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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re AMY J. et al., a Person Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

E.B. et al.,

Defendant and Appellant.

G047084

(Super. Ct. Nos. DP-020185
& DP-021440)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Cheryl L. Leininger, Judge. Affirmed.

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

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputies County Counsel, for Plaintiff and Respondent.

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This case involves two children, a girl born in late summer 2010, who is now about two and a quarter years old, and a boy born in early summer 2011, who is now a year and one half. Both children were born with methamphetamine in their system due to their mother's methamphetamine addiction. Both were placed with their paternal grandparents shortly after their births, as a prospective adoptive placement. However, when the infant boy was accidentally burned by the grandparent's adult daughter in the process of being washed after he had soiled his diapers and the grandparents hesitated in seeking immediate treatment, social workers removed both children from the house. At the time of removal, the grandparents were given three judicial council forms (JV-321, JV-324, JV-325), one of which (JV-324, the notice of emergency removal form) explained their right to contest the removal within seven calendar days. Those forms are mandatory (see Gov. Code, § 68511), and there are no Spanish translations available for those forms (as there are for other juvenile law forms¹). The grandparents, however, do not speak English. The grandparents missed the deadline to contest the removal.

About six weeks after the removal, the grandparents, having found a lawyer, made a motion under Welfare & Institutions Code section 388² to change the removal order. That motion was denied. The trial judge stated the grandparents did not show a sufficient change of circumstances since the removal and, more broadly, changing the placement of the children *back* to the grandparents was not in their best interests.

The grandparents have now appealed from the order denying their section 388 motion. We affirm. Substantial evidence shows the trial judge's implicit decision not to relieve the grandparents' failure to timely contest the removal was reasonable. As the trial judge noted, there were no less than two adults also living in the grandparents'

¹ For example, form JV-365, for termination of dependency jurisdiction because the child attains the age of majority, is available in a Spanish version.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

household who spoke English and might have translated the relevant forms. Substantial evidence also supports the trial judge's implicit decision that removal was in the grandchildren's best interests. This record shows a bit too much indifference to the grandchildren's safety. And finally substantial evidence supports the trial's explicit decision to deny the section 388 petition and leave in place the status quo as it existed at the hearing. The grandparents' section 388 motion showed no change of circumstances warranting a return of the grandchildren to the grandparents.

FACTS

The grandparents have two children, an adult son and an adult daughter. The adult son, born in 1990, has had a criminal record since 2005, including child molestation, burglary, criminal street gang membership, and carjacking. He sired a daughter who was born in summer 2010, and again sired a son, born in early summer 2011. The mother in each case was the same woman, who herself has struggled with methamphetamine addiction since at least 2006, and her last known use was one day prior to the son's birth. In this opinion we will refer to the daughter as the infant granddaughter, and the son as the infant grandson.³ Both grandchildren were born with methamphetamine in their system, and placed with the grandparents almost immediately after their births.

Soon after the granddaughter was placed in their care, the grandparents expressed an interest in adopting her. There were, however, three other adults in the household: An aunt, the adult daughter, and her boyfriend.

³ Several of the names of the parties are fairly unusual, so the traditional appellate use of first name and initial would defeat the "objective of anonymity." (See Cal. Rules of Court, rule 8.401(a)(2).) But use of all initials (e.g., "A.A.") makes for poor readability, and is, in any event, dehumanizing. We do not lose sight of the fact human beings are the subject of dependency cases, not acronyms. Except for the form of the caption, over which we have no control, we refer to the various persons involved in this case by their place in the general family structure from the point of view of the appellant grandparents.

Parental rights to the granddaughter were terminated as to both natural parents in March 2011, with adoption being the proposed permanent plan. Yet progress by the grandparents toward adoption of the granddaughter proceeded slowly. By April 2011, the infant granddaughter was found to have delayed gross motor skills. When a social worker and a public health nurse found her to be suffering from a severe mouth infection and told the maternal grandmother the child need immediate medical attention, the maternal grandmother did not want to immediately take the child to a doctor, instead opting for a visit with the adult son in jail. The social worker had to order her to visit the doctor instead.

By June 2011 it was also clear the adult daughter and her boyfriend had a “domestic violence history.” The adult daughter and her boyfriend were ordered to attend certain classes, but didn’t.

Despite these problems, when the infant grandson was born testing positive for methamphetamine, he was soon placed with the grandparents. Within the month, during a routine visit, social workers had to tell the maternal grandmother not to let a cell phone charger cable dangle into the granddaughter’s crib. The grandmother seemed (as the report would later say) “oblivious” to the safety concern, and, as was the earlier case involving the mouth infection, again had to be ordered to take the indicated action.

The parental rights of both natural parents to the infant grandson were terminated in December 2011, and again the permanent plan was for adoption. But then, on January 19, 2012, an accident happened. Sometime in the afternoon around 3 p.m., while the adult daughter was cleaning the infant grandson under the faucet in the kitchen sink, something occurred, possibly the grandson’s accidentally kicking the cold water tap off, which resulted, as would later be learned, in the grandson’s sustaining first and second degree burns in his lower extremities. The grandmother reached a social worker by about 4 p.m. to report the burns, but told the social worker the burns were not serious.

She did not take the grandson to the emergency room at Children's Hospital in Orange County until that evening, when the true nature of the burns was ascertained.

The next day a social worker and a public health nurse visited the residence to check up on the grandson's injuries. They also found a space heater in the room the grandchildren were sharing with the grandparents. They told the grandmother the heater posed a safety hazard and, in the face of contrary arguments from the grandmother, had to order her not to take the necessary safety precaution.

About a week after the January 19 accident, several workers met with a public health nurse and a physician to review the case. The physician noted that even if the injuries were accidental, there were "concerns of neglect" involving their relative severity of the burns, including the fact the grandparents no doubt knew of the high water temperature coming from the faucet. The next day, January 27, 2012, social workers removed both children.

At the time of the removal, the social workers gave copies of three judicial forms to both grandparents: Form JV-324, notice of emergency removal, form JV-325, objection to removal, and form JV-321, request for adoptive parent designation. The emergency removal form states, "If you do not agree with the removal, you may request a court hearing by filling out form JV-325, Objection to Removal, and filing it with the court within five court days or seven calendar days, whichever is longer, from the date you receive this notice." The objection to removal form states "If you do not agree with the removal, you can request a court hearing by filling out this form," but does not otherwise give a deadline.

The grandparents did not contest the removal within the seven calendar days. In a hearing held February 6, 2012, the court found proper notice to the grandparents had been given, no objections had been received, and no further action was necessary. The grandchildren were soon placed in a non-relative foster home.

In mid-March 2012, six weeks after the January 27 removal, the grandparents, having found counsel, filed a section 388 motion, including submitting a filled-out JV-325 objection to removal form. The gravamen of the motion was that they had not been given “proper” legal notice and were denied due process by social workers’ failure to tell them “how to proceed” in the face of the removal.

On the merits, the grandparents asserted the two grandchildren had been with them since they were born, and had provided for them “financially, emotionally and physically,” they loved the grandchildren, and it would be detrimental to the grandchildren to have them removed from the family that “loves and cares for them.” The papers were devoid of any showing – or even any promises – that the grandparents would be more vigilant concerning the childrens’ safety in the future, nor did they indicate the adult daughter and her live-in boyfriend had finally galvanized themselves into taking the domestic violence courses necessary to get the adoption process moving again.

A hearing was held April 26, 2012. Counsel argued the grandmother *did* try to come to court within the seven-calendar-day period, but was directed to the “wrong court” and apparently became confused and failed to file the necessary papers. Counsel also asserted the grandparents had contacted the social worker on the case, but she had told them she couldn’t help them. Counsel emphasized the grandparents did not understand the judicial council forms, written as they were in English. The motion was supported by numerous handwritten letters, some in English, some in Spanish with accompanying typed translations, supporting the grandparents.

During the hearing the trial judge noted a discrepancy in the grandparents’ paperwork. The filled-out JV-325 objection-to-removal form submitted in connection with the motion was signed by the grandmother under penalty of perjury on January 31, 2012. That date of the signing was impossible to square with the statement on the same page that the social worker “never gave me my paperwork not did they explain how I

should proceed with a petition to overturn the removal” The judge noted the discrepancy in open court, as well as the fact January 31 was easily within the time period in which to object to the removal. An off-the-record discussion was then requested by the grandparents’ attorney, and when recorded proceedings resumed, the trial judge noted that “counsel clarified” the grandparents “did in fact receive the paperwork.”

In denying the motion, the trial judge observed that the aunt and boyfriend who lived in the house both handwrote their letters in support of the grandparents in English, implying at least *they* were available to translate the juvenile forms for the grandparents. The judge further noted the grandparents had a credibility problem,⁴ having signed a statement under penalty of perjury on January 31 to the effect the caseworker had never gave them their paperwork. The trial judge further noted the “noncompliance” by the adult daughter and her boyfriend with the need to take certain courses, hence the complete stalling of the adoption process since April 2011. The judge also alluded to unspecified safety and health concerns.

Finally, the judge further found it was in the best interest of the children that they not be returned to the grandparents. There was a new status quo in the sense they had been with new foster parents, interested in adoption, for some six weeks by then and were “doing well.” The new foster parents were also interested in adopting the two grandchildren. And the grandparents had certainly not shown a change of circumstances.

The motion was denied without any testimony. The grandparents then filed this timely appeal.

⁴ The judge used the tactful phrase that she “would have more inclined to have found the grandparents to be more credible based on these declarations”

DISCUSSION

The grandparents' appeal is focused entirely on the trial judge's tacit decision not to somehow relieve the grandparents' failure to timely contest the removal, i.e., as the opening brief frames its sole issue on appeal, whether the trial court abused its discretion "when it did not find good cause to grant relief from default."

Preliminarily, we note that the idea of relief from default as applied in California's juvenile law has received a somewhat skeptical reception by the appellate courts. (See *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125 [noting "there is no relief from default at the trial court in a termination proceeding"]; *Dolly D.* (1995) 41 Cal.App.4th 440, 444-445, fn. 2 ["We find no special rule for default applicable to dependency court proceedings."].)

In re Cathina W. (1998) 68 Cal.App.4th 716, the sole case relied on by the grandparents, is inapposite. *Catherina W.* is a case of appellate procedure, involving a small variation on juvenile dependency's writ-it-or-lose-it rule. Normally, appellate courts do not entertain direct appeals from orders made at hearings terminating reunification services and setting a permanency planning hearing, at least in the absence of a prior writ petition (§ 366.26, sub. (l).) In *Catherina W.*, a mother did not receive timely, adequate notice of her right to bring a writ petition in the wake of a "setting hearing," the appellate court held it had the power to entertain her direct appeal from the setting order. (See *id.* at pp. 722-724.)

All that said, there is a statute, section 348, which provides the classic civil law applying to relief from default found in section 473 of the Code of Civil Procedure does indeed apply to juvenile dependency proceedings. Section 348 provides, in its entirety: "The provisions of Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure [which includes Section 473] relating to variance and amendment of pleadings in civil actions shall apply to petitions and proceedings under

this chapter, to the same extent and with the same effect as if proceedings under this chapter were civil actions.”

Here, the record readily shows the trial court’s implicit decision not to relieve default to have been reasonable. The trial court noted, as do we, that there were at least two adults in the household who had sufficient command of the English language to write letters on the grandparents’ behalf, and— as their counsel apparently admitted at the hearing — the grandparents *had* received the relevant forms. The grandparents cite us to no authority which requires that every legal form approved by the Judicial Council must be available in Spanish translation (cf. Gov. Code, § 68511), and there was no reason offered why, having received forms in a language they could not read on January 27, they could not have immediately sought a translation from one of the members of their own household, if no one else. Moreover, the paperwork they finally *did* submit in mid-March 2012 undermined their credibility. To be sure it was drafted by their lawyer, but the wrong date and the blanket statements about not receiving any paperwork were presumably read to them in Spanish before they signed it. In the language of the famous quartet of justifications from section 473 of the Code of Civil Procedure, the grandparents here showed no “mistake, inadvertence, surprise, or excusable neglect.”

For the sake of completeness we also hold substantial evidence supported the merits of the trial court’s decision. Removals, even when *timely* contested, are evaluated by courts under a best interest standard. (See § 366.26, subd. (n)(3)(B) [“At the hearing, 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.”].) Here, even though accidental, the severe injuries of January 19 still implicate, as the evaluating physician noted, “concerns of neglect,” particularly given

what the grandparents must have known about the hot water tap (hot enough to cause *second* degree burns). The record, as the trial judge alluded to, also reflects a tendency on the part of the grandparents to minimize safety concerns. Particularly significant is the initial minimization of the injuries suffered on January 19, followed by the delay in taking the infant grandson to the emergency room after he had sustained second degree burns in some very painful areas of his body.

And finally, just as a garden-variety section 388 change-of-circumstances modification petition, the trial judge's denial order was clearly reasonable. Under section 388, the grandparents bore the burdens of showing both the existence of a change of circumstances, *and* that a modification in light of that changed circumstance would be in their grandchildren's best interests. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 47 ["Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests."].)

Here, however, the moving papers did not even make a *prima facie* showing of either of these two section 388 requirements. There was nothing which showed a change in the reluctance of the adult daughter and her boyfriend to complete the necessary domestic violence courses to restart progress toward adoption,⁵ or revealed any willingness on the part of the grandparents to change their relative laxity concerning safety precautions.

⁵ The grandparents' briefing is not entirely accurate on the importance of the stalled adoption process. The reply brief asserts the failure of the daughter and her boyfriend to take a domestic violence class was described by a social worker as the "*only* obstacle" to proceeding with the adoption process. (Italics added). That was a bit of wishful reading. The actual quote from the social workers' report said: "[The grandson] was placed with his paternal grandparents on July 5, 2011. Since that time, [the daughter] and [the daughter's boyfriend] has still not attended the required classes or therapy, despite this being *an* obstacle prior to [the grandson's] being placed in this home. Adoption Applicant Senior Social Worker Larry Jimenez had a discussion with the family again recently regarding this issue and the fact that it continues to hinder the adoption." (Italics added.)

In sum, the trial judge's order was reasonable and in the grandchildren's best interests totally apart from the fact that by the time of the order, the grandchildren were in new foster placement where, by all accounts, they were doing well.

DISPOSITION

The order is affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.