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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

R.Z., JR.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E056893

(Super.Ct.No. RIJ120280)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Harry A. Staley, Judge. (Retired judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Petition denied.

David Goldstein for petitioner.

No appearance for respondent.

No appearance for real party in interest.

This petition concerns dependency proceedings concerning father's two children, born in May of 2010 and March of 2011. Father seeks to vacate the order setting a hearing pursuant to Welfare and Institutions code 366.26¹ and to have the children returned to the physical custody of their paternal great aunt and uncle.² We find that his challenge lacks merit and, therefore, deny the petition.

FACTS

The family had been receiving family maintenance services, but at the status review hearing on October 5, 2011, the juvenile court ordered the children removed from the parents' home due to their positive drug tests and lack of consistent participation in their case plans. Temporary placement and care of the children was vested with the Riverside County Department of Public Social Services (department), which was directed to assess the aunt and uncle for placement. In fact, the children had been placed with this aunt and uncle.

On October 27, 2011, the court made the requisite jurisdictional findings pursuant to the supplemental dependency petition. It ordered that father be provided reunification services while services to mother were terminated. The court declared the minors to be a sibling group and their care and custody remained under the supervision of the department for placement in an approved home.

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

² They are the paternal great aunt and uncle, but will hereafter be simply referred to as the aunt and uncle.

In January 2012, father was charged with assaulting the children's mother and damaging her car. On February 6, he pleaded guilty to the assault charge and was immediately sentenced at his request to 14 years in prison.

Department personnel held a team decision meeting (TDM) on March 8, 2012, to assess the placement of the children with the aunt and uncle, who also were present. It was decided to move the children and obtain preliminary adoption information from interested relatives, including the aunt and uncle, as well as the maternal cousins. The social worker reported that concerns about the home of the aunt and uncle had arisen. Their home had still not been certified despite having initiated the process in October 2011, principally because two adults with significant contact with the children had not been Live Scanned. In addition, the aunt had conflicts with both parents during visits.

The department removed the children from the aunt and uncle's home and placed them in the home of a maternal cousin. Following the removal of the children from her home, the aunt filed a section 388 motion that the children be placed back in her custody. She indicated that she was requesting legal guardianship and that previously she had been unaware she could have legal guardianship. The social worker noted in the status review report that the request for legal guardianship came after the aunt had been informed that adoption was to be the plan for the minors.

Later, father's counsel filed a request to return the children to the care of the aunt and uncle, indicating that they were committed to adopting them.

The hearings on status review and the request for change of court order were continued several times so that the father could be present, and eventually took place on

August 7, 2012. The focus of the hearing was the aunt's request that the children be placed back in her home. At the hearing, the social worker admitted that the aunt and uncle had expressed an interest in adopting the children early on. He also indicated that he told the aunt that she did not have to make a decision right away. After father's arrest and conviction, it became clear that a permanent plan had to be made for the children. He insists that a decision to remove the children from the aunt and uncle had not been made before the TDM, but that the department personnel were interested in having visits with the maternal relatives because of "concerns and red flags" about the aunt and uncle. He cited their failure to follow through with the certification and the fact that they were "enmeshed" with the parents as being concerns.

The social worker stated that the aunt and uncle could apply to adopt the children, but the fact that the children were not currently placed with them could be a problem. After the children's removal from the aunt and uncle's home, the social worker stated that he was met with hostility from the aunt. He indicated a willingness to facilitate continuing contact between the children and the aunt and uncle. He objected to having overnight and weekend visits, expressing a concern that the aunt would allow the mother to have unsupervised contact, although he conceded that there never was an indication that the aunt and uncle had permitted such contact during the six months the children were in their care.

At the conclusion of the August 7, 2012 hearing, the juvenile court terminated reunification services to father and set a section 366.26 hearing. It denied the aunt's

request to return the children to her. The court did order that the aunt and uncle have one unsupervised visit a month with the children.

In stating its decision, the juvenile court appeared to question whether the department personnel simply became upset with the aunt and uncle and, in response, decided that rather than deal with them, they would just move the children. “I see the Department to some extent stretching the facts in an effort to make a case for the actions that they have taken.” It added that it would have liked to have seen notes of repeated contacts between the department and the aunt and uncle informing them the Live Scans were needed to go forward with an adoption. Instead, it seemed that the department was not interested in speeding up that process. In ruling on the request based on change of circumstances, the court concluded that it could not now find it would be in the best interest of the children to grant the section 388 motion and “re-place the children” in the home of the aunt and uncle.

DISCUSSION

Father contends that the department abused its discretion by removing the minors from a preferential relative placement without just cause and without filing a juvenile court petition.

Father cites *In re Jonique W.* (1994) 26 Cal.App.4th 685, to support his position that the department was required to file a supplemental petition under section 387 before it removed the children. There, however, the minors had been placed with the relative under a permanent plan of long term foster care and, moreover, the relative had attained de facto parent status. The situation here is distinguishable. Contrary to father’s

assertion, the initial placement with the aunt and uncle was not tantamount to a specific placement order. The placement order gave custody to the department, which then had discretion to select the children's placement. (§ 361.2, subd. (e).) The court merely directed the department to assess the aunt's home. This case concerns a placement in the first instance, and not removal from an existing placement the department had already approved. (See *In re Miguel E.* (2004) 120 Cal.App.4th 521.)

Generally speaking, the department's placement decisions are subject to judicial review. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 648-650; *In re Robert A.* (1992) 4 Cal.App.4th 174, 188-190; see also, *In re Miguel E.*, *supra*, 120 Cal.App.4th at pp. 546-548.) Here, we must point out that the aunt and uncle failed to obtain the required certification in a timely manner.³ In addition, we must consider the procedural context in which this issue arose. The trial court was presented with section 388 petitions requesting that the children be moved back to the aunt's home after their removal. As the juvenile court correctly noted, the questions it had to determine were whether a change of circumstances had been shown and whether it would be in the children's best interest to uproot them once again to return them to the aunt's home. It found that neither a change of circumstances existed nor that the best interests of the children would be promoted by changing the placement. These findings are supported by the record. In reaching this conclusion, we do not intend to condone the conduct of the department personnel in this case. There has been no

³ It appears that they subsequently obtained certification. In contrast, the maternal cousin's home was certified in a short time.

indication that the aunt’s home was other than a satisfactory placement for these children, and it appears that the department could have put more effort in trying to facilitate certification of her home, rather than concentrating on rather dubious “red flags.” However, we cannot conclude that the juvenile court abused its discretion in denying the section 388 petitions.

DISPOSITION

The petition is denied.

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KING
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.