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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.V., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

N.P.,

Defendant and Respondent;

T.P.,

Real Party in Interest and Appellant.

E055688

(Super.Ct.No. RIJ1100212)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Fifteen-month-old D.V. was injured while in the care of her mother's boyfriend, sustaining a spiral fracture to her left humerus among other injuries. The juvenile court declared D.V. to be a dependent child, offering services to the noncustodial alleged father, but denying services to mother due to the allegation of severe physical abuse. After father's services were terminated at the six-month review hearing, a hearing pursuant to Welfare and Institutions Code,¹ section 366.26 was set. At approximately this point in time, the mother's aunt (maternal great-aunt) learned of the proceedings and came forward seeking relative placement. She visited the minor, forging a relationship with the child, and her home was evaluated. However, the minor was also bonded to the foster parents, who wished to adopt. The maternal great-aunt made a request to change a court order (JV-180; § 388), seeking placement of the minor, but the request was denied based on the court's determination that it would be detrimental to move her from her current foster home placement. The maternal great-aunt appealed.

On appeal, the maternal great-aunt asserts (1) the trial court erred in refusing to hear evidence showing that the foster parents had committed perjury in their application for standing as de facto parents, and (2) the court abused its discretion in denying the section 388 petition. We affirm.

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

BACKGROUND

On February 11, 2011, mother took D.V. to the doctor after noticing that something was wrong with the baby's arm. A few days earlier, mother had left the child in the care of her boyfriend, D.V.'s father, while she went to work. Mother's boyfriend took a shower while the 15-month-old child slept on mother's bed. When he came out of the shower, he saw D.V. lying under a low bookcase that had fallen on top of her. The boyfriend informed mother of the incident, but D.V. seemed to be acting normally, so mother did not seek medical attention, despite the presence of multiple bruises on D.V.'s abdomen, knees, and left scalp, abrasions to her right hand and elbow, and a bleeding cut on her lip. Both mother and her boyfriend acknowledged marijuana use, and mother indicated alcohol use as well.

D.V. seemed normal until February 11, 2011, when she pulled her left arm away and would not let mother touch it. Mother noticed swelling, but went to work. At lunchtime, mother's boyfriend brought D.V. to mother's workplace because the swelling of the arm had worsened. That evening, mother took D.V. to her primary doctor who notified authorities upon seeing multiple bruises all over the baby's body.

While en route and at the hospital, a worker for the Riverside County Department of Public Social Services (DPSS) interviewed mother. Upon transfer to Loma Linda University Medical Center for evaluation, D.V. was found to have suffered a fractured left humerus (diagonal split, offset spiral fracture), numerous bruises all over her body (including a blackened right eye), bite marks, hair loss, and head swelling. The pediatric

forensic consultant reported that the injuries were out of proportion and were inconsistent with the history provided. A hospital hold was placed by Child Protective Services (CPS).

A dependency petition was filed on February 16, 2011, alleging nonaccidental physical abuse (§ 300, subd. (a)), neglect (§ 300, subd. (b)), and severe physical abuse to a child under five. (§ 300, subd. (e).) At the detention hearing, the minor was detained and temporarily placed in the custody of DPSS, who placed the minor in a foster family agency. On March 28, 2011, the court found the allegations of the petition true and sustained it. The minor was declared a dependent and removed from the custody of her parents. Reunification services were offered to the father, but the court denied services to mother based on a finding under section 361.5, subdivision (b)(5), relating to the finding that the minor came within section 300, subdivision (e), due to the conduct of the parent.

Notwithstanding the fact that services to mother were denied, mother promptly engaged in services with Family Preservation Court and actively participated in programs. She visited regularly, but showed up with bruises on her body and did not come prepared with diapers or snacks. Father, for whom services were ordered, failed to participate in any program. He was inconsistent with visits, frequently showing up late and unprepared. At times, father attended visits with his parents (the paternal grandparents), and argued with the grandfather during the visit.

In September, 2011, the maternal great-aunt learned that mother's visits had been reduced and that the home of the maternal grandmother was being assessed for

placement. At the six-month review hearing conducted on October 3, 2011, father's reunification services were terminated and a section 366.26 hearing was scheduled to select and implement a proposed permanent plan of adoption for the minor. On November 5, 2011, the maternal grandmother was arrested for prostitution and methamphetamine use, putting an end to any consideration of placement of the minor in her home. When the maternal great-aunt was informed of this fact, she contacted DPSS to request placement. On November 7, 2011, a referral was made to the Relative Assessment Unit (RAU) to evaluate the home of the maternal great-aunt.

After making contact with DPSS, the maternal great-aunt visited frequently, traveling 500 miles each way from the Sacramento area to Riverside County. After DPSS received the favorable Livescan results of the maternal great-aunt, she began receiving unsupervised visits with the minor. However, the social worker felt it would be detrimental to remove the minor from her current placement.

On December 19, 2011, the foster parents filed a request for standing as de facto parents of the minor. In support of their application, the foster parents alleged they had provided day-to-day care of the minor since the minor was placed with them in February 2011. They also alleged that the minor's behavior changes after visiting with her mother or her father, becoming very angry and scared, and having nightmares.

On January 27, 2012, the maternal great-aunt filed a request to change court order

(JV-180; § 388) seeking placement of the minor.² On February 9, 2012, the court heard the maternal great-aunt's petition as well as the foster parents' de facto parent status request. At the hearing, mother's counsel objected to the de facto parent application and wanted to examine the foster mother as to any attempts to thwart or misrepresent visitation, referring to the foster parents' statements in their application about the minor's behavior after visits with the parents. Father's counsel joined in the objection. Mother's counsel was permitted to examine the foster mother on the issue.

However, the court cut examination short after sustaining a relevance objection, informed the parties it had heard enough, and indicated it was not considering the foster parents' statements regarding the minor's behavior for purposes of their application for de facto parent standing. Mother's counsel made an offer of proof that other witnesses would show that the foster mother was either misstating the facts or was not accurate in the statements on the de facto parent application. Father's counsel joined in mother's objection again. The maternal great-aunt's counsel did not object or examine the foster parents. The court then granted the application.

The court then proceeded with the maternal great-aunt's petition pursuant to section 388, seeking relative placement. Counsel for the maternal great-aunt called the mother, the maternal grandfather, the social worker, and the maternal great-aunt to testify over a two-day hearing. The maternal great-aunt informed the social worker about the

² The mother also filed a section 388 petition, but she withdrew the petition on the date of the hearing.

foster family agency's unwillingness to accommodate her work schedule in setting up weekend visits. When the maternal great-aunt attempted to set up holiday visits, or visits when she had time off, the foster parents were either busy or had other plans. After hearing the evidence and the arguments of counsel, the court determined that it would not be in the minor's best interests to remove her from her current caretakers, and denied the maternal great-aunt's petition.

On February 17, 2012, the maternal great-aunt appealed the denial of her section 388 petition.

DISCUSSION

a. Any Error in the Curtailing of Testimony of the Foster Mother, Made in Connection with the Foster Parents' De Facto Parent Application, Was Not Preserved.

On appeal, the maternal great-aunt argues that the trial court erred in refusing to hear evidence showing that the foster parents committed perjury in their application for de facto parent status. Respondent argues that the maternal great-aunt is precluded from raising this issue because the evidentiary ruling was made in connection with the hearing on the de facto parent application which the maternal great-aunt did not appeal. Maternal great-aunt clarified her position in her reply brief by arguing that her objection was to the trial court's denial of the section 388 petition after excluding the perjury evidence, which was relevant to the foster parents' fitness to adopt the minor. The great-aunt's position is not well-taken as it has not been preserved and there was no evidence of perjury.

First, testimony of the foster mother was adduced during the hearing on the foster parent's application for de facto parent status. The parents' counsel examined the foster mother at length about statements on the application for de facto parent status in which the foster parents stated that the minor's behavior changes following visits with the mother and father, and that she had nightmares after visits.

The court finally cut off the cumulative questions on the ground that they were not relevant to the issue of whether the foster parents should be granted de facto parent status. The maternal great-aunt took no position on the de facto parent application, did not join in the objections of mother and father, and did not ask the trial court to consider allegations of perjury in the de facto parent application in connection with the 388 petition. Further, in his argument to the trial court at the section 388 hearing, counsel for the maternal great-aunt made no argument that the foster parents' veracity in their de facto parent application should be considered in ruling on the section 388 petition.

A failure to object or to raise certain issues in the juvenile court prevents a party from presenting the issue to the appellate court. (*In re R.C.* (2008) 169 Cal.App.4th 486, 492, citing *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.) Here, the issue pertaining to the credibility of the foster parents in their de facto parent application was posited by the parents. The maternal great-aunt did not join in the objection. Nor did she argue that the credibility of the foster parents had a bearing on her own section 388 petition. The issue was not preserved for appeal.

Even if the issue could be raised, it would not compel a reversal of the order

denying the maternal great-aunt's section 388 petition. The testimony was not excluded, as asserted in the opening brief. Rather, after extensive questioning about the statements in the application, the court finally determined that the information on the form was not relevant to the application because it "doesn't go to the issue of the De Facto parent motion." Later, the court clarified its ruling to say that it was excluding further testimony from the de facto parents on the issue of the statements in item 6-C of the application pursuant to Evidence Code section 352, as unduly time consuming. The record shows that the area was thoroughly examined.

Further questioning about the foster parents' statement about how the minor behaved after visits with the parents was irrelevant to the issue of whether they should be granted standing as a de facto parent. A de facto parent is a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection for a substantial period.

(In re Jacob E. (2004) 121 Cal.App.4th 909, 919.)

De facto parent status allows a person who has assumed the role of parent of a child to participate in the court hearings and share their "legitimate interests and perspectives" with the juvenile court as it makes decisions about the child's future care and welfare. *(In re Bryan D. (2011) 199 Cal.App.4th 127, 146, citing In re Kieshia E. (1993) 6 Cal.4th 68, 77-78.)* A person who otherwise qualifies for de facto parent status may become ineligible by acting in a manner that is fundamentally inconsistent with the role of a parent. *(In re Bryan D., at p. 142.)* Applicants for de facto status who have

caused serious and substantial harms to the children involved may be denied standing as a de facto parent. (*Id.* at pp. 143-144.)

De facto parent is ordinarily liberally granted on the theory that a court only benefits from having all relevant information relating to the child's best interests. (*In re D.R.* (2010) 185 Cal.App.4th 852, 864.) The factors generally considered in determining whether to grant such status include whether (1) the child is psychologically bonded to the adult; (2) the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time; (3) the adult possesses information about the child unique from other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact between the adult and the child. (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67.)

The statements on line 6-C of the de facto parent application were not relevant to the issues presented. Nevertheless, the court permitted extensive (but not never-ending) examination of the foster mother by the parties based on the possibility that the foster parents were making efforts to thwart any reunification efforts or visitation. The foster mother testified about the behaviors she observed after the minor had visited with the parents that she interpreted as being scared and angry, and indicated that the minor cried a lot at nighttime after visits with the mother and father. There was no showing of perjury.

No other evidence was presented by any party to refute this testimony. The

questioning was not geared at eliciting information relating to conduct by the foster parents that have caused serious and substantial harm to the child, so further questioning was irrelevant to the court's determination of the application. Thus, the trial court's ruling was correct.

b. The Trial Court Did Not Abuse Its Discretion in Denying the Section 388 Petition.

The maternal great-aunt argues that the court, which found her to be a “wonderful woman,” erroneously concluded that changing placement for the minor was not in the minor's best interests, for purposes of a petition pursuant to section 388. We disagree.

A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317.) The party making the request to change the court order bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) Generally, the petitioner must show by a preponderance of the evidence that the child's welfare requires the modification sought. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.)

The linchpin of placement of dependent children is their best interests. (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 378.) Although courts determining a child's best interests under section 388 should carefully evaluate whether a child's distress in

severing a temporary bond is simply situational, and not base their decisions on a transitory problem, courts may place great weight on evidence that after a substantial period in foster care, the severing of a bond with the foster parents will cause long-term, serious emotional damage to the child. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 418-419.)

Of course, a finding of detriment cannot be based solely upon a successful relationship between a foster child and foster parent, but it may be based on evidence that severing the bond with the foster parents would do serious, long-term emotional damage to the child. (*In re Jasmon O., supra*, 8 Cal.4th at p. 418.) The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318; *In re S.J.* (2008) 167 Cal.App.4th 953, 959.)

In the present case, we accept that the court found the maternal great-aunt's request for relative placement to be a change of circumstances, within the meaning of section 388, because the court did not deny the petition on the ground there were no changed circumstances. In fact, it ordered a hearing on the petition, which implies a finding that the petition set forth a prima facie basis for relief. We treat the first prong of section 388 as having been established.

The crux of the case, which the court acknowledged was difficult, was the second prong of section 388. Maternal great-aunt argued at the hearing that the minor had an extended family on the maternal side that is very invested in caring for the child. She testified that five generations of maternal relatives lived in close proximity. Her counsel

also argued that the court should look at the case globally, considering what will happen to the minor when she is older and seeks to learn about her family.

However, the court found that any change in the minor's placement would be detrimental to her. The court noted that the minor was brought into the system after being severely battered and injured, and had been nurtured back to health by the caretakers, with whom she has lived for more than half her life. The documentary evidence presented at the hearing included the report prepared for the section 366.26 report, where the social worker's assessment indicated that initially, after her injury, she had difficulty trusting adults. The nurturing provided by the caretakers aided her ability to interact with adults without being guarded. During this time period, the minor has developed a loving bond with the foster parents.

The trial court was not free to ignore the potential impact on the minor that a removal from the current placement would have. We are not free to ignore it either. Based on this record, the decision to deny the petition was a reasonable exercise of discretion.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

KING
J.