

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.M., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

E057528

(Super.Ct.No. J238944)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Regina A. Coleman, Deputy County
Counsel, for Plaintiff and Respondent.

Appellant T.M. (father) appeals from a juvenile court's order denying his request to transfer the dependency case regarding his son, T.M. (the child), from San Bernardino County to Riverside County. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 17, 2011, the San Bernardino County Children and Family Services (CFS) filed a Welfare and Institutions Code¹ section 300 petition on behalf of the child, who was seven months old at the time. The petition alleged that the child came within the provisions of section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse of a child under five). The petition alleged that father and the child's mother (mother)² engaged in domestic violence in the presence of the child, that father physically abused the child, and that the abuse resulted in injuries such as bruising, a torn frenulum, a skull fracture, and a broken femur. The petition also alleged that mother used marijuana throughout her pregnancy, that father knew or reasonably should have known that she had a problem with substance abuse, and that father also had a history of substance abuse.

The social worker reported that mother had a history of domestic abuse and had previously gone to jail. Father obtained a protection order against mother in February

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Mother is not a party to this appeal.

2011, and she had no contact with him or the child since then. Father stated that he had been the primary caretaker of the child since February 25, 2011.

On May 18, 2011, a juvenile court detained the child in confidential foster care.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on June 6, 2011, and recommended that the child be removed and placed in out-of-home care, and that reunification services not be provided to either parent. The child was assessed by Dr. Amy Young at the Children's Assessment Center. Dr. Young reported that the child had a skull fracture, a bruise on his left chest area, a femur fracture, and a torn frenulum (the flap of skin beneath his upper lip). The torn frenulum was consistent with blunt force. The social worker reported that father was not married to mother, and his name was not on the child's birth certificate, but he claimed to be the father. He told the social worker that he believed the child's injuries were sustained when the child was in mother's care. Father insisted that the spots that appeared to be bruises on the child were actually Mongolian spots. The social worker spoke with mother as well, and she said she had not had contact with the child since February 2011. She said that the child did not have Mongolian spots on his chest, but he did have one on his back.

The social worker concluded that the child had non-accidental injuries, and that father and mother (the parents) were unable to provide a plausible explanation for the injuries. Due to the age of the child, his vulnerability, and his dependence on others to

meet his needs, the social worker opined that his safety and well-being would be jeopardized if he remained in the parents' care.

In an addendum report dated June 20, 2011, the social worker changed her recommendation to providing the parents with reunification services. A CT scan of the child's skull did not provide clear findings of a fracture, and a bone survey indicated that "it [was] less likely that there [were] fractures." The social worker also noted that, on several occasions, father accused CFS staff, doctors, and other caregivers of abusing the child, but he had never acknowledged the concerns that brought the child to CFS's attention while in his care.

At a contested jurisdiction/disposition hearing on December 6, 2011, the court found that the child came within section 300, subdivisions (a) and (b), declared the child a dependent of the court, declared father the presumed father of the child, and ordered the parents to participate in reunification services.

On March 1, 2012, the social worker informed the court that mother and father were back together as a couple.

Six-month Status Review

The social worker filed a six-month status review report on May 29, 2012, and requested that reunification services be continued. The parents had completed objectives in their case plans, in addition to completing 16 sessions of anger management. Nonetheless, they had not been able to demonstrate that they had benefitted from any of the services. The social worker opined that their relationship appeared to be "toxic and

not healthy for them or the child.” On March 20, 2012, they had a domestic violence incident. Furthermore, the social worker noted that the court had ordered father to undergo a psychological examination on May 5, 2012, but he had not made himself available to schedule an appointment. The social worker reported that father continued to blame everyone for the removal of the child except himself. He had been angry, rude, disrespectful, and resistant to any help CFS offered him. At a contested six-month review hearing on August 8, 2012, the court continued reunification services.

Motion to Transfer

On November 1, 2012, father filed a motion to have the case transferred to Riverside, since he and mother had moved there. Father alleged that, since the six-month review hearing, a new social worker had taken over the case, and he informed his counsel that he was having problems with the new social worker. Specifically, father stated that the new social worker “continued to display the same attitudes previously reported by him.” Father described the new social worker as “threatening, unprofessional and totally disrespectful during his contact with her.” He reported that he made numerous complaints and recently submitted two messages to the social worker’s supervisor. Father also stated that he met with a psychologist for his evaluation and had a confrontation that led him to “believe that he could not get a fair and independent assessment.” Father concluded that he had ongoing problems with the agency in San Bernardino, and since he was currently living in Riverside, it was in his best interest that

the case be transferred there so he could receive “an independent evaluation of his progress” and ability to parent his child.

12-month Status Review

The social worker filed a 12-month status review report on November 5, 2012, and recommended that the court terminate reunification services and set a section 366.26 hearing. The parents were living together as a couple and stated that they intended to raise the child together. The social worker was concerned, given their volatile history and the recent domestic violence incident in March 2012. The social worker was further concerned because father still did not take responsibility for the injuries to the child that occurred in his care. Father also remained uncooperative with completing the court-ordered psychological evaluation. The social worker concluded that father and mother had still failed to demonstrate any benefit from the services they had completed, and that returning the child to them was not in the child’s best interest.

At the 12-month review hearing on November 13, 2012, the court heard father’s motion to have the matter transferred. The court stated that it did not see any reason for father wanting the matter transferred to Riverside, except that he did not get along with CFS. Father’s counsel added that the parents now lived in Riverside, and confirmed that father had problems with the psychologist and the previous social worker, and that there was an ongoing conflict with the current social worker. Thus, father wanted “a fresh look from a fresh department so [he could] get a fair assessment of the case.” The court declared that it was not transferring the case to Riverside. The court stated, “We’re not

going to start over somewhere else,” and concluded that it was not in the best interest of the child. The court then continued the matter to December 12, 2012, for a contested review hearing. Father filed a notice of appeal.

ANALYSIS

The Court Properly Denied Father’s Request to Transfer the Case to Riverside County

Father argues that the court abused its discretion when it denied his request to transfer the case to Riverside County. He asserts that the question was whether it was in the child’s best interest for the case to be transferred. He contends that the transfer would benefit the child since the case was at the stage where the focus was on reunification, Riverside was the county of residence of the child’s parents, a transfer would provide father a fresh start with a new social worker and “be in a better position to achieve reunification,” and the transfer would not create unnecessary delay. We conclude that there was no abuse of discretion.

Section 375 provides that “whenever, subsequent to the filing of a petition in the juvenile court of the county where that minor resides, the residence of the person who would be legally entitled to the custody of the minor were it not for the existence of a court order issued pursuant to this chapter is changed to another county, the entire case may be transferred to the juvenile court of the county where that person then resides” “[S]ection 375 permits, but does not require, a court to transfer a juvenile case to the county where the parent resides.” (*In re J.C.* (2002) 104 Cal.App.4th 984, 992 [Fourth Dist., Div. Two], italics omitted.) The juvenile court must consider the best

interest of the child when deciding whether to transfer the matter. (*Id.* at pp. 992-993.)

“Matters such as placement of the minor and transfer of the proceedings to another jurisdiction are committed to the sound discretion of the juvenile court. [Citations.]”

(*Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1478.)

We initially note the timing of father’s request to transfer the case. At the time of his request, father had nearly 11 months of reunification services. CFS had provided him with monthly in-person contacts, referrals, consultation with service providers, and monthly assistance with transportation to services and visits. Although father had completed some of his services, he had not demonstrated that he had benefitted from the services. He continued to blame everyone for the removal of the child except himself. Consequently, by the time the court considered father’s motion to transfer, the social worker was recommending that reunification services be terminated and a section 366.26 hearing be set.

Furthermore, father’s request to transfer the case to Riverside appeared to be based on his own best interest. As the court noted, the main reason father wanted the matter transferred was that he was having problems with his social workers and the psychologist. His request was clearly not based on the best interest of the child. Moreover, in light of CFS’s recommendation to set a section 366.26 hearing to terminate parental rights and establish a permanent plan of adoption, father’s county of residence had very little bearing on the court’s decision about which venue would serve the child’s best interest. (*In re J.C., supra*, 104 Cal.App.4th at p. 994.)

We conclude that the court properly exercised its discretion in denying father's request to transfer the case.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REORTS

HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.