains that no separate notice was sent to her identifying the July 2, 2012, date for the adjudication hearing. But mother was present in court with her attorney at the detention hearing when this date was set. Thus, mother had actual notice of the July 2, 2012 hearing date.

Moreover, any error in not sending mother a separate notice of the July 2, 2012, was harmless beyond a reasonable doubt. (*In re Angela C.* (2002) 99 Cal.App.4th 389, 395.) The record shows that mother was engaged in ongoing intravenous heroin abuse. She was not in drug treatment. And her drug use had already contributed to her failure to reunify with, and to lose parental rights over, four other children. The juvenile court properly terminated family reunification services pursuant to section 361.5.

B. Section 366.26 Hearing

Mother also claims that she did not receive proper notice of the section 366.26 hearing, because the proof of service for this hearing is "unclear" as to who served mother, if that same person also mailed a copy of the section 366.26 report and when, and why there were two addresses for the mailing of the report. These concerns, however, do not affect the propriety of notice.

First, the record shows, and mother does not dispute, that mother was *personally* served with timely notice of the section 366.26 hearing. Section 294, subdivision (f)(3) expressly provides that personal service on the parent is sufficient.

Second, contrary to mother's suggestion that the section 366.26 report is required to be served by certified mail, section 294 is silent as to service of the section 366.26 report. The notice indicates that the section 366.26 report was not provided to mother at the time of personal service, but was mailed to her at a later date at two different addresses, including the address where mother was personally served. While mother questions why the report was sent to two addresses and who mailed the report, she does not claim that she never received a copy of the report.

Moreover, any error in service was harmless beyond a reasonable doubt. (*In re Angela C.*, *supra*, 99 Cal.App.4th at p. 395.) "The primary issue in a section 366.26 hearing is whether the dependent child is likely to be adopted." (*Ibid.*) The juvenile court found by clear and convincing evidence that Jayden is adoptable, and the evidence supports this finding. Once the juvenile court finds the likelihood of adoption, section 366.26, subdivision (c)(1) requires termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child because of one or more circumstances listed in section 366.26, subdivision (c)(1)(B)(i) – (vi). Mother's attorney did not argue at the section 366.26 hearing that any exception to the termination of parental rights applied, nor does mother make such an argument on appeal. The evidence in the record is clear that none of the exceptions to the legislative preference for adoption possibly applies here.

II. Placement of Jayden

Mother contends that the juvenile court abused its discretion by not placing Jayden with the boyfriend of the maternal grandmother. This contention fails.

First, mother lacks standing to challenge the placement issue. As mother acknowledges, in *In re K.C.* (2011) 52 Cal.4th 231, our Supreme Court stated: "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*In re K.C.*, *supra*, at p. 238.) Mother, however, does not challenge the termination of her parental rights,

nor could she legitimately do so when she had not bothered to visit her son in the six months since his removal from her.

Second, the relative placement preference in section 361.3, subdivision (a), the basis for mother's contention, only applies throughout the reunification process. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 794–796.) Once family reunification services are terminated, the statutory preference for placement shifts to the child's current caretaker. (§ 366.26, subd. (k).) Here, the placement issue was last addressed in DCFS's June 4, 2012, adjudication and disposition report. At the adjudication and disposition hearing on July 2, 2012, the juvenile court terminated reunification services and set the matter for a section 366.26 hearing to select a permanent plan for Jayden. Mother was required to file a petition for extraordinary writ at this time, but failed to do so, thus forfeiting mother's challenge now. (§§ 366.26, subd. (l), 366.28.)

Third, Ismael was not entitled to relative preferential consideration in any event because he was not a relative of Jayden. Section 361.3, subdivision (c)(2) defines "relative" as an adult related to the child "by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons even if the marriage was terminated by death or dissolution." Ismael was only the boyfriend of the maternal grandmother.

DISPOSITION

The order terminating mother's parental rights as to Jayden is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
FERNES

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.