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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.F. et al., a Person Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.F. et al.,
Defendants.

F.C.,

Appellant.

E060241

(Super.Ct.Nos. J248463 & J248464)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Appellant.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

Appellant F.C. (the paternal grandmother) appeals from the juvenile court's denial of her petition for de facto parent status as to her grandchildren, R. and C. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because the issue on appeal is limited, no extensive description of the dependency proceedings is needed.¹

On March 15, 2013, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition alleging that R., who was eight months old at the time, came within subdivisions (a) (serious physical harm), (b) (failure to protect) and (e) (severe physical abuse). The petition was later amended to add an allegation under section 300, subdivision (j) (abuse of sibling). The amended petition alleged that, while in the care and custody of his father, R. sustained a second degree burn on his right thigh. The amended petition alleged that R.'s mother knew or should have known that the safety of R. was at risk while in father's care. The petition also alleged that both mother and father (the parents) had domestic violence histories, substance abuse problems, criminal histories, and extensive CFS histories. The amended petition further alleged that R.'s sibling, C., sustained a fracture to his right fibula, while in the parents' care. CFS also filed a section 300 petition on behalf of C., who was two years old at the time. That petition alleged that C. came within subdivisions (b) (failure to protect) and (j) (abuse of sibling). That petition was

¹ On the court's own motion, we incorporated the record in case No. E059848 in the record of the instant case, case No. E060241.

subsequently amended to add allegations under section 300, subdivisions (a) (serious physical harm) and (e) (severe physical abuse), with regard to a fracture to C.'s right fibula.

The social worker filed a detention report, which stated that R. came to CFS's attention when he was transported to the hospital for an injury due to boiling water being dropped on him. He sustained a second degree burn that was three to four inches long and approximately one inch wide, on his upper thigh. R. was at the hospital with the maternal grandmother, and the whereabouts of the parents were unknown. The nurse contacted the police. R. was discharged to the maternal grandmother. The parents subsequently arrived at the hospital. Father told the police that he was making Top Ramen soup and C. bumped into him. Consequently, he dropped the soup, and it splashed on R.

The social worker went to the Days Inn, where the parents were staying with the maternal grandmother and her boyfriend. The parents had been staying there for one week and said they were only "visiting" the maternal grandmother. They planned to stay for two more weeks. The social worker noticed that C. was sleeping on top of some blankets on the ground, that the room was cluttered, and that there were minimal provisions for the children. The parents said that R. slept in the bed with the maternal grandmother and her boyfriend. The social worker informed the parents about her concerns with the residence, and the parents agreed to rectify the problems.

The social worker conducted research on the family and discovered that the parents had a history with CFS and both parents had criminal histories. Moreover, Dr. Mark Massi had concerns regarding R. and recommended that he be taken to Loma Linda University Medical Center (Loma Linda). The social worker went back to the Days Inn to get the

children. The maternal grandmother's boyfriend said the parents were gone and left no information about where they were going or when they would return. C. was examined at Loma Linda, as well as R., and it was discovered that C. had an injury to his right fibula consistent with a fracture. The social worker placed the children in protective custody.

The parents failed to appear at the detention hearing held on March 18, 2013. The court detained the children in foster care.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report and recommended that no reunification services be provided to the parents, pursuant to section 361.5. The social worker interviewed mother, who said that R.'s injury occurred when she was out grocery shopping with the maternal grandmother. Regarding C.'s leg injury, mother initially expressed shock, but then said he fell six months ago when his leg got "tangled in a stool"; however, she did not notice any injury to him from that incident.

The social worker interviewed father, who changed his story about how R. was injured. Father said what actually happened was that he was running around and cleaning the room. He placed both children on the bed. He placed a cup of water in the microwave, and when he pulled the cup out of the microwave, R. pushed C. off the bed, then lost his balance. Father reached out to catch R. as he was falling off the bed. Father had the cup of hot water in the other hand, and it spilled on R.

Father further reported that he received therapeutic services for approximately two years as a child, and that the services were "court mandated" due to "his mother not being a great parent." He stated that his mother (the paternal grandmother) abused alcohol, and that

his sister abused marijuana. Furthermore, he reported that the paternal grandmother suffered from depression, and that she used to beat him as a form of discipline.

Nonetheless, father requested that the paternal grandmother be assessed for placement of the children.

A contested jurisdiction/disposition hearing was held on June 20, 2013. The court found that the parents had no plausible explanation for the children's injuries. The court found that both children came within the provisions of section 300, subdivisions (a), (b), (e), and (j). The court found father to be the children's presumed father, declared them dependents of the court, and removed them from the parents' custody. The court ordered that reunification services not be provided to the parents. The court also ordered that the children be maintained in their current foster home. The court set a section 366.26 hearing.

Section 366.26

The social worker filed a section 366.26 report on October 8, 2013, and recommended that parental rights be terminated and adoption be implemented as the permanent plan. The children had been living with the same care providers since March 13, 2013. There was a mutual attachment between the current caregivers and the children. The caregivers loved the children and were anxious to adopt them. The social worker had observed them in the home and opined that the children were secure and well-adjusted.

The social worker further reported that she submitted a relative placement request on behalf of the paternal grandmother. The relative approval worker informed the social worker that a criminal exemption would be required for both the paternal grandmother and the paternal aunt, who resided in the home. The relative approval worker reported that the

paternal grandmother had an extensive child welfare history, which included over 20 referrals from 1994 to 2009. She also had a prior dependency case in 2000. The social worker opined that it would be highly unlikely that the paternal grandmother would be approved, given her background.

De Facto Parent Requests and Section 388 Petitions

The paternal grandmother and the paternal aunt (the relatives) filed de facto parent status requests for both children on October 17, 2013. They alleged that R. lived with them, and they had responsibility for his day-to-day care from July 5, 2012, to March 6, 2013. Specifically, the paternal aunt had been his primary caregiver since birth. As to information they had that others may not have, the relatives alleged that R. was behind on his shots, he had a lot of allergies, he had been referred to a specialist at Loma Linda for a deformity of his penis, and he used Huggies diapers and wipes and would break out if they were not scent free. They also alleged that R. was quiet and preferred to play alone, he did not tolerate noise well, and he loved to explore. Regarding C., the relatives alleged that he had lived with them, and they were responsible for his daily care from January 12, 2010, to August 15, 2011, and December 3, 2011, to March 6, 2013. They alleged that they did “everything together.” As to information they had about him that others may not have, they alleged that C. was up to date on his shots, had ear problems and may need ear tubes, was allergic to pollen, dust, and cat dander, was aggressive, and was happiest when he was free to roam about.

On the same day they filed the de facto parent requests, the relatives filed a section 827 request for the disclosure of the juvenile case files, as well as section 388 petitions. The

section 388 petitions essentially alleged that the children had lived with the relatives most or all of their lives, and that they should be returned to them, rather than remain in their current placements.

On October 31, 2013, the court ordered a hearing on the de facto parent requests for November 14, 2013. On the same day, the court summarily denied the section 388 petitions. The court also ordered the social worker to update the court on the status of the assessments on the relatives at the November 14, 2013 hearing.

At the November 14, 2013 hearing, the court noted that it had denied the section 388 petitions, and then asked for a status update as to the assessment of the relatives. County counsel informed the court that CFS never received the section 388 petitions, so it did not have any updates in writing; however, county counsel offered to give a verbal update. The court agreed. County counsel informed the court that it was likely that the relatives would be denied placement since they both had extensive CFS histories and criminal histories that would require exemptions. County counsel opined that it was unlikely that the exemptions would be granted and, even if they were, the social worker's view was that it was not in the children's best interest to place them with the relatives. County counsel added that the children were in a concurrent planning home together. The court continued the de facto status request hearing.

On December 5, 2013, the social worker filed an interim review report recommending that the court deny the de facto parent requests. The social worker opined that it was not in the children's best interest for the relatives to be given de facto status. They were not appropriate caregivers, since they both had child welfare histories and

criminal histories. The aunt had been charged with being under the influence of a controlled substance on 16 occasions. Her most recent arrest occurred on November 3, 2013, for possession of drug paraphernalia. She had been charged with possession of drug paraphernalia on at least three other occasions. The aunt also had been charged with driving under the influence on two occasions, as well as with resisting arrest and attempted burglary. The paternal grandmother had been charged with child endangerment and assault and battery. The social worker noted that the paternal grandmother did provide care for the children in her home, approximately in July 2012, but that she allowed the parents to reside in her home as well. The paternal grandmother previously reported that she witnessed regular domestic violence between the parents while they resided in her home, and that she knew the parents used illicit substances. In addition, the paternal grandmother failed to protect the children when she allowed the parents to take them from her home, and the children subsequently suffered severe injuries. Furthermore, the social worker reported that the relative approval worker informed her on December 3, 2013, that the home of the paternal grandmother was formally denied for relative placement.

On December 9, 2013, the court held a hearing on the requests for de facto parent status. The paternal grandmother testified that she raised C. all of his life, with the exception of six or seven months. She also said that the parents were living with her when C. was five months old. The paternal grandmother stated that R. lived with her every day of his life, until he was taken by father on March 6, 2013. The court asked if she called the authorities when the parents came to take the children in March. She said she called 911, but “the lady” said she could not report a kidnapping since the parents were the legal parents

of the children. The court noted that the relatives had played a parental role in the children's lives for a substantial period of time. It then stated that the only issue of concern was the failure to protect. The paternal grandmother interjected that it was not her place to protect the children because the parents had custody of them. The court denied the relatives' de facto requests relying on *In re Merrick V.* (2004) 122 Cal.App.4th 235 (*Merrick V.*). The court stated that it understood the relatives wanted to be sure that the children were safe and well-provided for. The court said it was satisfied that the children were being cared for in their current placement. The court further denied the section 827 requests for disclosure of the juvenile files, since the relatives were not parties to the dependencies.

The court immediately proceeded to the section 366.26 hearing and found it likely that the children would be adopted. It then terminated parental rights and ordered adoption as the permanent plan.

The paternal grandmother filed a timely appeal.

ANALYSIS

The Court Properly Denied the Paternal Grandmother De Facto Parent Status

The paternal grandmother contends that the juvenile court abused its discretion when it denied her request for de facto parent status. We disagree.

A. Standard of Review

“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, and who has assumed that role for a substantial period’ [Citations.]” (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 919 (*Jacob E.*)) “De facto

parent status gives the child’s present or previous caretaker standing to participate as a party in disposition hearings and subsequent hearings in which the status of the dependent child is at issue. [Citation.] A de facto parent has the right to be present at the hearing, be represented by retained counsel, and present evidence. [Citation.] The purpose of conferring de facto parent status is to ‘ensure that all legitimate views, evidence and interests are considered in dispositional proceedings involving a dependent minor.’ [Citation.]” (*Merrick V., supra*, 122 Cal.App.4th at p. 256.)

“The denial of a petition for de facto parent status is reviewed for abuse of discretion. [Citation] ‘In most cases, the lower court does not abuse its discretion if substantial evidence supports its determination to grant or deny de facto parent status.’ [Citations.]” (*Jacob E., supra*, 121 Cal.App.4th at p. 919.)

B. The Court Did Not Abuse Its Discretion

“The decision to grant de facto parent status turns on the facts of each case.” (*Jacob E., supra*, 121 Cal.App.4th at p. 919.) “Factors the court should consider in assessing a de facto parent application are 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 the 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 with the adult.’ [Citations.]” (*Merrick V., supra*, 122 Cal.App.4th at p. 256.)

The paternal grandmother here did show significant involvement in the children’s lives. She alleged in her de facto parent statement that they both lived with her, and she had

the responsibility for the day-to-day care of them, almost all of their lives. The paternal grandmother had been present at many of the court hearings. Furthermore, she had knowledge of their health issues, and she faced losing further contact as a result of a future hearing. On the face of things, the paternal grandmother would ordinarily have met her burden of showing that she was a de facto parent.

However, “[a]n applicant who otherwise qualifies as a de facto parent may be denied that status by acting in a manner fundamentally inconsistent with the role of a parent. [Citation.]” (*Merrick V.*, *supra*, 122 Cal.App.4th at p. 257.) In *Merrick V.*, the grandmother assumed the daily role of a parent for her two-year-old twin grandchildren since birth, as well as for her 12-year-old grandson. (*Ibid.*) Nonetheless, the court found that she “at least indirectly caused the twins to be at risk of substantial harm, which led to their dependency.” (*Ibid.*) The grandmother left the twins in the care of their mother, whom she knew used drugs and had an unstable lifestyle. (*Ibid.*) As a result, the twins were found wandering outside in dirty diapers, and they tested positive for drugs. (*Ibid.*) The court concluded that the juvenile court properly denied the grandmother de facto parent status, since the “potential for substantial harm to the twins was considerable,” when she allowed the mother to assume care of them. (*Id.* at p. 258.)

In the instant case, the paternal grandmother indirectly caused the children to be at risk of substantial harm. She had witnessed regular domestic violence between the parents, and she knew they used illicit substances; yet, she allowed them to live in her home with the children, thereby exposing the children to potential danger. Similarly, the paternal grandmother allowed the aunt to live in the home with the children. The de facto parent

statement stated that the aunt was R.'s primary caregiver. However, the aunt had been charged with being under the influence of a controlled substance on 16 occasions. Her most recent arrest for possession of drug paraphernalia occurred on November 3, 2013, while she was living with the children. Clearly, the paternal grandmother did not consider mother, father, or the paternal aunt, a danger to the children, despite their backgrounds. She allowed them to live with the children, and thereby put the children in harm's way. In addition, the paternal grandmother failed to protect the children when she allowed the parents to take them from her home; R. subsequently sustained a second degree burn while in father's care and custody.

The paternal grandmother argues that *Merrick V.*, *supra*, 122 Cal.App.4th 235 is completely distinguishable from the instant case because the grandmother in that case had a guardianship and, thus, "had legal authority to not give the children to their mother." The paternal grandmother asserts that the court erred in relying on *Merrick V.*, since she had no legal authority to prevent the parents from taking their own children. We first note that, in contrast to her argument, the paternal grandmother previously asserted that she was C.'s "custodial parent of record" when father took the children from her, and that she had a document from the Department of Child Support Services dated April 8, 2013, showing as much. In any event, even if the paternal grandmother did not have the legal authority to stop the parents from taking the children from her home, she had allowed the parents to *live in her home* with the children prior to that. "[T]o qualify as a de facto parent, one must demonstrate that he or she cares about the child's well-being, desires to fulfill the child's needs, and intends to act in the child's best interests." (*In re Jody R.* (1990) 218 Cal.App.3d

1615, 1627 (*Jody R.*.) Ultimately, the record shows that the paternal grandmother at least indirectly caused the children to be at risk of substantial harm by failing to protect them from the parents' domestic violence and drug use, and by having the aunt be R.'s primary caretaker, despite her apparent drug use and possession of drug paraphernalia. (See *Merrick V.*, *supra*, 122 Cal.App.4th at p. 257.) These actions demonstrated that the paternal grandmother did not actually care about the children's well-being and did not intend to act in their best interest. (*Jody R.*, *supra*, 218 Cal.App.3d at p. 1627.)

We conclude that the juvenile court properly denied the paternal grandmother's petition for de facto parent status. The court appropriately took into account facts that placed the children at serious risk of harm. We see no abuse of discretion.

Assuming *arguendo* the court erred in denying the paternal grandmother's petition for de facto parent status, we conclude that any error was harmless. By the time of the de facto parent status hearing, the court had already denied the relatives' section 388 petitions requesting the children to be returned to their custody. Moreover, the children were living in a stable home with caregivers who wanted to adopt them. Immediately after the de facto status hearing, the court terminated parental rights and freed the children for adoption. In light of the paternal grandmother's criminal and child welfare histories, it was unlikely that she would ever be granted custody of the children. Thus, even if the court had granted her de facto parent status, the outcome of the dependency proceeding would not have been affected. (See *In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 95.)

DISPOSITION

The order denying de facto parent status is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

CODRINGTON
J.