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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.A. et al., Persons Coming Under the
Juvenile Court Law.

B260209

(Los Angeles County
Super. Ct. No. CK86738)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAIME A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Timothy R. Saito, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant
and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County
Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Jaime A. appeals from an order terminating his parental rights to A.A. and Michael L. He contends the Los Angeles County Department of Children and Family Services failed to exercise due diligence in searching for him before the juvenile court authorized service of the petition and the notice of a selection and implementation hearing by publication. He argues that the service by publication violated his due process rights and that the order terminating his parental rights and other orders are void for lack of personal jurisdiction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Dependency Petition*

On February 18, 2011 the Department removed Maricela L.'s three children, Carlos D., A.A., and Michael L., from Maricela's custody and placed them with their maternal grandmother, Maria M. On February 24, 2011 the Department filed a dependency petition (Welf. & Inst. Code, § 300)¹ alleging that Maricela suffered from depression and had recently been hospitalized involuntarily for the evaluation and treatment of her psychiatric condition, and that she was unable to provide regular care for her children. The petition alleged that the alleged father of Carlos D. was incarcerated. The petition also alleged that Jaime was the alleged father of A.A. and Michael L., that his location was unknown, and that he had failed to provide the two children with the necessities of life.

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

On February 24, 2011 the juvenile court detained the children, placed them with Maria, and ordered family reunification services. The court ordered the Department to provide evidence of due diligence in attempting to locate Jaime.

B. The Jurisdiction and Disposition Hearing

The Department's jurisdiction and disposition report stated that Maricela had several prior referrals to the Department. The prior referrals included substantiated allegations that Jaime had sexually abused a child. They also included substantiated allegations that Maricela had neglected her children and had previously received family maintenance services.

According to the report, Carlos D. (who was then 12 years old) stated that Jaime was arrested and then went to Mexico, and that Jaime had sexually molested him on two occasions three or four years earlier. A.A. (who was then four years old), however, stated that she had seen Jaime that morning in Montebello and he had promised to take her to Chuck E. Cheese's. Maricela and Maria stated that A.A. was fabricating the alleged sighting of Jaime and that in fact A.A. had not seen Jaime in over two years, and Maria stated that A.A. had been home with her all that day. Maricela stated that she had not seen Jaime since 2008, when she learned he had molested Carlos D. Maricela stated that she believed Jaime was somewhere in Los Angeles, but she had no contact information, and that he was looking for her and her children, but she did not want him to find them, nor did she want the Department to find Jaime. Maria stated that Jaime was in jail.

The Department submitted a declaration of due diligence, executed on March 23, 2011, with its jurisdiction and disposition report. The declaration stated that the Department had completed a due diligence search to locate Jaime, but was unable to find him. The declaration described how the Department had searched 18 sources, including Department of Motor Vehicles records, telephone directory assistance, Lexis Nexis, branches of the United States Military, the Federal Bureau of Prisons, the county jail, the United States Postal Service, probation and parole records, voter registration, the California Child Support Automation System, the Child Abuse Central Index, the Child Welfare Services/Case Management System, and the Welfare Case Management

Information System. The declaration stated that the searches had disclosed two possible addresses in El Monte, California, but notices mailed to those addresses had been returned with a statement that Jaime was not known at either address. The declaration also stated that directory assistance had disclosed a phone number for a person with a similar name, but a woman who answered the phone reported that the person by that name residing in her home had no children.

On March 28, 2011 the juvenile court found that the Department had exercised due diligence in searching for Jaime, but had not located him. The court found that Jaime was not entitled to reunification services (§ 361.5, subd. (b)(1)). The court also found that Jaime was A.A.'s presumed father and Michael L.'s alleged father. The court sustained the petition as to all three children on grounds of failure to protect and no provision for support (§ 300, subds. (b), (g)). The court also declared all three children dependents of the court and removed them from Maricela's custody.

C. The Supplemental Juvenile Dependency Petition

On June 29, 2011 the Department filed a supplemental dependency petition (§ 387) alleging that Maria had endangered the children by allowing her husband, whom Maricela claimed had sexually abused her as a child, to reside in the children's home. The supplemental petition also alleged that Maria had failed to provide appropriate sleeping arrangements for the three children.

The Department's detention report, filed the same date, stated that Maria had acknowledged that A.A. and Michael L. were sleeping on a sofa in the living room so that Maria's son and daughter-in-law could sleep in the bedroom, while Carlos D. shared a bed with Maria and her husband. The Department stated that Maria had acknowledged that other adult family members and friends were also living in the house. The Department reported that Maria had refused to allow Maricela to visit the children, which caused Maricela to throw a rock through the living room window. The Department also stated that the adults living in Maria's house had refused to submit to live scan

fingerprinting. On June 24, 2011 the Department removed the children from Maria's custody.

On June 29, 2011 the juvenile court dismissed the supplemental petition in the interest of justice, and ordered the Department to investigate placing the children with relatives. On July 15, 2011 the Department reported that Jaime's sister, Teresa, and mother, Esther, were considering asking the court to place A.A. and Michael L. in their home and were moving from Texas to Los Angeles County for that purpose.

D. *The Six-Month Review Hearing*

In its report for the six-month review hearing (§ 366.21, subd. (e)), the Department stated that Maricela had been staying at a women's home, but, according to Maricela's friend Harry, had gone to Jaime's home because she needed a place to stay. Maricela called the social worker a few days later, however, and stated that she was staying with her friend Antonia. Maricela later became homeless. She did not complete the court-ordered treatment programs.

At the six-month review hearing on September 26, 2011 the juvenile court ordered the Department to submit a supplemental report and continued the hearing to October 24, 2011. On October 24, 2011 the court found that Jaime was not given proper notice for the hearing and continued the hearing to November 28, 2011. On November 28, 2011 the Department reported that Teresa had stated that Jaime was in Mexico and had provided a phone number. The social worker left messages for Jaime at that number, but Jaime did not return the calls.

E. *The 12-Month Permanency Hearing*

In its report for the 12-month permanency hearing (§ 366.21, subd. (f)), the Department reported it had conducted another due diligence search for Jaime, but had been unable to locate him. The Department submitted another due diligence declaration reflecting that the search had produced possible addresses in El Monte, but the United States Post Office indicated that he was unknown at those addresses. Teresa and Esther

had moved from Texas to East Los Angeles and requested placement of A.A. and Maricela in their home. The juvenile court continued the hearing. The Department later reported that both A.A. and Michael L. had told their foster mothers that they saw Jaime at church and during unmonitored visits at Teresa's home. Teresa stated that the prior child abuse charges against Jaime were false, that he was innocent, and that he was living in Mexico. On April 3, 2013 the juvenile court conducted the continued permanency hearing, terminated Maricela's reunification services, and set a hearing pursuant to section 366.26 to select a permanent plan.

F. *The Section 366.26 Selection and Implementation Hearing*

In its report for the section 366.26 hearing, the Department stated that Maricela had not had any contact with A.A. and Michael L. since 2012. The Department submitted another due diligence declaration stating that it had completed another search to locate Jaime, but had been unable to find him. The Department stated that it had searched the same 18 sources it had previously searched, and that the new searches produced two possible addresses in Santa Rosa and El Monte, but the United States Postal Service indicated that Jaime was unknown at both addresses. The Department reported that the searches had disclosed two possible phone numbers, but one was a fax number, and a woman answering the other stated that the caller could not reach Jaime there.

On July 31, 2013 the juvenile court found that the Department had exercised due diligence in searching for Jaime, ordered the Department to give notice to Jaime by publication, and continued the section 366.26 hearing. After further continuances, the court conducted the hearing on September 10, 2014. The court found that the Department had properly served Jaime with notice of hearing by publication and terminated Maricela and Jaime's parental rights. Jaime timely appealed from the order. The notice of appeal indicated that his address was on Harding Avenue in Los Angeles.

DISCUSSION

Due process requires that parents be given notice of juvenile dependency proceedings involving their children. (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247 (*Claudia S.*.) The notice must be “‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” (*Ibid.*, quoting *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) Service of notice by publication satisfies due process if the child welfare agency cannot locate the parent through the exercise of reasonable diligence.² (*Claudia S.*, at p. 248; see *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1352 (*Emily R.*) [“when the address of an alleged father is unknown and cannot be determined with due diligence, notice by publication is sufficient for due process”].)

“The term ‘reasonable or due diligence’ “denotes a thorough, systematic investigation and inquiry conducted in good faith.” [Citation.] Due process notice requirements are deemed satisfied where a parent cannot be located despite a reasonable search effort and the failure to give actual notice will not render the proceedings invalid. [Citation.]” (*Claudia S.*, *supra*, 131 Cal.App.4th at p. 247.) “[T]here 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.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188 (*Justice P.*.) “‘It is not always possible to litigate a dependency case with all parties present. The law recognizes this and requires only reasonable efforts to search for and notice missing parents. Where

² Section 294, subdivision (f)(7), authorizes service by publication of notice of a section 366.26 hearing “[i]f a parent’s identity is known but his or her whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive”

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. Children need stability and permanence in their lives, not protracted legal proceedings that prolong uncertainty for them. Further, the very nature of determining a child's best interests calls for a case-by-case analysis, not a mechanical rule.' [Citation.]" (*In re J.H.* (2007) 158 Cal.App.4th 174, 182-183 (*J.H.*))

We review the juvenile court's finding that the Department exercised reasonable diligence in searching for Jaime under the substantial evidence standard. (*Justice P.*, *supra*, 123 Cal.App.4th at p. 189; cf. *Vorburg v. Vorburg* (1941) 18 Cal.2d 794, 797 [trial court's finding of reasonable diligence supporting service of summons by publication was entitled to the same deference as any other factual finding]; *Giorgio v. Synergy Management Group, LLC* (2014) 231 Cal.App.4th 241, 248-249 [substantial evidence standard applied to a finding under Code Civ. Proc. § 415.50 that the plaintiff could not serve the defendant with reasonable diligence other than by publication]; *Stanislaus County Dept. of Child Support Services v. Jensen* (2003) 112 Cal.App.4th 453, 458 [substantial evidence standard applied to a finding that a noncustodial parent made reasonably diligent efforts to locate the custodial parent and child].)

The juvenile court found both at the jurisdiction and disposition hearing and at the section 366.26 hearing that the Department had exercised reasonable diligence in searching for Jaime. The record discloses no reliable source of information regarding Jaime's whereabouts at those times. Before the March 2011 jurisdiction and disposition hearing Maricela stated that she had not seen Jaime since 2008. Maricela believed that Jaime was living in the Los Angeles area, but she had no contact information. A.A. stated that she had seen Jaime in Montebello, but Maricela and Maria stated that the child was making it up. Teresa later stated that she believed Jaime was living in Mexico.

The Department's due diligence declaration submitted for the jurisdiction and disposition hearing reported that the Department had searched 18 different databases in an effort to locate Jaime. Jaime does not contend the Department failed to search the appropriate databases. The Department later conducted another search of the same databases before the section 366.26 hearing. The Department attempted to contact Jaime using the addresses and phone numbers produced by the searches, but was unsuccessful.

Jaime argues that the Department failed to follow up on the information most likely to produce a valid address, such as "the telephone number in Mexico[,] current information he was living in Los Angeles," and Harry's statement that he had taken Maricela to Jaime's home. Jaime contends there is no evidence that the Department contacted the telephone company in Mexico, asked any relatives of Maricela or Jaime where in the Los Angeles area Jamie was living, or asked Harry where Jaime was living. The fact that the Department might not have made those specific inquiries, however, does not compel the conclusion that its search was inadequate. (See *J.H.*, *supra*, 158 Cal.App.4th at p. 182 [law "requires only reasonable efforts to search for and notice missing parents"].)

David B. v. Superior Court (1994) 21 Cal.App.4th 1010 (*David B.*) and *In re Arlyne A.* (2000) 85 Cal.App.4th 591 (*Arlyne A.*), cited by Jaime, are distinguishable. In *David B.*, *supra*, 21 Cal.App.4th 1010, the child's birth certificate gave the father's name and stated that he was a United States Marine. The child welfare agency searched several sources in an effort to locate the father, but failed to contact the Marines, which, had it been contacted, would have disclosed the father's address. (*David B.*, at pp. 1014, 1016.) The court in *David B.* held: "Where the party conducting the investigation ignores the most likely means of finding the [parent], the service is invalid even if the affidavit of diligence is sufficient. [Citations.]" (*Id.* at p. 1016.) The court concluded that the agency's search was "woefully deficient" and that the juvenile court's finding of due diligence was "wholly unsupportable." (*Id.* at p. 1017.)

Similarly, in *Arlyne A.*, *supra*, 85 Cal.App.4th 591, the child welfare agency limited its directory assistance search to an old address in Fontana, despite current information from one of the children’s attorneys and their maternal grandmother that the father’s parents, with whom the father was living, lived in Rialto. (*Id.* at pp. 598-599.) The agency also failed to timely request a copy of the father’s police report from the police department, despite accurate information from the maternal grandmother that the father’s home address was listed on the report. (*Id.* at p. 599.) The court held that, although the due diligence declarations, considered alone, seemed to show reasonable efforts to locate the father by searching the usual sources, the agency’s failure to pursue “the most likely means of finding” the parent based on information known to the agency compelled the conclusion that the record did not support the juvenile court’s finding of reasonable diligence. (*Ibid.*; see *In re Megan P.* (2002) 102 Cal.App.4th 480, 489 [child services agency searched for the father only in California, despite knowing that he was living in Indiana, and failed to timely obtain the father’s address from the child support services agency].)

In both *David. B.*, *supra*, 21 Cal.App.4th 1010, and *Arlyne A.*, *supra*, 85 Cal.App.4th 591, the child welfare agency possessed information that, if investigated, would have disclosed the father’s current home address. In both cases, the child welfare agency failed to pursue or ignored entirely “the most likely means of finding” the missing parent. In contrast, Jaime has not identified any information known or reasonably available to the Department that, if investigated, would have disclosed his address, or even that there was any likely means of finding him. (See *Emily R.*, *supra*, 80 Cal.App.4th at p. 1353 [parent failed to show that any particular search measure would have been successful].) Jaime has not shown that the Department’s search efforts were unreasonable or inadequate. Substantial evidence supports the juvenile court’s findings that the Department made reasonable efforts to locate Jaime and exercised due diligence in trying to find him.

DISPOSITION

The order terminating Jaime's parental rights to A.A. and Michael L. is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

BECKLOFF, J.*

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