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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.C., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,
Plaintiff and Respondent,

v.

D.H.,
Defendant and Appellant.

E055555

(Super.Ct.No. INJ1100102)

OPINION

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,
Plaintiff and Respondent,

v.

D.H. et al.,
Defendants and Appellants;

G.H.,
Appellant.

E056286

(Super.Ct.No. INJ1100102)

APPEAL from the Superior Court of Riverside County. Lawrence P. Best, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as to case No. E055555. Affirmed as to case No. E056286.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant D.H.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant E.O.

Sharon S. Rollo, under appointment by the Court of Appeal, for Appellant G.H.

Pamela J. Walls, County Counsel, and Prabhath D. Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

D.H. (hereafter mother) and E.O. (hereafter father) purport to appeal from the trial court's order on a Welfare and Institutions Code section 300 petition terminating their parental rights with respect to their two young children, B.O. and E.O.¹ Specifically, mother and father contend that the trial court abused its discretion in denying the section 388 petitions filed by G.H., the maternal grandfather of B.O. and E.O., in which he sought an order placing the two children with him. G.H. also appeals from the trial court's order denying his section 388 petitions. In a separate appeal (E055555), mother challenges the trial court's disposition order denying her reunification services with her oldest child, A.C., who was living with his father pursuant to a family law custody order

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

at the time the section 300 petition was filed in this case. We conclude the claims are all meritless, and therefore we will affirm.

FACTS

The pertinent facts, which are not disputed, are recounted in detail in our opinion in case No. E055147 in which we denied the writ petitions of mother and father after the trial court denied them reunification services and set the selection and implementation hearing. In order to resolve the issues raised in this appeal, it is sufficient to note that Riverside County Department of Public Social Services (DPSS) filed a section 300 petition in February 2011 with respect to E.O., B.O., and A.C. after a physical examination of then-four-month-old E.O. disclosed the infant had suffered severe physical injuries, including multiple bruises on his body that were in various stages of healing, a skull fracture, a fractured forearm, a fractured humerus, two fractured tibias, and several fractured ribs. The fractures also were in varying stages of healing. Other tests disclosed E.O. had internal bleeding and a laceration on his liver. Mother claimed there was a family history of anemia and easy bruising, but neither mother nor father could explain the fractured bones. Both mother and father denied they had inflicted the injuries.

Additional facts will be recounted below as pertinent to our resolution of the issues raised in this appeal.

DISCUSSION

1.

MOTHER’S APPEAL FROM THE ORDER DENYING REUNIFICATION SERVICES

Mother contends the trial court erred in denying her reunification services with her oldest child, A.C. In February 2011, when DPSS filed the section 300 petition, then-four-year-old A.C. lived with his father, O.C., who had sole physical custody of the child pursuant to a family law custody order. Nevertheless, DPSS included allegations regarding A.C. in the section 300 petition it filed after it removed E.O. and then-18-month-old B.O. from mother’s custody based on the severe physical injuries E.O. had suffered.

At the conclusion of the contested jurisdiction hearing, the trial court denied reunification services to mother with respect to all three children under section 361.5, subdivision (b)(6) which states, in pertinent part, that reunification services need not be provided to a parent if the court finds by clear and convincing evidence “[t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.” The trial court removed the two younger children from mother’s custody and placed them in out-of-home care. The trial court ordered that A.C. remain with his father. The trial court also awarded the father sole legal and physical custody of

A.C., with mother to have monthly supervised visits. The trial court then terminated jurisdiction over A.C.

Mother contends the trial court abused its discretion in denying her reunification services with A.C., because the evidence did not establish that she had caused E.O.'s physical injuries. We will not address the particulars of mother's claim, because A.C. was not removed from mother's physical custody, and therefore mother was not entitled to reunification with the child. Section 16507, subdivision (b) states, "Family reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court."

The trial court, as previously noted, ordered that A.C. remain in the care of his current custodial parent, his father, who had custody of the child pursuant to a family law order. Because the trial court did not order A.C. placed in either out-of-home care or with a previously noncustodial parent, mother was not entitled to reunification services, her contrary arguments notwithstanding. In short, the trial court reached the right result with respect to A.C., even though it relied on section 361.5 rather than section 16507 as authority for its decision.

2.

FAILURE TO PLACE E.O. AND B.O. WITH MATERNAL GRANDFATHER

The remaining issue we must resolve is whether the trial court abused its discretion when it denied the section 388 petitions filed by the maternal grandfather,

G.H., in which he requested that E.O. and B.O. be placed with him for adoption. We conclude, as we explain below, that the trial court did not abuse its discretion.

The pertinent factual and procedural details are not in dispute. After the trial court denied reunification services to mother and father, it set the selection and implementation hearing for April 2, 2012, and ordered DPSS to evaluate any proposed relatives as potential adoptive parents. In all previous placement discussions, mother and father had identified the children's paternal grandparents as relatives willing to take temporary custody of B.O. and E.O., and DPSS had submitted the appropriate referral to DPSS's relative assessment unit (RAU). According to a discussion that occurred at the conclusion of the contested jurisdiction and disposition hearing on December 1, 2011, DPSS had not placed the children with the paternal grandparents because the paternal grandmother had an outstanding warrant in Riverside County. The case social worker represented to the court that the RAU social worker had twice sent an exemption packet to the paternal grandmother, but she had not completed and returned that paperwork. The paternal grandmother purportedly had also hung up when the RAU social worker tried to contact her by telephone.

The trial court ordered DPSS to "revisit the assessment of the grandparents, specifically confirm whether or not that warrant is this particular person [presumably referring to the paternal grandmother], and either proceed with it [presumably referring to placing the children with the paternal grandparents] or show us that we can [*sic*]." ² The

² We assume the court meant to say "cannot" rather than "can."

trial court denied mother's attorney's request to set an interim status hearing on the issue, but granted father's request to have DPSS look at any relatives the parents identified as potential adoptive parents.

In that regard, the social worker's completed services log, attached to the report for the section 366.26 hearing, indicates that on December 5, 2011, the case social worker confirmed that the paternal grandmother had a misdemeanor warrant issued in May 1994. On that same day, the RAU social worker contacted the maternal grandmother by telephone and left a message asking her to call back so that they could continue with the placement process. The RAU social worker was "still waiting for the exemption paperwork/documents" from the paternal grandmother, who needed to "take care of her Active [*sic*] misdemeanor warrant issue[d] 05/05/1994." On December 13, 2011, the RAU social worker closed the assessment and evaluation of the paternal grandparents because the paternal grandmother had not responded to the social worker's "contact attempts" that included telephone calls and a certified letter mailed December 6, 2011.

On December 13, 2011, DPSS placed E.O. and B.O. with prospective adoptive foster parents. The social worker contacted father by telephone to tell him about the placement and to ask that he tell mother. On December 20, 2011, mother called the case social worker to ask why the children had been moved to a new placement and also to ask what was going to happen at the next hearing. When the social worker explained that the next hearing is to terminate parental rights, and that the children had been placed in a pre-adoptive home because neither she nor the father had provided the names of any potential adoptive relatives, mother told the social worker that G.H., the children's maternal

grandfather, and a cousin wanted to be assessed. When asked why she had not provided this information before, mother told the social worker that she thought the children would be coming home, but now that they might be adopted, these relatives want to be assessed.

The maternal grandfather, G.H., filed section 388 petitions on May 1, 2012, requesting the trial court place E.O. and B.O. with him.³ The record does not contain specific information to establish when G.H. first contacted DPSS about placement. However, the social worker's report for the section 366.26 hearing indicates that on March 1, 2012, DPSS "began receiving information of other family members who were interested in being considered for relative placement of the children." In addition, it is apparent from statements made at the hearing on G.H.'s section 388 petitions that DPSS had initiated the process of evaluating him for placement. For example, counsel for DPSS objected to placing the children with G.H. because the assessment process had not been completed and exemptions had not been processed for G.H.'s criminal convictions. G.H., in turn, confirmed that DPSS had evaluated his home for placement. He also submitted to the court five letters of reference, four of which were dated April 21, 2012, and one dated April 26, 2012. Mother's attorney also represented to the court that the RAU social worker was proceeding with the placement approval process, although the social worker had not indicated whether G.H. would be approved. The trial court ultimately denied G.H.'s section 388 petitions based on the lack of information regarding the requested placement.

³ In his petitions, G.H. actually requested "reunification" with his grandchildren.

G.H., joined by mother and father, challenges the trial court's order denying the section 388 petitions.⁴ First, G.H. contends that in its December 1, 2011, order issued at the conclusion of the jurisdiction and disposition hearing, the trial court deferred ruling on the issue of relative placement and as a result that issue "remained open." We do not share G.H.'s interpretation of the pertinent order.

As set out above, at the conclusion of the contested jurisdiction and disposition hearing, the trial court ordered DPSS to "revisit assessment" of the paternal grandparents by determining whether the paternal grandmother had a criminal conviction or outstanding criminal matter that would prevent DPSS from placing the children with her. The trial court also ordered DPSS to consider any other relatives the parents identified as prospective adoptive parents. The trial court's order was not a blanket deferral on the question of relative placement, as G.H. contends. It was a directive to complete the evaluation of the paternal grandparents and of any other relatives the parents identified as prospective adoptive parents.

According to the record, mother identified G.H. in December 2011, but the evaluation process did not begin until the following March. G.H. does not dispute DPSS's representation that G.H. did not contact the social worker until March 2012. Contrary to G.H.'s suggestion that DPSS is responsible for the delay, the evidence indicates he caused the delay in the evaluation process by his apparent failure to contact

⁴ We are not persuaded mother and father have standing to raise the issue, but we will not resolve that point because the claims fail on their merits and the merits are easier to address.

DPSS before March 1, 2012. Because the trial court set the selection and implementation hearing for April 2, 2012,⁵ and also ordered DPSS to evaluate any relatives the parents identified as prospective adoptive parents, we must construe the latter order to include the requirement that any interested relatives immediately come forward. That did not happen in this case.

Even if we were to conclude, as G.H. contends, that the trial court left open the issue of placing the children with relatives, we nevertheless would reject his claim that the preference for relative placement set out in section 361.3 was applicable at the time he filed his section 388 petitions. The section 361.3 preference applies to placements made when a child is initially removed from the parent's physical custody. (§ 361.3, subd. (a) ["In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative."].) Unless the child is moved to a new placement after the disposition, there is no preference for placement with a family member. (See § 361.3, subd. (d).) In short, by the time G.H. filed his section 388 petitions the children had been placed with prospective adoptive parents in accordance with the trial court's disposition order. The statutory preference for placing the children with relatives no longer applied.

⁵ The trial court continued the hearing from that date to May 9, 2012, at the request of the parents and due to confusion about whether they had retained an attorney to represent them both at the hearing.

The only issue the trial court was required to resolve at the hearing on G.H.'s section 388 petitions is whether G.H. alleged any changed circumstance or new evidence that warranted change of the trial court's disposition placement order, and whether the proposed change was in the best interests of the children. (§ 388, subd. (a)(1); *In re Casey D.* (1999) 70 Cal.App.4th 38 [The moving party bears the burden of demonstrating both a change of circumstance and that the proposed change is in the best interest of the child.]) We review the trial court's ruling on a section 388 petition for abuse of discretion. (*Casey D.*, at p. 47.)

G.H. alleged in his section 388 petitions that circumstances had changed because at some unspecified time he had been fingerprinted so that his grandchildren could be placed in his care. G.H.'s allegations are not sufficient to demonstrate changed circumstances that would warrant removing the children from their prospective adoptive parents. In order to even consider placing the children in his custody, G.H. would have had to establish that DPSS had completed the evaluation process and had approved G.H. as a prospective adoptive parent for the children. At best, the allegations show he was in the process of being evaluated for placement, and therefore the circumstances might change in the future.

Moreover, even if the allegations had established changed circumstances, G.H. would have had to demonstrate that the proposed change in placement was in the best interests of the children. (§ 388, subd. (d) ["If it appears that the best interests of the child . . . may be promoted by the proposed change of order . . . the court shall order that

a hearing be held”].)⁶ In that regard, G.H.’s only showing consisted of the allegation in the petitions that the children would be “better off living with family members.” Although that might have been true at an earlier stage in the dependency process, it was no longer true in this case, as discussed above. There is nothing in the record to indicate that G.H. had any connection with E.O. and B.O., except that of biology. In contrast, by the time of the hearing on the section 388 petitions, the children had lived with their prospective adoptive parents for four months and as a result presumably had established a connection with their caregivers, as the trial court observed.

G.H. failed to establish either required aspect of a section 388 petition, and therefore we conclude the trial court did not abuse its discretion by denying his petitions.

We also reject G.H.’s assertion that the trial court abused its discretion by denying the parents’ request to continue the section 366.26 hearing so that DPSS could complete their evaluation of G.H. as a suitable placement for the children. We are not persuaded G.H. has standing to assert this issue, but we will not belabor that point.

The pertinent details are that after the trial court denied G.H.’s section 388 petitions, it then proceeded with the selection and implementation hearing. Mother’s attorney, joined by father’s attorney, purported to object, based on her previously expressed view that the trial court had ordered DPSS to investigate placement of the children with a relative, and DPSS had not complied with that order. Therefore, she

⁶ G.H. contends the trial court summarily denied his section 388 petitions and in doing so committed error. A summary denial is one that occurs without a hearing. The trial court conducted a hearing on the petitions in this case, even though G.H. did not demonstrate that the proposed change in placement was in the children’s best interest.

objected “to termination and the Court proceeding today without that further information” and asked that the hearing be put over so that the RAU social worker could be present to address the issue of relative placement. The trial court denied that request.

The trial court did not abuse its discretion by denying the request to delay the section 366.26 hearing. As previously discussed, the question of whether to place the children with a relative was not pertinent by the time of the section 366.26 hearing. Therefore, neither parent established good cause to continue that hearing. (§ 352, subd. (a) [“Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.”].)

DISPOSITION

The trial court’s disposition order in case No. E055555 denying reunification services to mother is affirmed.

The trial court’s orders in case No. E056286 (a) terminating the parental rights of mother and father and (b) denying maternal grandfather’s section 388 petitions are affirmed.

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MCKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.