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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

JIMMIE G.,

Defendant and Appellant.

C071634

(Super. Ct. No. JD231901)

Jimmie G., the father of one-year-old J.G., appeals from an order of the Sacramento County Juvenile Court terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395; unless otherwise stated, all statutory references that follow are to the Welfare and Institutions Code.)

On appeal, father contends the order terminating parental right must be reversed because efforts by the Sacramento County Department of Health and Human Services

(Department) to locate and serve father prior to the jurisdiction and disposition hearing were not reasonable. We affirm the juvenile court's order.

FACTS AND PROCEEDINGS

Originating Circumstances

In September 2011, mother gave birth to J.G. several weeks prematurely while father was away on vacation. Two days later, father returned to Sacramento and visited J.G. at the hospital. Two days after the visit, mother was released from the hospital. Father's name does not appear on J.G.'s birth certificate.

On the day of J.G.'s birth, the Department received a Child Protective Services (CPS) referral. Mother had tested positive for cocaine; J.G. had tested positive for benzodiazepine; mother had received poor prenatal care; and J.G. was born prematurely. Mother admitted to hospital staff that she had used cocaine two to three times per day during her pregnancy. Mother's extensive CPS history includes loss of parental rights to three children, loss of physical and legal custody to a fourth child, and long-term placement of a fifth child.

After mother's release from the hospital, father talked to her and learned that J.G. had been born prematurely and was still hospitalized.

On October 4, 2011 (and again on October 11, 2011), social worker Ana Romero spoke to maternal cousin D.W., who had brought mother home from the hospital. D.W. explained that mother "usually calls her once a year for transportation," "when she needs to be picked up from the hospital," after she "deliver[s] her babies." D.W. said she would call around to see if mother could be located.

Also on October 4, 2011, Social Worker Romero tried unsuccessfully to locate mother at an address provided on the referral.

On October 5, 2011, Social Worker Romero learned that mother had called the hospital and had left a telephone number. Romero called the number and left a detailed message. Mother did not return Romero's call.

That same day, Social Worker Romero received a telephone call from maternal relative S.S., requesting placement of J.G. in her home. S.S. said she had last spoken with mother two months previously and had no contact information for mother or knowledge of her whereabouts. S.S. said she would drive around the areas where mother had been known to hang out and would call back with any new information. The next day, Romero telephoned S.S. who reported she had not been able to locate mother.

On October 7, 2011, Maria Velasco, a Department staff person, had contact with relatives D.W. and S.G. Velasco asked these relatives to advise mother to contact the Department.

On October 11, 2011, a hospital social worker advised Social Worker Romero that mother and father had visited the hospital on October 7, 2011, looking for J.G. The parents were informed that J.G. had been taken into protective custody and were given Social Worker Romero's name and telephone number. Mother had indicated she was aware of the court hearing. Father was identified as "Jimmy [G.]" and described as "about 30 years old." Romero called the telephone number that mother had given to the hospital social worker and discovered the number had been disconnected.

Petition

On October 11, 2011, the Department filed a petition alleging that J.G. came within section 300, subdivisions (b), (g), and (j), in that mother had a long history of substance abuse; she and the child had tested positive for drugs at the time of the birth; mother's whereabouts were unknown; and mother had failed to reunify with five other children.

Detention

Neither parent was present at the detention hearing on October 12, 2011. The juvenile court found a prima face showing had been made that J.G. came within section 300.

Jurisdiction and Disposition

In preparation for the jurisdiction and disposition hearing, the Department filed a “Declaration of Due Diligent Search” for father. The only identifying information known to the Department was the name, “Jim [G.]” or “Jimmy [G.],” and the approximate age of 30 years.

On October 11, 2011, social worker Gisella Wolfe submitted a “Record Search/Locate Request” for the parents to the Investigations Division of the Sacramento County Department of Human Assistance.

On October 12, 2011, Social Worker Romero and intern Social Worker Perez attempted to deliver letters regarding a court date to the parents at a recovery home but the parents were not present.

On October 17, 2011, a Department investigator performed a criminal history check for father. Responses received from the California Department of Justice (DOJ), local law enforcement, Medi-Cal, and Sacramento County child support officials, did not yield information for father. A Wanted Persons search could not be completed due to lack of information. Department of Motor Vehicles (DMV) records could not be searched due to lack of information.

On October 18, 2011, Social Worker Wolfe spoke to maternal cousin S.S., who indicated she did not know mother’s whereabouts.

On October 21, 2011, Social Worker Wolfe spoke to maternal cousin L.D. After conversing with family members, L.D. told Wolfe that neither she nor her relatives knew mother’s whereabouts.

On October 25, 2011, the Sacramento County Probation Department stated that, although father was not on probation, he was known to that agency. A registered letter was sent to the address provided by probation but it drew no response.

On October 25, 2011, the Department searched the Megan's Law website and found no listing for father.

On October 25, 2011, the Department made inquiries with the Sacramento Main Jail, the Department of Corrections and Rehabilitation, and the Federal Bureau of Prisons. Father was not located in any of their databases.

On October 25, 2011, the Department performed a search on the CalWIN public assistance computer that yielded three persons with names similar to father but none with a consistent date of birth. The Department was unable to search the Medi-Cal database because father's Social Security number was unknown.

On October 25, 2011, the Department searched several internet telephone directories and person search web sites for "Jim [G.]" and "Jimmy [G.]" The searches yielded telephone numbers that were for wrong persons, were not answered, or had been disconnected.

On October 25, 2011, the Department obtained from the county elections department two addresses at which father had been registered to vote. Certified letters sent to these addresses garnered no response.

Requests for information sent to three local United States Post Offices similarly drew no response.

On November 2, 2011, Social Worker Wolfe spoke to maternal great-aunt J.S., who said she had no clue as to mother's whereabouts and had been unaware that mother had had another baby. J.S. said she would try to find mother and, if she succeeded, she would tell mother to contact Wolfe.

The Department filed a declaration of due diligent search for mother. She was not located and her whereabouts remained unknown.

At the jurisdiction and disposition hearing on December 1, 2011, the parents' whereabouts remained unknown. The juvenile court found that the notice required by section 291 for both parents had been accomplished. The court considered a statement regarding parentage (form JV-505), signed by "Jim [G.]," stating he is not the parent of "[J.G.]" and does not wish to participate in the proceeding. The court sustained the petition; bypassed mother's reunification services pursuant to section 361.5, subdivision (b), paragraphs (10), (11), and (13); and set the matter for a selection and implementation hearing. As a mere alleged father at the time, father was not entitled to reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451.)

Selection and Implementation

On December 21, 2011, father was arrested and incarcerated at the Sacramento Main Jail. He was released from incarceration on January 5, 2012.

Four days later, the Department notified the juvenile court that a person named "Derius Antwon Shares AKA Jimmie Russell [G.]" had been located at the Rio Cosumnes Correctional Center.

At a juvenile court status conference on January 12, 2012, Shares explained that he is not the child's father, but he is a friend of the child's father and had been in possession of father's identification when he was arrested; thus, he was given father's name as an "aka" at the time of the arrest. Shares explained that he did not know mother and was not J.G.'s father. Shares provided father's date of birth, which he recalled from father's identification; and he provided father's nickname, "Red."

The juvenile court bailiff checked the jail inmate information system and learned that father recently had been, but no longer was, in custody. The court asked Shares if he knew how to contact father; Shares responded, "If he is out--Red is a crack head, man. He hangs out in front of one of the stores like right around 47th Avenue. That's all I

could say. I don't know. He's a drug addict. He hangs around that area, man. That's it. And I don't think he has a home. I think he's transient."

On January 25, 2012, father was given notice of the selection and implementation hearing set for March 29, 2012, via substituted service on his paternal great-grandmother, A.W. The next day, a copy of the notice was mailed to her address.

Father attended the March 29, 2012, hearing and designated A.W.'s address as his mailing address for purposes of the proceeding. Father requested a paternity test. On April 19, 2012, the Department advised the court that, per the paternity test, father was the biological father of J.G. The court appointed counsel for father. The court also ordered its records corrected to reflect father's name listed on the child's birth certificate.

In an April 27, 2012, interview, father told the social worker he had resided with the paternal grandmother and paternal great-grandmother at their address for about a year prior to January 20, 2012, when he moved to a boarding house where mother also resides. That same day, the paternal grandmother told the social worker that father has a drug problem and has been residing in a "rehabilitation program for drugs" since January 2012.

The paternal grandmother told Social Worker Wolfe about her contacts with CPS. She said sometime in October 2011 she telephoned CPS to inquire about J.G. She gave the name "[J.W.]" and the child's birth date. She said CPS was unable to locate the child in its system. She then provided mother's name, date of birth, and Social Security number, but CPS still was not able to locate J.G. The grandmother also gave CPS her son's (father's) name, and they still were unable to locate the child's name in the system.

Social Worker Wolfe reported that a "search of the mother's name and date of birth automatically populates the mother in the CWS/CMS system additionally showing all her CPS referrals, related to each child. The system would show every child this mother gave birth to and their dates of birth. It would show a referral on September 28, 2011, and that she gave birth recently to a child in September 2011.

Social Worker Wolfe reported that she had spoken to a CPS intake supervisor and an intake worker. They informed her that, when a relative telephones with an inquiry about a child in the CPS system, the intake worker will ask for the mother's name and identifying information to conduct a proper search for a child and to identify the assigned social worker. The intake worker will notify the proper social worker about the telephone call and will document the telephone call in the CWS/CMS system. There is no documentation that father or the paternal grandmother had contacted CPS.

At his April 2012 interview, father told the social worker that he wanted J.G. placed with his sister. He would like J.G. adopted by a family member "so she can eventually live with him." Father has three other children who live in Michigan and have never lived full time with him.

Father stated he has not been employed since 2007 and receives General Assistance of \$190 per month. Beginning in January 2012, he resided at the boarding house along with eight other men and women including mother. He was asked to leave the boarding house in May 2012 following an argument with the pastor who operates the house.

Father was reluctant to discuss his criminal history but acknowledged he had been convicted of selling drugs.

On May 10, 2012, father's counsel indicated she would be making a motion for a new disposition hearing. In June 2012, father signed a declaration of paternity. In his pretrial statement, father requested that the matter be returned to the disposition hearing. The Department and the child filed opposition to father's motion.

Father's motion was heard on July 17, 2012. Father did not attend the hearing. The juvenile court denied the motion, stating: "It's hard for the Court to imagine what more the Department could have done to locate this individual. [¶] The Court at the time found that--that the Department acted with due diligence. And looking at it again in

hindsight, having heard arguments from counsel the Court still concludes that the Department did everything it reasonably could to try to locate the father.”

The selection and implementation hearing immediately followed the denial of father’s motion. The parents’ rights to J.G. were terminated.

DISCUSSION

Father contends the Department’s efforts to locate him prior to the December 1, 2011, disposition hearing were not reasonable. Father argues the Department had the same information in October 2011 and in January 2012, specifically, father’s “name and date of birth,” but the results of the searches were “quite different.” Father argues the record fails to explain why he could not have been located in October 2011 in time to receive notice of the disposition hearing.

Standard of Review

A juvenile court’s determination that adequate efforts were made to provide notice of the proceedings is reviewed for substantial evidence. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189 (*Justice P.*)) The reviewing court does not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, the reviewing court draws all reasonable inferences in support of the findings, considers the record most favorably to the juvenile court’s order, and affirms the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Law Regarding Sufficiency of Notice

Parents are entitled to due process notice of juvenile proceedings affecting their interest in custody of their children. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418.) Due process “requires ‘notice 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 Tr. Co.* (1950) 339 U.S. 306, 314 [94 L. Ed. 865, 873].)

If the whereabouts of a parent are unknown, the issue becomes whether due diligence was used to locate the parent. (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247; *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1352.) “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.*, at p. 247.)

Father relies on *In re DeJohn B.* (2000) 84 Cal.App.4th 100, which remarked, “Social services agencies, invested with a public trust and acting as temporary custodians of dependent minors, are bound by law to make every reasonable effort in attempting to inform parents of all hearings. They must leave no stone unturned.” (*Id.* at p. 102.) For reasons we explain, father has not shown that the Department failed to make a reasonable effort to find him prior to the disposition hearing.

Father relies on *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010 (*David B.*), at page 1016, for the proposition that notice is defective “[w]hen the agency ignores the most likely means of finding a parent.” In *David B.*, the child’s birth certificate revealed the father’s name and the fact he was in the United States Marines. Notice to the father was deemed inadequate because the social service agency “failed to take the one step which patently appeared to hold the most promise of locating petitioner--an inquiry addressed to that organization.” (*Ibid.*) But as we explain, here the Department did not fail to take a step that held substantial promise of locating father.

Analysis

Analogizing to *David B.*, father claims the inadequacy of the first search, prior to the disposition hearing, is demonstrated by the successful second search, prior to the

selection and implementation hearing, “using the same search parameters.” But not all the parameters were the same.

The affidavit of due diligence showed that multiple databases, including DMV, could not be searched due to the lack of identifying information. At the time, the only information available was father’s name and approximate age.

In his opening brief father claims the Department knew, not only his name and approximate age, but also *his date of birth*. Father has forfeited the point by failing to identify any evidence that the Department knew his date of birth (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282), and by failing to supply appropriate citations to the record (Cal. Rules of Court, rule 8.204(a)(1)(C); *Ingram v. City of Redondo Beach* (1975) 45 Cal.App.3d 628, 630).

In his reply brief father makes the same claim in greater detail, citing to the record and claiming the affidavit of due diligence shows the Department’s knowledge of his date of birth. But father’s delay in properly setting forth his argument has deprived the Department of an opportunity to respond to it. For this reason, too, father has forfeited the issue. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 482, fn. 10; *People v. Dunn* (1995) 40 Cal.App.4th 1039, 1055; *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8.)

In any event, the record does not support father’s argument. The affidavit of due diligence is, at best, ambiguous as to whether the Department had known father’s date of birth in October 2011. The affidavit states that the Sacramento New Main Jail and California State Prison had no person with father’s name “and date of birth”; the Bureau of Federal Prisons had no person with father’s name “and age”; the CalWIN database had three individuals with father’s name but none with “the same date of birth”; and a web site had been searched for persons with father’s name and “date of birth.” From these

passages, father infers that the Department had known father's date of birth in October 2011.

But the affidavit does not state father's date of birth or otherwise indicate that the Department had known the exact date. Construed most favorably to the judgment (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 947), the affidavit simply means that the dates of birth of the persons found in the prison, CalWIN and other databases did not correspond to father's approximate age of 30 years. For example, the Department could fairly aver that a person whose birth date revealed him to be 40 years old did not have "the same date of birth" as father.

Moreover, the affidavit makes plain that the Department had insufficient information to search the DMV database. As appellant, father bears the burden of showing error affirmatively on appeal. (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499.) But father does not identify any evidence that the DMV database *requires information in addition to name and date of birth*. Absent such evidence, the juvenile court was entitled to deduce from the inability to search the DMV database that, in October 2011, father's date of birth had not been known.

Following the jurisdiction hearing, father was arrested and incarcerated at the Sacramento Main Jail. He was released from incarceration on January 5, 2012. Four days later, Shores was arrested while in possession of father's identification and was assigned father's name as an "AKA." In juvenile court on January 12, 2012, Shores explained that he knew father, had been incarcerated with father, had come into possession of father's identification, and thus knew father's date of birth. The juvenile court was entitled to conclude that the Department had not known father's date of birth until Shores made his appearance in this case.

Father claims this case is factually similar to *Justice P.*, *supra*, 123 Cal.App.4th 181, in which the agency "sent a letter to the Maricopa County Sheriff in Phoenix seeking assistance in locating [the father.] A sheriff's employee wrote a note on the letter that an

individual with [the father's] name and Social Security number was in custody in the Durango Jail and mailed back the letter to the Agency. Apparently, Agency received the letter in early December [2002]. The new social worker did not pursue this lead, and as late as April 28, 2003, was reporting to the court that [the father's] whereabouts were unknown. [¶] On May 1, 2003, Agency mailed a parent notification letter to [the father] at the Durango Jail. The letter was returned to Agency because [the father] was no longer in custody.” (*Id.* at p. 186.)

Father's claim that *Justice P.* is factually similar to the present case is based on his argument that the Department had the same information in October 2011 that it later had in January 2012. As we have seen, that argument is not correct.

The juvenile court expressly declined to consider whether any error in the provision of notice was harmless beyond a reasonable doubt. The court declined to find beyond a reasonable doubt that, had father appeared at disposition, it would have applied to him the bypass provision of section 361.5, subdivision (b)(13). The court stated “there's no need for me to find harmless error because I'm not finding that there's error in this case.” For that same reason, we have no occasion to consider the Department's contention that any lack of due diligence was harmless.

DISPOSITION

The order terminating parental rights is affirmed.

_____ HULL _____, J.

We concur:

_____ RAYE _____, P. J.

_____ MAURO _____, J.