Filed 3/13/13 In re B.G. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re B.G. et al., Persons Coming Under the Juvenile Court Law.	B244055 (Los Angeles County Super. Ct. No. CK83529)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LARRY G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Juvenile Court Referee. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Larry G. (Father) appeals from an order terminating his parental rights over his three children, five-year-old twin girls, B. and B., and three-year-old Ruben, under Welfare and Institutions Code section 366.26.[1] He challenges the juvenile court's finding that Ruben was adoptable and claims the order places the children's sibling relationship at risk. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (DCFS) filed a petition under section 300, subdivision (b), on August 10, 2010. The petition alleged the children's parents, Father and Amanda M. (Mother),[2] were unable to protect or care for the children due to the parents' substance abuse.

The children had been placed with their paternal grandparents, Maria and Daniel A., in February 2010 pursuant to a voluntary family reunification agreement. Since that time, the parents continued to abuse drugs. Both had entered substance abuse treatment programs and left before completion. Mother tested positive for marijuana and methamphetamine. Father had a criminal history which included theft- and drug-related offenses, and a warrant for his arrest for violating parole by leaving his treatment program.

In addition, the parents routinely got into physical altercations in front of the children. They visited the children while under the influence of drugs, exposed the children to others under the influence and failed to supervise the children when in their presence.

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[1] All further section references are to the Welfare and Institutions Code.

[2] Mother is not a party to this appeal. We do not include facts pertaining to her except as they relate to Father's appeal.

On August 10, 2010, the juvenile court ordered the children detained with the maternal aunt. It ordered the parents to participate in drug counseling and testing and a domestic violence program. It granted the parents monitored visitation but ordered that they not visit at the same time.

The children were returned to the home of Maria and Daniel A. on September 8, 2010. In its September 10 jurisdiction/disposition report, DCFS noted that Father had been arrested for a parole violation and possession of narcotics on August 13. Both parents wanted the paternal grandparents to take care of the children.

On October 19, DCFS reported that Father had enrolled in a substance abuse program. He left the program and was arrested for possession of narcotics on September 24. He was released back to the program on October 4. At the October 19 jurisdiction/disposition hearing, the juvenile court sustained the petition and ordered the children suitably placed. The court ordered the parents to participate in drug counseling and random drug testing, individual counseling, and parenting and domestic violence programs. It granted them monitored visitation.

On January 18, 2011, DCFS reported that Father had left the substance abuse program at the end of October. Maria A. had not heard from him since then, and his whereabouts were unknown.

On April 19, DCFS reported that there was a warrant out for Father's arrest. He contacted Maria A. periodically, but he would not tell her where he was. He had not visited the children.

DCFS also reported that the children were doing well in their placement. It noted that "Ruben has asthma and is being treated for it by a doctor who monitors him closely. Ruben has been referred to the Public Health Nurse for an evaluation for the F-rate." Maria and Daniel A. wanted to adopt the children, and adoption assessments had been submitted.

The juvenile court terminated the parents' reunification services based on their lack of compliance with their case plans. It set a section 366.26 selection and implementation hearing for August 16.

In its August 16 report, DCFS stated that Father had contacted the CSW to say that he was staying in a recovery home and that he wanted the children returned to his care. Shortly thereafter, Maria A. contacted the CSW to say that Father had moved to another home that had the services he needed, and that she would try to get information on his location.

Maria and Daniel A. stated that they were interested in legal guardianship over the children, rather than adoption. DCFS noted that they both had prior criminal histories and a history of child welfare referrals, both substantiated and unsubstantiated. DCFS recommended that the hearing be continued for completion of the home assessment.

The juvenile court continued the hearing for six months to allow DCFS to assess an adoptive placement for the children, including placement with Maria and Daniel A. if appropriate. The court also declared the children a sibling group and ordered that they not be separated.

On September 16, DCFS reported that Father had three arrest warrants and had been placed in jail. Ruben's asthma was improving, and he was being treated for it by a doctor who saw him regularly to monitor his progress. Maria A. was attempting to get documents she needed to obtain a waiver so her home could be approved. The adoption assessments had been completed, and the adoption worker was recommending legal guardianship by Maria and Daniel A.

On October 24, DCFS reported that the children had been removed from the home of Maria and Daniel A. on September 26. The A. home could not be approved due to their extensive criminal history. While the children initially were placed together in one foster home, Ruben had been removed from the home. The foster family did not feel comfortable giving Ruben nebulizer treatments for his asthma, and their license did not allow them to care for medically fragile children. Ruben had been placed in a medical placement foster home with a foster mother who had been certified in the use of a nebulizer. The medical placement unit was looking for a home in which Ruben could be placed with his sisters.

As of April 23, 2012, Ruben and the twins remained in separate foster homes. A referral had been submitted for an updated adoption assessment and adoptive placement search. The adoptions CSW reported that a match had been found and a pre-placement visit with the prospective adoptive parents was scheduled. The prospective adoptive parents were interested in adopting all three children, and their adoptive home study had already been approved. DCFS recommended continuing the proceedings for placement of the children in the prospective adoptive home.

DCFS also reported that Ruben's asthma was under control, and he still saw a doctor regularly to monitor his progress. In all other respects, he was progressing normally. He was completely potty trained and enrolled in preschool.

The juvenile court agreed to continue the hearing to allow DCFS to further assess the children's placement situation.

In a July 19 report, DCFS indicated that all three children had been placed with the prospective adoptive parents, Mr. and Mrs. F. on June 15. At a hearing the same date, the juvenile court found by clear and convincing evidence that it was likely the children would be adopted. It terminated Mother's and Father's parental rights. It designated Mr. and Mrs. F. as the prospective adoptive parents and referred the matter for finalization of the adoption.

DISCUSSION

Father contends that the juvenile court erred in finding Ruben to be adoptable in the absence of an appropriate adoption assessment. DCFS claims that Father forfeited the right to challenge the adequacy of the adoption assessment due to his failure to raise the matter below. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1317; *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) We agree that Father's challenge to the adequacy of the adoption assessment has been forfeited but, in any event, it is without merit.

Father argues that DCFS's "own reports describe Ruben as medically fragile," and he points out that Ruben could not be placed with his sisters in the initial foster home

because the foster parents did not "have the proper medical training and certifications to deal with Ruben's conditions. He was then moved to a foster home specially licensed to care for medically fragile children." Father complains that there is nothing in the record "to show that the prospective adoptive parents are sufficiently aware of Ruben's medical needs, or that they are specifically trained to deal with them."

DCFS's reports do not describe Ruben as "medically fragile" with "conditions." He has asthma, for which he receives Albuterol treatment as needed and nightly treatment with Pulmicort. His asthma is under control and monitored by his doctor, whom he sees regularly. In all other respects, he has no special needs. Maria and Daniel A. reported no problems caring for Ruben, and no problems had been reported during the month Ruben had been living with Mr. and Mrs. F.

Additionally, in making a finding as to adoptability, the court's focus is on the child, whether the child's "age, physical condition, and emotional state make it difficult to find a person willing to adopt" the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Factors that may make it difficult to find a person willing to adopt a child include "membership in a sibling group" (§ 366.26, subd. (c)(3)) or "diagnosed medical, physical, or mental handicap[s]" (*ibid*.). Because the focus is on the child, it is not necessary to a finding of adoptability that the child have a prospective adoptive family. (*In re Sarah M.*, *supra*, at p. 1649; *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223, fn. 11.)

Thus, the prospective adoptive parents' ability to care for Ruben is not a factor in determining his adoptability. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) That they are willing to adopt him and his sisters supports a finding that he is, indeed, adoptable. In sum, the juvenile court had before it substantial evidence from which it could make a determination of adoptability. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

Father also claims that the sibling relationship exception to termination of parental right (§ 366.26, subd. (c)(1)(B)(v)) precludes termination of his parental rights. This contention is predicated on the assumption that "[b]ecause Ruben is not adoptable, there

is a good chance that the planned adoptive parents will fall through." Inasmuch as this assumption is faulty, Father's claim fails.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.