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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARIA A.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G050849

(Super. Ct. No. DP024563)

O P I N I O N

Original proceeding; petition for extraordinary writ (Cal. Rules of Court, rule 8.452) to challenge an order of the Superior Court of Orange County, Caryl Lee, Judge. Petition denied.

Law Offices of Kenneth Alan Reed and Kenneth Alan Reed, for Petitioner.

Nicolas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Real Party in Interest.

Law Office of Harold LaFlamme and Tina Stevens, for Minor.

Maria A. (mother) seeks writ review (Cal. Rules of Court, rule 8.452; all further rule references are to these rules) of the juvenile court's order setting a hearing under Welfare and Institutions Code section 366.26 (all further statutory references are to this code) after denying placement of her now 19-month-old daughter (child) with the child's maternal great aunt (great aunt) (§ 361.3). Mother requests that the child be placed with great aunt and that she be allowed visitation with the child, although the record shows visitation has not been denied. The child joins in the arguments of real party in interest as to why the petition should be denied. We deny the petition on the merits.

FACTS

Orange County Social Services Agency (SSA) placed a hospital hold on the child when she was six months old after she was found to have multiple fractures occurring within a one-month period during which time mother was the sole caretaker. SSA placed the child with great aunt in mid-March after it found "no cause to deny placement." Following an extensive discussion with SSA during the home assessment, great aunt "insisted" she could take care of the child and her employer, a physician, agreed she would have no problem doing so. Nevertheless, citing medical reasons, great aunt requested the child be removed from her home two days after receiving placement. Subsequently, SSA placed the child with her current caretakers, where she has remained to the present.

The next month, great aunt requested visitation but on a different day from mother, who was no longer speaking to her. Great aunt explained she had asked the child to be removed from her care because of her recent foot surgery, arthritis, and stress, not because she did not want the child. She asked about having the child placed with her again. Both visitation and placement were denied at that time.

In May, the court granted the child's request not to be removed from her current placement without further order absent exigent circumstances. Several days later, SSA inquired why great aunt was seeking placement of the child again. Great aunt answered it was because they were blood related and she did not want the child to be adopted by another family. When asked what had changed, great aunt explained her health had been "delicate" due to recent surgery, arthritis, and stress when the child had been placed with her. She had also been living in her employer's home and had no privacy. But she felt better now that she was on medication, although she had yet to find a place to live since she did not know if the child would be placed with her.

As to the child's medical condition, great aunt questioned whether the child had fractured bones, as she had seen no bruises and would have known if something had happened. Rather, she thought "it was something medical" such as "colic or a stomach problem." Great aunt believed "a crazy or mental person" caused the injuries, not mother, who "protects kids like a lion."

Upon completing its reassessment of great aunt's placement request, SSA concluded the child could be placed in her home if approved by the court. Details of that assessment, addressing all of the factors in section 361.3, were contained in an addendum report. But SSA noted several concerns, including that great aunt appeared to be seeking placement of the child solely to please mother. Because great aunt did not want to jeopardize her relationship with mother, great aunt would not commit to adopting the child without mother's approval and agreed to care for the child only for a period of six months. Additionally, great aunt had no "tangible plan" for living arrangements, "as her future decisions appeared to depend on [mother's] wish." Moreover, great aunt's repeated reference to her own "medical condition . . . may negatively impact [the child's] placement in the future." Great aunt was also protective of mother and repetitively stated she did not believe mother had harmed the child.

Later, great aunt again explained her medical condition had been stabilized and now realized the child was more important than her relationship with mother. She was ready to comply with court orders even if it displeased mother. She also stated she was willing to adopt the child.

A visit by the social worker showed the child was doing well with her current caretakers. The child ate well, smiled, crawled, and was able to stand for a few seconds. The caretakers reported no concerns and the child hugged and cuddled with them. The child was bonded to her caretakers, as she cried for and followed them. The court granted them de facto parent status upon their request.

At the dispositional hearing, great aunt testified she had only asked the child to be removed due to her medical issues. She admitted that when the child was first placed with her she had insisted she was able to care for the child after the social worker discussed placement with her extensively and that her employer, a doctor, also opined she was able to care for the child but only because she believed she would be able to find someone to help her care for the child. She also acknowledged that despite her medical issues, she was able to go to Mexico for over two weeks between late February and early March for a funeral but asserted she had to use her crutches.

Great aunt did not believe the child would be at risk in mother's care. She thought the child had sustained only one fracture and did not know she had 10 broken bones occurring over a period of a few weeks to a month. Even so, she was still unsure what happened because she did not live with mother. Great aunt reiterated she could not "say who harmed the child."

The court denied mother reunification services and set a section 366.26 hearing for February 2015. Upon considering and admitting into evidence all of SSA's reports, including SSA's assessment of the factors contained in section 361.3, the court found SSA had properly given "the relative placement first right of refusal" by placing the child, now 16 months old, with great aunt, who was subsequently unable to care for

the child and that great aunt had the burden to show it was in the child's best interest to be placed with her again. The "child ha[d] certainly suffered a multitude of injuries and . . . did not need to be exposed to anything else as a result of [a] nonambulatory caretaker." The court appreciated great aunt's honesty that she was "not up to the task" of caring for the child but the child had "been with her current caretakers" for almost seven months and was thriving, while on the other hand there was no bond with great aunt. Moreover, great aunt could not accept that it was most likely mother who inflicted the injuries on the child. Because the child deserved stability, the court ordered her to remain with her current caretakers.

DISCUSSION

Mother contends the court erred in not placing the child with great aunt. County Counsel responds the writ petition should be denied because it did not comply with rule 8.452(b), as it does not contain citations to the record, a full factual summary of the facts, the standard of review, or a "meaningful legal analysis." Even if so, this court has issued an order to show cause, demonstrating our intent "to determine the petition on the merits." (Rule 8.452(d).) We shall do so.

Section 361.3 gives "preferential consideration" to placement requests by certain relatives upon the child's removal from the parent's physical custody at the dispositional hearing. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 854 (*Lauren R.*)) "Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "[T]he statute express[es] a command that relatives be assessed and *considered* favorably, subject to the juvenile court's consideration of the suitability of the relative's home and the best interest of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320 (*Stephanie M.*)) Among other things, the statute identifies a number of factors the court should consider when

assessing a potential relative placement. (§ 361.3, subd. (a)(1)-(8).) “The preference applies at the dispositional hearing and thereafter ‘whenever a new placement of the child must be made’” (*Lauren R.*, at p. 854.)

We review the denial of a relative placement request for abuse of discretion and will not disturb the juvenile court’s ruling unless it is an “‘arbitrary, capricious, or patently absurd determination.’” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*Id.* at pp. 318-319.)

We discern no abuse of discretion. The court considered all the evidence and emphasized the child’s need for stability. It did not, as mother claims, ignore great aunt’s selfless act of returning the child due to her physical condition. Rather, the court listened to mother’s argument in that regard and appreciated great aunt’s honesty that “she was simply not up to the task.”

As in *Stephanie M.*, *supra*, 7 Cal.4th at page 319, the court here also “focus[ed] on the evidence of the possible effects on the child of placement with” great aunt, noting “there is simply not a bond.” Mother argues this finding was made with “without competent evidence.” But the record shows during visitation with the child, great aunt mainly played with, and supervised, the child and mother. The only evidence of a potential bond between great aunt and the child was once when the child became “upset and pointed to the door when [great aunt] left.” But being upset when great aunt left the visit does not mean there was a bond between them. It could just be the result of a child being upset because her playmate left.

Mother also contends the court ignored its previous order that placement not be changed absent a further order, apparently suggesting the lack of a bond between the child and great aunt was due to that order. But regardless of the reason, mother does

not dispute “that the child lacked any significant bond to” (*Stephanie M., supra*, 4 Cal.4th at p. 319) great aunt, resembling the limited contact between the child and her grandmother in *Stephanie M.* Mother does not cite any evidence showing great aunt had any bond with the child.

The court also considered the added concern that great aunt had not accepted “that mother is the most likely suspect” in the child’s injuries. As the court observed, the child could not begin a new life in an environment in which her caretaker did not appreciate the risk and danger involved in the cause of the child’s injuries.

In arriving at its determination, the court correctly recognized the focus had shifted to the child’s best interest, rather than mother’s interest in the child’s care, custody, and companionship. (*Stephanie M., supra*, 7 Cal.4th at p. 317.) Mother claims “the ‘simple best interest test,’” which is “to simply compare the household and upbringing offered by the natural parent or parents with that of the caretakers” is insufficient under *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529. “It ignores all familial attachments and bonds between father, mother, sister and brother, and totally devalues any interest of the child in preserving an existing family unit, no matter how, in modern parlance, ‘dysfunctional.’ It fails to account for the complexity of human existence, substituting in its stead a one-dimensional comparison which does not adequately address the child as a whole person, including his or her formative years with a natural parent.” (*Id.* at pp. 529-530, italics omitted.) Mother submits factors to be considered “include[] blood and cultural bonds.” But here, the court did not apply the “‘simple best interest test’” and instead considered the child’s needs as a whole, including the factors suggested by mother.

During oral argument, mother asserted the court had failed to comply with section 361.3 by not considering all of the factors under section 361.3. The record shows otherwise. Section 361.3 requires the court to “consider” all of the stated factors. The

court did so by taking into account and admitting into evidence the SSA report that detailed SSA's assessment of the factors under section 361.3.

DISPOSITION

The petition is denied on the merits. (Rule 8.452(h)(1).) Our decision is final as to this court immediately. (Rule 8.490(b)(2)(A).)

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.