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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.S. et al.,

Defendants and Appellants.

E056138

(Super.Ct.No. JUV82396)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and
Appellant V.N.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and
Appellant L.S.

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

I

INTRODUCTION¹

A young boy, D.B., is the subject of this dependency appeal. D.B. was initially detained in May 2009. Mother, V.N., appeals the order terminating her parental rights on the grounds that the juvenile court erred in finding D.B. was likely to be adopted. L.S., the paternal great-aunt, appeals on the grounds the juvenile court abused its discretion in denying her section 388 petition. Mother joins in L.S.'s petition. We reject these contentions and affirm.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention

D.B. was born in October 2007. V.N. is his mother. A.B. is his father. A dependency petition filed in August 2009 alleged the parents failed to protect D.B. because of mother's drug use, mental health issues, and failure to reunify with three other children, and father's failure to support D.B. (§ 300, subds. (b) and (g).)

The May 2009 detention report described an altercation that occurred in April 2009 between mother and her 18-year-old daughter, A.W., involving A.W.'s careless treatment of D.B. Mother blamed A.W. for their dispute. Mother admitted to Child

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

Protective Services (CPS) that she had a history of methamphetamine use. Mother was receiving food stamps, CalWorks assistance, and social security benefits. Mother did not want to acknowledge that A.B. was D.B.'s father.

Mother's child welfare history began in 1994.² Mother also had a history of schizophrenia, in addition to 13 years of substance abuse. Mother had four criminal offenses between 1997 and 2008. She was inconsistent about participating in reunification services.

In September 2009, D.B. was found unsupervised and in a filthy state on a college campus after wandering away from mother. When mother was arrested, she was unkempt, disoriented, and argumentative. CPS amended the dependency petition to add an allegation of neglect and child endangerment. The court detained D.B. and placed him in foster care.

B. Termination of Reunification Services

The paternal great-aunt, L.S., asked to be assessed for placement. Both parents began having visitation with D.B. at a local mall but mother was often inattentive, allowing D.B. to run around unsupervised. Mother had verbally assaulted the foster mother.

In October 2009, mother had not complied with her case plan and she had tested positive for drug use. The court sustained the dependency petition and removed B.D. from mother's custody. The court ordered CPS to offer family reunification services and

² Mother has six children between the ages of 2 and 21. All have been either removed by CPS or are not under mother's care.

ordered mother to have a psychological evaluation. D.B. was placed with L.S. in December 2009.

The status review report for April 2010 indicated D.B. had been evaluated as developing normally although he was hitting and using bad language. He was adapting well to his foster placement with L.S., who wanted to adopt him and move to Oregon. Mother had achieved mixed results on her case plan. In individual counseling, she had made “minimal” progress. She had both positive and negative drug tests. She had completed a parenting education course. Mother was having weekly visits with D.B. and teaching him sign language to communicate with A.B. who is hearing impaired. The parents had an intermittent relationship involving episodes of domestic violence. After an evaluation, a psychologist diagnosed mother as having schizophrenia, paranoid type, and an antisocial personality disorder, and recommended mother be prescribed anti-psychotic medication. CFS determined it was not substantially probable that D.B. could return to mother’s home within six months. At the six-month status review hearing on June 7, 2010, the court ordered mother to receive additional reunification services.

L.S. delayed obtaining medical and dental treatment for D.B. because of lack of Medi-Cal coverage and because she had been in a car accident. L.S. complained about not receiving Medi-Cal and CalWorks payments and she demanded that CPS find another placement for D.B. D.B. was placed in a new foster home in July 2010 and L.S. moved to Arizona. The new foster mother reported that D.B. had stopped screaming and crying in the middle of the night. She also commented that D.B. used bad language and had “a mouth like a sailor.”

Mother had made little progress in managing her mental health issues. She had positive drug and alcohol tests. She was often inappropriate during her sporadic visitations with D.B. In October 2010, CPS recommended termination of reunification services.

At the 12-month status review hearing in December 2010, the court terminated reunification services but allowed mother to continue to have supervised visitation until April 2011. The court authorized an ICPC (Interstate Compact on the Placement of Children) for assessment of L.S. in Arizona.

C. Termination of Parental Rights

In the section 366.26 report, CPS described in detail the ongoing problems with mother's supervised visitation between December 2010 and April 2011. The proposed plan was adoption by the maternal uncle and his wife. D.B. was placed with the maternal uncle in March 2011. The uncle became concerned about "undiagnosed, developmental delays," medical issues, and sexualized behaviors. D.B. would grab women's breasts and discuss masturbatory activity. D.B. was intelligent but not fully responsive. He exhibited twitchy movements and an odd gait, which the pediatrician believed would eventually be resolved. D.B. would overeat until he vomited.

In November 2011, CPS submitted its post-permanency plan review report. D.B. was in good health but he was experiencing a digestive disorder. He was still displaying an unusual gait. CPS described him as exhibiting "some hard-to-diagnose developmental concerns" and "unusual sexual acting out for a four year old child." D.B. had to be moved into special education because he was showing his penis in class, urinating on

other students, and throwing furniture around the classroom. D.B. was precociously intelligent with a sophisticated sense of humor. He would pretend to work at a computer and talk on the telephone. D.B. was receiving therapy but his behavior seemed to be worsening. Mother's monthly visitation with D.B. was traumatic for him, causing anxiety and frustration. D.B. also expressed the worry that he might be moved again. CFS concluded D.B. was an adoptable child once his misbehavior was addressed by assessment and therapy.

Although D.B. was still with his maternal uncle, the uncle had asked he be placed elsewhere because D.B.'s "acting out behaviors that have become 'too disruptive to our family and harmful to our children.'" The uncle threatened to deliver D.B. to a police station if CPS did not respond. He also asked that D.B. be placed with L.S.

On November 3, 2011, the court ordered a continuance until May 2012 to identify a new adoptive home. In November and December 2011, L.S. had a change of heart and contacted CPS to ask for placement of D.B. with her again. On January 12, 2012, D.B. was placed in prospective adoptive home.

In February 2012, CPS made an ex parte application, seeking an order to terminate mother's visitation because it was detrimental to D.B. Mother was speaking inappropriately to D.B. during their visits and allowing D.B. to gorge on snacks. D.B.'s therapist had written a letter stating that contact with mother was affecting D.B. adversely. D.B. had extreme behavioral problems both before and after visiting mother. The court terminated visitation on February 3, 2012.

In April 2012, CPS filed another status review report, recommending termination of parental rights. CPS described D.B. as extremely intelligent with a sophisticated vocabulary and appropriate motor and verbal skills. Although socially awkward at times, D.B. knows colors, the alphabet, and sign language. D.B. was attending preschool and his problematic behaviors had lessened. He was “likable, funny, cheerful, and carefree” but he had problems trusting adults.

The prospective adoptive parents had been a couple for 24 years. They both had responsible jobs and owned a home. D.B.’s placement with the prospective adoptive parents was proceeding successfully.

On May 8, 2012, the juvenile court terminated parental rights.

D. Section 388 Petition

In February 2012, L.S. filed a section 388 petition, seeking placement of D.B. with her in Nevada. She described D.B. as a “highly intelligent child with a mind of his own.” She had videos of him, illustrating his physical and mental state during the seven months he was placed with her between December 2009 and July 2010.

CPS opposed L.S.’s request because previously L.S. had refused to provide financial information to qualify for Medi-Cal and CalWorks even though D.B. needed treatment for an extensive scaly rash and other medical problems. L.S. was also not cooperative in visitation procedures. L.S. had become frustrated with the dependency process and demanded D.B. be removed from her home in July 2010. D.B. was making good progress in his prospective adoptive home and it would be detrimental to remove him and change his placement yet again.

On April 19, 2012, the court denied L.S.'s section 388 petition.

III

L.S.'S APPEAL

L.S. argues the juvenile court clearly abused its discretion when it denied her section 388 petition because she met the statutory requirements of showing a change in circumstances or new evidence, making the proposed change of placement with her in the best interests of D.B. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) In our view, L.S. clearly has not met any of the statutory requirements.

D.B. was placed with L.S. from December 2009 until July 2010. L.S. failed to apply for the necessary financial assistance because she did not want to provide the required financial information. Consequently, D.B. was not receiving appropriate medical care and L.S. demanded that he be removed from her care. When L.S. filed her section 388 petition, there was no showing of a change of circumstances or new evidence. The only different information offered in support of the section 388 petition was that L.S.'s financial situation may have improved somewhat—although no such evidence was presented—and L.S. regretted giving up D.B. after placement with the maternal uncle was unsuccessful. This information scarcely qualified as changed circumstances or new evidence. Instead, the situation with L.S. seemed pretty much the same except for her change of heart about having D.B. placed with her.

Furthermore, L.S. utterly failed to articulate how D.B.'s best interests would be served by removing him from his present placement. In spite of some ongoing problems,

which were being addressed in his prospective adoptive placement, D.B. was experiencing a successful transition with committed adoptive parents who were providing the stability and care he needed. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) After nearly three years in dependency proceedings, D.B. had finally found a secure home. It would have constituted an extreme abuse of discretion to have granted L.S.'s section 388 petition rather than denying it.

IV

MOTHER'S APPEAL

Mother argues substantial evidence does not support the juvenile court's finding that D.B. was *generally* adoptable. (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 88, disapproved on another point in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) We disagree. The evidence shows D.B. was both generally and specifically adoptable. After ping ponging between several foster homes and being rejected by two different family members, he was making good progress when placed in a situation offering love and a caring structure. Although D.B. was still exhibiting problematic behaviors during the first months of his placement with the prospective adoptive parents, those behaviors had lessened significantly. Even if these particular prospective parents did not adopt D.B., the evidence demonstrates that, in the right circumstances, he was certainly adoptable. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650-1651.)

Mother's unsupported speculations about possible future problems did not preclude a finding that D.B. was likely to be adopted. (*In re R.C.* (2008) 169 Cal.App.4th 486, 492.) Nor has it been established that D.B. is a "special needs" child based on his

brief placement in a special education class while he was still in the unsuccessful placement with his uncle. Even if D.B. had special needs rendering him not generally adoptable, the prospective adoptive parents were willing to adopt him, making it reasonably likely he would be adopted within a reasonable time. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292-1293.)

V

DISPOSITION

The section 388 petition did not contain new evidence or a change of circumstances in the best interests of D.B. D.B. was likely to be adopted by the prospective adoptive parents.

We affirm the orders of the juvenile court.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.