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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

A.P. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E058938

(Super.Ct.No. SWJ007055)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Jacqueline C.

Jackson, Judge. Petition denied.

David A. Goldstein for Petitioners.

No appearance for Respondent.

No appearance for Real Party in Interest.

This writ proceeding concerns the propriety of a decision regarding the placement of two-year-old twin girls, Lo.S. and La.S (the girls), dependents of the juvenile court. The girls were removed from the custody of their parents when they were about four months old and placed in the home of Mr. and Mrs. Pedroza (petitioners). However, the girls were removed from the petitioners' home four months later, after the petitioners were arrested for physical abuse of their six-year-old adopted son.

The petitioners filed a request to change court order asking that the girls be returned to their home based on changed circumstances. At the conclusion of a contested hearing, the juvenile court found that it was not in the girls' best interest to be moved again and returned to petitioners' home. The petitioners have filed the instant writ petition under California Rules of Court, rule 8.456¹ seeking review of the denial of their request to change a court order. We find no error, and deny the petition.

I.

FACTUAL AND PROCEDURAL BACKGROUND

The Riverside County Department of Public Social Services (DPSS) initiated this proceeding in June 2011 to establish the girls as dependents of the juvenile court based on the parents' neglect, substance abuse, and mental illness.² The girls were born prematurely in February 2011 and had special needs.

¹ All further rule references will be to the California Rules of Court.

² The parents, T.B. (Mother) and L.S. (Father), are not parties to this appeal.

On August 3, 2011, the court established jurisdiction over the girls pursuant to Welfare and Institutions Code³ section 300, subdivision (b), after finding true a number of allegations, including failure to protect, neglect, substance abuse, domestic violence, and mental issues. The court ordered a psychological evaluation for Father and scheduled a dispositional hearing. Mother waived reunification services.

Father underwent two psychological evaluations. The evaluations concluded that Father was incapable of benefitting from services based on his diagnosis of mild mental retardation and inability to live independently or care for himself.

The contested dispositional hearing was held on January 11, 2012. At that time, following submission of evidence, the court denied reunification services for both parents and set the matter for a hearing to select a permanent plan under section 366.26. The court also ordered an assessment of the paternal grandmother's home when appropriate.

The court continued the May 10, 2012 section 366.26 hearing to August 8, 2012, to allow DPSS to assess the paternal grandmother's home for placement. The court also referred the matter to mediation for postadoption contracts.

On May 29, 2012, the paternal grandmother filed a request for de facto parent status. She also filed a request to change court order (Judicial Council Forms, form JV-180) under section 388, requesting that the girls be placed in her care.

³ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

The social worker recommended that the court proceed with a permanent plan of adoption and identified petitioners as nonrelated extended family members who were being considered as prospective adoptive parents. The girls were placed with petitioners on June 12, 2011, when they were about four months old, and had been with them most of their young lives. The petitioners had demonstrated that they were capable of meeting the girls' needs, and the girls had appeared happy and comfortable in their home. The social worker recommended that the court deny the paternal grandmother's request to place the children in her care, noting the girls were not bonded to the paternal grandmother and the paternal grandmother lacked the ability to care for and meet the girls' special needs. The social worker also recommended that the court deny the paternal grandmother's request for de facto parent status.

The contested section 366.26 hearing was held on September 26, 2012. At that time, the court denied the paternal grandmother's request for de facto parent status, as well as her request to change the court-ordered placement. The court also terminated both parents' parental rights, and selected a permanent plan of adoption for the girls.

On October 19, 2012, DPSS filed a notice of emergency removal of the girls from the care of petitioners based on allegations that the petitioners were arrested for physical abuse of their six-year-old adopted son, D., who had special needs. Mr. Pedroza admitted to grabbing D.'s face hard enough to cause bruises. He also admitted to spanking D. with a hanger. Bruises were found on D.'s face and legs. The allegations of physical abuse were substantiated against petitioners and all four children in the home were removed from their care.

The girls were placed in a foster home and DPSS was in the process of matching the girls with an approved adoptive home. The girls were placed in a prospective adoptive home on January 28, 2013. The girls had no problems adjusting to their new caretakers, and appeared to be happy toddlers.

On December 21, 2012, petitioners filed a request to change or modify court order under section 388 with supporting declarations, requesting the order of adoption remain in place and the girls be placed back in their care. The petition noted that petitioners were not facing any criminal charges; that they remained in a position to finalize the adoption; that their two children were placed back in their care; and that their own DPSS case would soon be terminated and closed as unfounded.

On February 8, 2013, the girls' prospective adoptive parents were appointed as their educational representatives.

On February 13, 2013, petitioners filed a request for de facto parent status of the girls with supporting documents.

The social worker recommended not returning the girls to petitioners' care or allowing any visitation between the girls, petitioners, and their two children. An adoptive match had been found for the girls and the girls had become very attached to their prospective adoptive family. Since their placement, the girls had physically and developmentally grown and their severe symptoms of GERD had improved dramatically with a change in diet. In addition, they were able to sleep through the night and they no longer required additional medical care other than medication for GERD. The girls were the only children in the prospective adoptive home and had benefitted from the time and

attention they were receiving from the prospective adoptive parents. Their vocabulary had increased significantly and the prospective adoptive parents were devoted to the girls. The girls appeared to be very happy and bonded to the prospective adoptive parents, referring to them as “mama” and “dada.”

The petitioners two children were returned to their care on family maintenance services and their home had been placed on “permanent hold” status, meaning dependent children would no longer be placed in their home based on the substantiated allegations of child abuse in the home. A social worker discussed with the petitioners that they needed to focus on services for the two children in their home to which they agreed. Documentation previously provided by petitioners showed that their six-year-old adopted son can become very aggressive and combative when confronted with a change in his emotions or environment.⁴

Following numerous continuances, the hearing on petitioners’ request to change court order under section 388 was held on April 15, 2013. At that time, the court heard testimony from the current social worker, the past supervising social worker, and the petitioners’ pastor. The court also heard a sworn statement from petitioners’ therapist. The therapist stated that she was working with the petitioners on their parenting skills and assisting them in helping them with their two children’s behavior issues; that the petitioners were exceptional parents; and that they were working effectively with their

⁴ The petitioners’ son is a special needs child who had been diagnosed with Cerebral Palsy, Systemic Mastocystosis, Seizure activity, and developmental delays. He was enrolled in an emotionally disturbed class and was a client at Inland Regional Center.

two children. Following arguments from the parties, petitioners' counsel requested, as an alternative to returning the girls to petitioners' care, that petitioners' home be reassessed. The court ordered a reassessment of petitioners' home and a team decision meeting to take place within three weeks. The hearing on the request to change court order was continued to May 15, 2013 to allow the assessment to be completed. The court also granted petitioners' request for de facto parent status of the girls.

On May 7, 2013, the prospective adoptive parents filed a request for de facto parent status of the girls with supporting documentation. They also filed a request for change of court order under section 388, requesting that the girls remain in their care and that they not be removed from their custody without a court order.

DPSS assessed petitioners' home and concluded that it could not approve the home. A social worker went to the home on April 22, 2013, and additional paperwork was provided to petitioners so an adult living in the home could be live-scanned. After the Relative Assessment Unit (RAU) received results from the live-scan and a child welfare history for petitioners, it determined that it could not approve the home. The assessment was thereafter reviewed by supervisors, and certification of the home was denied on May 20, 2013. Following a placement decision meeting, DPSS determined that the girls should be adopted by the prospective adoptive parents. The girls were continuing to thrive and blossom in the care of the prospective adoptive parents and looked to them to meet their physical and emotional needs. DPSS thereafter recommended that petitioners' request to change court order be denied; that the court

dismiss petitioners' de facto parent status; and that any visitation between the girls and the petitioners be determined by the prospective adoptive parents.

A postpermanency review was held on June 10, 2013. At that time, the court also heard the requests to change court order under section 388 filed by the petitioners and the prospective adoptive parents, and the prospective adoptive parents' request for de facto parent status. The court recognized that it was undisputed that both families loved the girls, but noted that it had to look at what was in the best interest of the girls, even if the circumstances had changed. The court found that petitioners' circumstances had changed, but found that it was not in the girls' best interest to move them again. The court noted that the girls had adjusted very well in the home of the prospective adoptive parents; that they had resolved many of their medical issues; and that they were bonded to the prospective adoptive parents. The court therefore denied the petitioners' request to change court order and terminated petitioners' de facto parent status. The prospective adoptive parents' counsel thereafter withdrew their request to change court order without prejudice. The court subsequently granted the prospective adoptive parents' request for de facto status of the girls.

On June 14, 2013, petitioners filed a notice of intent to file a writ petition pursuant to rules 8.454 and 8.456.

I

DISCUSSION

Petitioners contend that the juvenile court erred in denying their request to return the girls to their home, claiming the best interest of the girls would have been met by placing them back with petitioners.

Initially, we note that petitioners filed this writ petition from the juvenile court's order denying their section 388 petition, and neither party disputes the applicability of section 388 to the petitioners' appeal.⁵ (Compare §§ 366.26, subd. (n)(5) & 366.28, subd. (b)(1) [child's removal from designated prospective adoptive parents after parental rights have been terminated is normally not appealable]; see *State Dept. of Social Services v. Superior Court* (2008) 162 Cal.App.4th 273, 285-286 [§ 366.26, subd. (n), "represents a paradigm shift in the standards to be applied to agency decisions in the narrow category of posttermination removal of children from designated prospective adoptive placements"].)

When a child is declared a dependent of the court and removed from parental custody, the social services agency is authorized to select a suitable interim placement for the child pending reunification or adoption. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1490; § 361.2, subd. (e).) Likewise, "[o]nce a dependent child is freed for adoption, the agency to which the child is referred for adoption is responsible for the child's custody and supervision. The agency is entitled to the exclusive care and control

⁵ County counsel filed a letter, stating that "it does not intend to file a response" to the writ petition on behalf of real party in interest.

of the child at all times until a petition for adoption is granted. [Citations.]” (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) Further, the agency is “authorized to exercise its discretion to reassess the suitability of the environment in which it had placed the child and, if deemed unsuitable, move the minor to an improved situation.” (*In re Cynthia C.*, at p. 1490.) Accordingly, the agency has discretion to terminate an interim or adoptive placement at any time before the petition for adoption is granted. (*Shirley K.*, at p. 71.)

However, the agency’s discretion concerning adoptive placement “is not unfettered.” (*In re Shirley K.*, *supra*, 140 Cal.App.4th at p. 72.) The juvenile court retains jurisdiction over the child, among other things, to ensure that adoption is completed as expeditiously as possible and to ascertain the appropriateness of the placement. (*Ibid.*) The agency’s placement decisions are subject to judicial review for abuse of discretion. (*In re N.M.* (2011) 197 Cal.App.4th 159, 171; *In re C.B.* (2010) 190 Cal.App.4th 102, 123, fn. 5; *In re Shirley K.*, *supra*, 140 Cal.App.4th at p. 72; § 366.26, subd. (n)(3).)

Accordingly, section 366.26, subdivision (n), provides in relevant part that, at the hearing to determine whether the child shall be removed from the custody of a prospective adoptive parent, “the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child’s best interest, *and the child may not be removed from the home of the designated prospective adoptive parent unless the court*

finds that removal is in the child's best interest." (§ 366.26, subd. (n)(3)(B), italics added.)

Likewise, when reviewing a request for modification under section 388, the court considers whether the petitioner demonstrated by a preponderance of the evidence that there is a change of circumstances or new evidence *and* the requested modification would be in the best interest of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526-527, & fn. 5; accord, *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.)⁶ That is, “[i]t is not enough . . . to show just a genuine change of circumstances under the statute. The [petitioner] must show that the undoing of the prior order would be in the best interests of the child. [Citation.]” (*In re Kimberly F.*, at p. 529.)

On appeal, we review the juvenile court’s ruling on a modification motion for abuse of discretion. (*In re Carl R., supra*, 128 Cal.App.4th at p. 1072.) We must give the juvenile court’s decision ““[b]road deference”” and view the evidence in the light most

⁶ Section 388 allows a parent or guardian to petition the court for a hearing to modify or set aside any previous order on the grounds of change of circumstance or new evidence, such that the proposed change would be in the child’s best interest. By its terms, section 388 applies to requests to modify court orders. (§ 388, subd. (a).) However, the section has also been used for requests to modify agency decisions. (See, e.g., *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1052; *In re Shirley K., supra*, 140 Cal.App.4th at pp. 70-71; see discussion in *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1072, fn. 14; see also *In re Cynthia C., supra*, 58 Cal.App.4th at pp. 1481, 1485, 1489-1490, fn. 8 [section 388 modification motion is proper procedure to use when petitioner seeks return of dependent child to foster home; the motion seeks change of court order giving social service agency discretion to decide placement]; accord *In re Matthew P.* (1999) 71 Cal.App.4th 841, 847, 848-849.) The parties have not disputed the applicability of section 388 in this case, and we assume its applicability.

favorable to the court's decision. (*In re Levi H.* (2011) 197 Cal.App.4th 1279, 1291.)

We do not substitute our judgment for that of the trial court and cannot reverse “““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Here, petitioners failed to demonstrate the second prong of section 388, namely that returning the girls to their care would be in the girls' best interest. The girls were removed from their care after petitioners were arrested for physically abusing their special needs, adopted six-year-old son. The allegations of physical abuse were substantiated against petitioners and their two children were returned to their care on family maintenance services. Although petitioners were going through a difficult period and they had changed their circumstances, their home still had not been certified to allow placement of the girls. Even if DPSS erred in failing to certify petitioners' home to allow placement of foster children or the social worker “ignored any positive information” about petitioners, the record shows that it was not in the girls' best interest to place them back with petitioners. Petitioners still needed to focus on services for the two children in their home. Furthermore, the girls were thriving physically, emotionally and developmentally in their prospective adoptive home. They had become very attached to their prospective adoptive family. Additionally, since their placement in their prospective adoptive home, the girls' severe symptoms of GERD had improved dramatically with a change in diet. The girls were also sleeping through the night and no longer required additional medical care, other than medication for GERD. The girls were

the only children in the prospective adoptive home and had benefitted from the time and attention they were receiving. Their vocabulary had increased significantly and the prospective adoptive parents were devoted to the girls. The girls appeared to be very happy and bonded to the prospective adoptive parents, referring to them as “mama” and “dada.”

The record shows no abuse of discretion in the court’s ruling. Although the girls’ removal from their stable, bonded placement with petitioners was unfortunate, DPSS did not abuse its discretion when removing the girls once the physical abuse allegations against petitioners were substantiated. When the girls were removed from petitioners’ home, they were placed with a family that was ready and willing to give them a permanent home. Meanwhile, DPSS still could not approve or certify petitioners’ home based on their reassessment investigations. Ultimately, the juvenile court was required to review DPSS’ placement decision by considering the difficult question of what was in the girls’ best interest. The court reasonably determined that returning the girls to petitioners, notwithstanding their bond, would constitute another move for two young toddlers who had already experienced multiple placements, and would disrupt bonds that the girls had formed with their prospective adoptive family who were prepared, willing and able to adopt them. This assessment was not an abuse of discretion.

Petitioners argue that their home was not just “another home,” but a home the girls had spent the majority of their young lives and had formed a bond, and that the certification issues, which could have been overridden, distracted from what was in the girls’ best interest. The record does not show the girls’ best interests were ignored when

the court declined to return the girls to petitioners. Again, the court was resolving difficult questions about what was best for the girls. Ultimately, the court determined that it was in the girls' best interest to remain with their prospective adoptive family. There is no basis to upset the court's decision.

In sum, the record supports the juvenile court's conclusion that it would not be in the girls' best interest to return them to petitioners' care. The court did not abuse its discretion in denying petitioners' request to change court order under section 388.

III

DISPOSITION

The petition for extraordinary writ is denied.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

RICHLI
J.