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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.F. et al.,

Defendants and Appellants.

E061421

(Super.Ct.No. RIJ1200963)

OPINION

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

Shobita Misra, under appointment by the Court of Appeal, for Defendant and
Appellant M.F.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant M.A.

Gregory P. Priamos, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

In this appeal, defendants and appellants M.F. and M.A.—the paternal grandmother and father, respectively, of the child who is the subject of this dependency proceeding, A.A.—seek to reverse the juvenile court’s decisions to terminate father’s parental rights, and to place the child in the care of nonrelative prospective adoptive parents, rather than with paternal grandmother. Father appeals from the order terminating his parental rights. Paternal grandmother appeals from the summary denial of her most recent petition pursuant to Welfare and Institutions Code¹ section 388. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND²

A.A. came to the attention of the Riverside County Department of Public Social Services (the department) on September 7, 2012, when the department received a referral alleging general neglect. At the time, she was 16 months old. The department took the child into protective custody on September 11, 2013. The dependency petition, filed September 13, 2012, alleged violations of section 300, subdivision (b) (failure to protect), based on mother’s chronic abuse of controlled substances, including methamphetamines and marijuana; mother’s untreated mental illness; domestic violence committed by both mother and father in the presence of the child; and father’s “extensive criminal history,

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

² We here summarize only those facts necessary for context, and those directly relevant to appellants’ claims of error. An exhaustive factual and procedural history is unnecessary to the disposition of the matter.

including active felony charges for gang member with a concealed weapon with priors, criminal street gang activity, assault with a deadly weapon (gun), and possession of a controlled substance (misdemeanor).”

On September 14, 2012, the juvenile court detained the child on a temporary basis. On October 10, 2012, the juvenile court sustained the dependency petition as alleged, and removed the child from the custody of mother and father.

When the child was removed from her parents’ custody, the court ordered reunification services for both parents. Mother did not participate in her case plan, and services were terminated with respect to her on June 10, 2013. Father initially participated in some parts of his case plan, and received further services even after mother’s were terminated, despite concerns raised by his continued substance abuse, among other things. On May 24, 2013, however, father was arrested for burglary and receiving a stolen vehicle, and on August 30, 2013, he was arrested again and charged with committing a felony while on bail. He was sentenced to four years in prison, and grandmother reported to the department that his expected release date is in 2016. On November 26, 2013, with father present in custody, the juvenile court terminated services to father and set a hearing pursuant to section 366.26 to select a permanent plan for the child.

When A.A. was initially removed from the custody of her parents, she was placed in foster care. On February 27, 2014, the child was moved from foster placement to a prospective adoptive home. The social worker observed that she quickly bonded to the

prospective adoptive parents, and appeared “very comfortable” with the new caregivers and in the new home.

During the case, the Relative Assessment Unit (RAU) of the department had assessed various relatives for possible placement. Most of these referrals were denied, for one reason or another. On January 3, 2013, an RAU referral for paternal grandmother was submitted, and on July 19, 2013, the RAU certified paternal grandmother and her home. Nevertheless, the social worker reported to the juvenile court in September 2013 that “the Department is not considering placement in the [paternal grandmother’s] home due to information contained in the child abuse registry.”³ Details regarding what is reported in the child abuse registry do not appear in our record, but we can discern that there was more than one child abuse referral involving paternal grandmother, and she suffered a conviction on a criminal charge relating to one of those referrals.

Paternal grandmother has filed a total of four petitions pursuant to section 388 during this case. The first, filed on November 26, 2013—the same day that father’s parental rights were terminated—requested that the child be put in her care. This petition, however, was supported by no evidence, and not even any argument beyond the bare request, plus the assertion that it is “better” for the child to live with “her family.” The petition was summarily denied on December 9, 2013, for failure to demonstrate changed circumstances or present new evidence, and failure to demonstrate that the proposed change would promote the best interest of the child.

³ Thus, father’s assertion on appeal that the juvenile court was not aware of her certification by the RAU until March 7, 2014, is inaccurate.

The second section 388 petition was filed on March 4, 2014. Again, paternal grandmother asked that the child be placed with her. This time, she noted her certification by the RAU, and attached a copy of the response letter, dated July 19, 2013, informing her of the certification. On March 11, 2014, the juvenile court summarily denied the petition, finding that the petition did not state new evidence or a change of circumstances, and that there had been insufficient notice to all parties of the petition.

A third section 388 petition was filed by paternal grandmother on March 26, 2014. This petition was in essence on behalf of another family member, requesting that the court consider a paternal *aunt* for guardianship or adoption. On March 28, 2014, the juvenile court summarily denied the petition, finding that the proposed change of order would not promote the best interest of the child.

Finally, on May 5, 2014, paternal grandmother filed her fourth section 388 petition, seeking an independent assessment by the court of the department's decision to place the child with prospective adoptive parents, instead of with her. In this petition, she asserted that the "concern" from the child abuse registry was "an incident over 17 years ago when the [paternal grandmother] was living in Long Beach, and her kids were left unattended." She represented that "[t]here was no juvenile court involvement, [she] completed a 40 hour parenting class, and paid a fine." Attached to the petition were letters from paternal grandmother herself, as well as several other relatives, expressing their wish that the child be placed with paternal grandmother, and expressing positive evaluations of her character and fitness as a caregiver.

In an addendum report filed May 6, 2014, the social worker described a visit between the child and paternal grandmother, two of the child’s great-grandmothers, and a six-year-old paternal uncle. The child did not recognize paternal grandmother—a circumstance the paternal grandmother had acknowledged in her section 388 petition. When the paternal uncle accidentally hurt the child during play, causing her to cry, the paternal grandmother appropriately comforted the child, but also was inappropriately demeaning to the paternal uncle—calling him “menso,” which means “dumb” in Spanish slang—raising concerns for the social worker about paternal grandmother’s parenting skills.

In an order filed on May 14, 2014, the juvenile court summarily denied paternal grandmother’s fourth section 388 petition on the basis that the proposed change in order did not promote the best interest of the child.

On July 21, 2014, after a number of continuances, the section 366.26 hearing was held. The trial court terminated the parental rights of mother and father, and selected adoption as the child’s permanent plan of care.

II. DISCUSSION

A. The Juvenile Court Did Not Abuse Its Discretion by Summarily Denying Paternal Grandmother’s Section 388 Petition.

Paternal grandmother and father contend that the trial court abused its discretion by summarily denying paternal grandmother’s most recent section 388 petition. We find no abuse of discretion.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A [petitioner] need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the [petitioner]’s request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) “In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. [Citation.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

Importantly, “[a]fter the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point, ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).

Here, it is questionable whether paternal grandmother made a prima facie showing that new evidence or changed circumstances existed. Paternal grandmother's fourth section 388 petition purported to offer to the court information that had not been previously presented regarding the circumstances of her conviction. Arguably, however, this information was not in any way new. Information regarding the fact of paternal grandmother's conviction, at least, had been presented to the court in September 2013. Any additional details regarding the circumstances of her convictions were presumably known to paternal grandmother, and could have been presented for consideration in connection with her previous requests to have the child placed with her. Similarly, the circumstance that paternal grandmother had been certified for placement by the RAU was not new information or a changed circumstance, and had been previously considered by the court, inter alia, in connection with her second section 388 petition.

Even if paternal grandmother made the required showing of new evidence or changed circumstances, however, she failed to make a prima facie case that the proposed change would be in the child's best interests. As noted, after the parents' reunification services are terminated, the focus of the court's analysis of the child's best interests properly shifts to questions of permanency and stability. (*Stephanie M., supra*, 7 Cal.4th at p. 317.) Paternal grandmother asserts in her section 388 petition that she "can provide permanency," but offered little evidence in support of that assertion. And she offers no explanation as to how the child's interests in permanency and stability would be served by removing her from a prospective adoptive home with caregivers to whom she had quickly bonded, and sending her to live with a blood relative she did not recognize, who

has previous child abuse referrals and a conviction on related charges. We see no abuse of discretion in the trial court's determination that no hearing was necessary to consider whether the child's best interests might be served by such a change.

Moreover, we note that paternal grandmother represented—but submitted no documentary evidence—only that the circumstances surrounding her conviction on child abuse related charges were relatively benign. She offered no explanation for the other “child abuse referrals” noted by the department, which did not result in a conviction. Even assuming that those referrals, too, involved relatively benign circumstances, the need for child welfare services repeatedly to be involved in paternal grandmother's parenting of her own children at least does not weigh in her favor.

Paternal grandmother's arguments on appeal rest on the notion that she was disqualified from placement by her conviction, and that the department “essentially assumed [her] conviction was for a nonexemptible offense, which precludes placement with a relative.” This premise, however, is erroneous. As noted, the RAU certified paternal grandmother for placement, despite her conviction, unlike a number of other relatives who were assessed. In other words, the RAU determined that paternal grandmother did not *need* an exemption to be certified for placement. Arguments that the department abused its discretion by failing to request an exemption are out of place.

In short, we find no abuse of discretion in the trial court's determination that paternal grandmother failed to make the prima facie showing necessary to entitle her to a hearing on her fourth section 388 petition.

B. Father Has Demonstrated No Error with Respect to the Termination of His Parental Rights.

Father's only argument with respect to the termination of his parental rights is premised on the notion that the juvenile court's ruling with respect to paternal grandmother's fourth section 388 petition must be reversed. We do not agree that the juvenile court's ruling should be reversed. Father therefore has demonstrated no error.

III. DISPOSITION

The orders appealed from are affirmed.

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HOLLENHORST

Acting P. J.

We concur:

KING

J.

MILLER

J.