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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LOURDES P.,

Defendant and Appellant.

D060778

(Super. Ct. No. NJ10784)

APPEAL from a judgment of the Superior Court of San Diego County, Blaine K. Bowman, Judge. Reversed and remanded with directions.

Lourdes P. appeals the judgment terminating her parental rights (Welf. & Inst. Code, § 366.26)¹ to Raymundo L. and Janet P., both of whom are teenagers, and Fernando M., who is 12 years old (together the children). Lourdes contends the court

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

erred by denying her counsel's request to continue the section 366.26 hearing to allow the children's older sibling, 19-year-old Y.P., to be present to enable Lourdes to fully litigate the case.

BACKGROUND

In July 1996 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for newborn Raymundo. The petition alleged Raymundo was exposed to his alleged father's violence toward Lourdes and Y.P. The case closed in August 1997. In March 2000 the Agency filed petitions for three-year-old Raymundo, two-year-old Janet and four-month-old Fernando. The petitions alleged the children's parents' whereabouts were unknown. The petitions were dismissed in March 2000 after Lourdes, who had been deported to Mexico, returned to the United States. In September 2000 the Agency filed new petitions for the children. The petitions alleged Lourdes had left the children unsupervised.

The children have remained in the same foster home since September 2000. The foster parents wished to adopt the children. The children wished to be adopted, but only by the foster parents. In October 2011, the court terminated parental rights and ordered permanent plans of adoption.

The children's appellate counsel now reports the foster parents no longer wish to adopt, but wish to continue caring for the children until the children become adults. The children's trial counsel believes the judgment should be reversed. Counsel for Lourdes, the children's appellate counsel, and counsel for the Agency agree that adoption is no longer the appropriate permanent plan. They have filed a joint application and stipulation

for reversal of the judgment, remand to the juvenile court with directions to order the Agency to notify Lourdes of a new section 366.26 hearing, and immediate issuance of the remittitur. We accept the stipulation. (Code Civ. Proc., § 128, subd. (a)(8); *In re Rashad H.* (2000) 78 Cal.App.4th 376; Cal. Rules of Court, rule 8.272(c)(1).)

DISCUSSION

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

Based on our independent review of the record, summarized above, we conclude the stipulation should be accepted. First, there is no reasonable possibility that reversal will adversely affect the interests of nonparties. The foster parents no longer wish to adopt. Raymundo's father was represented by counsel at the section 366.26 hearing, and counsel asked the court to find the children were not adoptable. The whereabouts of Janet's father have been unknown for 11 years, and search efforts have been unsuccessful. The parental rights of Fernando's father were terminated in 2002. Reversal will not adversely affect public interests. Second, the parties request reversal because adoption is no longer possible and reversal is required to ensure the children do not remain legal orphans. Because accepting the stipulation will further the children's best interests, the

public trust will not be eroded. On the contrary, public trust will be advanced by knowing that the Agency, counsel, and the courts will seek reasonable and expeditious solutions in cases involving children. (*In re Rashad H., supra*, 78 Cal.App.4th at p. 381.) Finally, the parties' agreement will not lead to a risk of reducing any incentive for pretrial settlement.

DISPOSITION

The judgment is reversed. The case is remanded to the juvenile court to conduct a new section 366.26 hearing after proper notice. The remittitur is to issue forthwith.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.