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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Guardianship of SCOTT L., a Minor.

WILLIAM S. et al.,

Petitioners and Respondents,

v.

SCOTT L., SR.,

Objector and Appellant.

G046887

(Super. Ct. No. AD77469)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Deborah J. Chuang, Judge. Affirmed.

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

Leslie A. Barry; Sharon Grier, for Petitioners and Respondents.

Appellant Scott L., Sr. (Scott) appeals from a judgment terminating his parental rights over his 12-year-old son Scott L. (Scottie). The judgment frees Scottie to be adopted by respondents William S. and Lynn B., but Scott contends there is insufficient evidence to support the trial court's finding that such adoption would be in Scottie's best interest. We disagree and affirm the judgment.

FACTS

Most of the underlying facts are set forth in our prior opinion in this matter. (See *Guardianship of Scott L.* (July 14, 2011, G044513) [nonpub. opn.].) To avoid repetition of that opinion, we will simply note that respondents have been Scottie's primary caretakers since the time he was born in 2000. They became his legal guardians in 2006, and in 2010 they commenced proceedings to adopt him. Scott opposed their petition, and following a trial on the matter, the probate court determined it would not be in Scottie's best interest to terminate Scott's parental rights and free Scottie for adoption. On appeal, we ruled the trial court erred in failing to obtain a pretrial report on that issue, as required by Probate Code section 1516.5. Finding the error prejudicial, we reversed the judgment and remanded the matter for the court to comply with that section.

On remand, the court did so by ordering court investigator Nancy Ward to report on whether it would be in Scottie's best interest to be adopted by respondents. When interviewed by Ward, respondents said Scott originally agreed to their adoption request, but he subsequently changed his mind on the issue. They also alleged that Scott has a criminal history and has been incarcerated since September 2011. Even so, they said that, consistent with their past practice, they would continue to allow Scott to visit Scottie when he is released.

Scottie's mother Melinda did not respond to Ward's request for an interview. However, Scott wrote Ward a letter from jail saying he has never wanted to give Scottie up for adoption. He claimed respondents were open to shared custody and liberal visitation when Scottie was younger. However, they have been pushing him out

of Scottie's life and are now trying to "adopt [Scottie] out from under [him]." And while he appreciates that respondents have taken good care of Scottie over the years, he doesn't want to cede custody to them. He said he tries to visit and talk to Scottie as much as he can and, despite his personal failings, has always tried to act in his best interest.

For his part, Scottie, then age 11, told Ward he wanted to be adopted by respondents, whom he calls "Momma Lynne" and "Daddy Bill." However, he also said he wanted to continue to see Melinda and Scott, whom he refers to as "mom" and "dad," and to have a relationship with them.

Evaluating the situation, Ward opined it would be in Scottie's best interest to be freed from parental control so that he could be adopted by respondents. Therefore, she recommended that respondents' petition for adoption be granted.

In addition to considering Ward's report, the trial court also held an evidentiary hearing on the matter during which Scott and William testified in open court and Scottie was questioned in chambers. Melinda did not appear for the hearing, nor has she ever opposed respondents' adoption request. She continues to see Scottie at respondents' house on weekends and appears to be content with that.

Scott testified he does not want to lose his parental rights over Scottie. He said he loves Scottie and would never do anything to harm him. They have a tight bond and enjoy fishing and playing the guitar together. He also has taken Scottie on various outings, such as to Disneyland and Angels games. Over the years, he's tried to keep up his relationship with Scottie, but as Scottie has gotten older, respondents have increasingly pressured him to give up the boy. In fact, on more than one occasion William has told Scott he would never allow him to see Scottie again if he did not agree to respondents' adoption request. Scott also claimed that respondents have made it harder for him to see Scottie. Often when he calls respondents to arrange a visit, they claim Scottie is too busy to see him. And when visitation does occur, respondents want Scott to come over to their house; they do not like him taking Scottie other places.

Testifying further, Scott said he was incarcerated in September 2011.¹ He was released briefly around Christmastime, but at the time of the hearing in March 2012, he was back in custody and did not expect to be released for a few more months. He said he did have a visit with Scottie on Christmas morning, but it was very brief because William's father died the day before and respondents were planning on leaving town with Scottie to attend his funeral.

Scott admitted that since the original trial in this matter back in 2010, he has not visited Scottie regularly or supported him financially. Nor has he taken any steps to regain custody of the boy. And although he doesn't have a car, a driver's license, or a phone, he said he has an offer to do air conditioning work when he is released from custody. He concedes there's been some distance between him and Scottie lately, due to his present situation, but he wants to reconnect with Scottie and spend more time with him once he is free. He doesn't think Scottie wants to be adopted, or even fully understands what that entails. However, he would accept it if that is what Scottie truly wanted.

William testified that he has never threatened Scott in any fashion, and if he and Lynn were allowed to adopt Scottie, they would continue to allow Scott to visit him. Although they do not initiate visitation with Scott, they do not hinder it either; if Scott calls for a visit, they do their best to facilitate his request if Scottie is available. Also, Scottie has a cell phone and is free to call his parents if he likes. Respondents generally leave it up to Scottie if he wants to see his folks. They think it would be good for Scottie if he maintained a relationship with his parents and their relatives. But they also believe adoption would bring a measure of security and sense of belonging to Scottie that would be beneficial to him.

¹ The court did not allow any evidence as to the basis for Scott's incarceration.

Scottie testified that Scott and Melinda are good parents and he likes visiting them. He sees them from time to time and also talks with them on the phone. However, respondents are the ones who have always cared and provided for him. He understands respondents want to adopt him and become his “full parents.” He said he wants that to happen because he’s always lived with respondents. He understands Scott would not have any control over him if he were adopted, and respondents could cease visitation altogether if they wanted to. He said that would be okay if that happened, but he didn’t think that it would. Given that respondents have never said no when he wanted to see Scott in the past, he was not worried they would prevent him from doing so in the future. If he were to be adopted, he would still like to see his parents “a lot.” Asked what he meant by “a lot,” Scottie said he would like to see them about as much as he sees them now. He also said he wants to keep Scott’s last name because it reminds him of his dad.

At the conclusion of the testimony, respondents’ and Scottie’s attorneys argued that adoption would benefit Scottie by bringing stability and security to his life, and Scott’s attorney claimed the present guardianship arrangement was working well enough; he did not see any reason to terminate Scott’s parental rights and give respondents complete control over Scottie’s upbringing.

The court found by clear and convincing evidence that it would be in Scottie’s best interest to be adopted by respondents. Therefore, the court terminated Scott and Melinda’s parental rights over him. The court reasoned it would be better for Scottie if respondents assumed complete responsibility for him via adoption than for him to remain in a prolonged guardianship. The court also believed that Scottie understood the ramifications of adoption and wanted to be adopted. And although he also wanted to continue to have visits with Scott, he was okay with the prospect of not being able to see his dad.

DISCUSSION

Scott argues there is insufficient evidence to support the trial court's ruling, but we do not find that to be the case.

Probate Code section 1516.5 authorizes the termination of parental rights when, as here, a guardianship has continued for at least two years, and the court determines that adoption by the guardians would be in the best interest of the child. (Prob. Code, § 1516.5, subd. (a); *In re Guardianship of Ann S.* (2009) 45 Cal.4th 1110.) In making this determination, the court shall consider all of the relevant circumstances, including the nature and extent of the child's relationship with his parents and the guardians and the efforts which the parents have made to maintain contact with the child. (*Ibid.*)

Although the trial court's ruling regarding the best interest of the child must be based on clear and convincing evidence (Fam. Code, § 7821), our role is limited to determining whether substantial evidence supports the conclusions reached by the trial court in utilizing that standard. (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1382.) On appeal, we indulge in all reasonable inferences to uphold the judgment. (*Ibid.*) “[W]e do not resolve conflicts in the evidence, pass on the credibility of witnesses, or determine where the preponderance of the evidence lies. [Citation.] We merely determine if there is any substantial evidence, contradicted or not, which will support the conclusion of the trier of fact. [Citation.]” (*Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1539.)

In attacking the trial court's ruling, Scott does not dispute that Scottie has benefited greatly from respondents' loving care and support and that he has developed a positive emotional bond with them. However, Scott asserts the court improperly relied on respondents' promise to allow continued visitation following adoption as a basis for its decision. (See *In re Noreen G.*, *supra*, 181 Cal.App.4th at p. 1382 [“a posttermination visitation order is unenforceable, and the court must presume that termination of parental

rights will result in cessation of all contact between parent and child.”].) The record does not support this assertion.

To be sure, there was evidence that Scottie wanted to keep up his relationship with Scott and that respondents intended to facilitate that by allowing Scott to have continued visitation in the event of adoption. But the court did not base its decision on that happening. In fact, it contemplated just the opposite by noting that although Scottie expected continued visitation with his father, he understood that was not guaranteed if respondents adopted him. It was Scottie’s testimony that he would be “okay” with the prospect of not seeing Scott, not respondents’ promise to keep up visitation, that formed the basis for the court’s decision. The court did not erroneously premise its decision on an unenforceable promise of continued contact between Scottie and his father.

Alternatively, Scott claims the court failed to recognize that respondents have undermined his efforts to visit and connect with Scottie. He sees himself as “a parent who has demonstrated a full commitment to parental responsibility, but whose efforts to secure custody have been thwarted” (*In re Guardianship of Ann S.*, *supra*, 45 Cal.4th at p. 1102), but that characterization is at odds with the evidence. During his testimony, Scott admitted he has not done anything to obtain custody of Scottie since the original trial back in 2010. Nor has he supported Scottie or visited him regularly during that time. Presumably, Scott’s incarceration has had something to do with that, but that’s Scott’s problem, not respondents’. Scott has only himself to blame for the conduct that led to his troubles with the law.

Scott would have us believe that William has pressured him to give up Scottie for adoption and made it difficult for him to visit his son. At least that’s what he alleged on the witness stand. However, William testified to the contrary; he specifically denied using threats or intimidation as a means to distance Scott from his son. The trial court obviously found William to be more credible on this issue, and we are not at liberty

to second-guess that determination on appeal. Suffice it to say, the record does not support Scott's claim respondents have impaired his efforts to bond with Scottie.

To the contrary, the record shows respondents have facilitated visitation because they believe it is in Scottie's best interest to have a positive relationship with his parents. Whereas Scott has failed to make a full commitment to his parental responsibilities, respondents have consistently provided Scottie with the safety and security he deserves. Under these circumstances, it is hardly surprising Scottie testified that he wants to be adopted. "For young children and those children for whom adoptive parents are available, adoption is usually the preferred placement because it offers the prospect of a secure permanent home." (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 258.) There is ample evidence to support the trial court's finding that adoption would be in Scottie's best interest. Therefore, the court did not err in terminating Scott's parental rights and freeing Scottie to be adopted by respondents.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.