Filed 3/14/12 In re Leila R. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re LEILA R., A Person Coming Under the Juvenile Court Law.	B232761 (Los Angeles County Super. Ct. No. CK76049)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. FRANK R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Juvenile Court Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Appellant, Frank R., (father) is the father of Leila R. (Leila). The Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code[1] section 300 petition on behalf of Leila and her two half-siblings alleging that their mother, Nicole R., (mother) suffers from substance abuse and mental and emotional issues that interfere with her ability to provide proper care and supervision of her children. It also alleged that Alphonso G. (Alphonso), mother's boyfriend, suffered from substance abuse and that both have previously engaged in violent altercations with each other.

Father was offered family reunification services but failed to comply. The trial court terminated such services and subsequently terminated his parental rights. Father contends that his due process rights, under *Santosky v. Kramer* (1982) 455 U.S. 745, were violated because the trial court failed to sustain any jurisdictional findings against him and failed to find, based on clear and convincing evidence, that he was unfit to be a parent to Leila before terminating his parental rights. Thus, he argues, the order terminating such rights should be reversed.

We disagree. First, it is unnecessary for a trial court to sustain jurisdictional findings against a parent prior to terminating his or her parental rights. Second, the trial court *did* find that father was unfit to be a parent to Leila and the record contains sufficient evidence to support such finding. Therefore, we will affirm the order terminating father's parental rights.

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[1] All section references are to the Welfare and Institutions Code unless otherwise noted.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Leila, born in November 2006, Leanna G. (Leanna), born in October 2007, and D. A. (D.), born in December 2008, came to the attention of DCFS on January 19, 2009 based on allegations that mother left home three days prior and had not returned.[3] DCFS filed a section 300 petition on behalf of Leila and her two half-siblings on January 26, 2009. The petition alleged that mother suffers from substance abuse and mental and emotional issues that interfere with her ability to provide proper care and supervision of her children. It also alleged that Alphonso, mother's current boyfriend, suffers from substance abuse and that both have previously engaged in violent altercations with each other. At the time the petition was filed, mother had physical custody of the children, but had left Leila with father, Leanna with Alphonso and D. with her maternal grandmother. Maternal grandmother informed DCFS that mother stated "she was too young to be a mother[,] . . . she was tired of being a mother . . . and she was going to sign away her parental rights to the fathers. . . . [Then both fathers] called [maternal grandmother] . . . and asked her to care for their daughters." Both mother and Alphonso have criminal histories involving violent and drug-related crimes.

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[2] The factual and procedural background was taken from the record which consists of four volumes of Clerk's Transcripts and three volumes of Reporter's Transcripts.

[3] Leanna's father is Alphonso. Both he and Leanna were parties to the case below but neither is a party to the current appeal. D., whose name is misspelled throughout the record as "Daisy," was a party to the case below but is not a party to this appeal. D.'s birth certificate lists Leo A. as her father; however, DNA testing revealed that he was not her biological father. On March 3, 2009, the trial court found that Manuel A. (Manuel) was her alleged father. Neither of these men is a party to the appeal. Mother is also not a party to this appeal.

Father also has a criminal history involving drugs and theft. Father was appointed counsel at the detention hearing. The trial court found that a prima facie case for detaining the children was made and that "[s]ubstantial danger exists to the physical or emotional health of the minor(s) and there is no reasonable means to protect the minors without removal." It then ordered reunification services and visitation as to the parents.

At the pre-trial resolution conference held on March 3, 2009, father was present (but left mid-proceeding) and was represented by counsel. The trial court found that he was the presumed father of Leila. The trial court ordered DCFS to prepare a report addressing father's housing arrangement and determining whether he had previously completed a drug program.

At the adjudication hearing held on April 15, 2009, the trial court declared the children dependents of the court under section 300, subdivisions (b) and (j), based on drug use by mother and Alphonso, mother's mental health issues, mother's failure to provide Leila with proper care and supervision, and domestic violence issues between mother and Alphonso. Father submitted to the court's jurisdiction and made no argument or objection to the court's orders and the court dismissed the count alleged against him. The trial court again ordered reunification services for father, as the presumed father of Leila, specifically requiring him to complete a parenting class and test clean for drugs five times before allowing his visitation to be unmonitored. If he missed a test or tested dirty, the court ordered him to participate in a rehabilitation program. The court stated that it found, pursuant to section 361, subdivision (b), by

clear and convincing evidence that removal was necessary to protect the children because substantial danger exists to their physical and/or emotional health.

At the six-month hearing on October 14, 2009, the trial court found that father failed to comply with the court-ordered reunification plan by missing nine drug tests, failing to keep in contact with DCFS, and failing to call or visit Leila. Father did not appear at the hearing and the court found that "conditions do continue to exist which necessitated this court's initial intervention. Case plan and placements are appropriate and necessary." It also found, with respect to Leila and D., that "Return of the Minor(s) to the physical custody of the parent(s)/guardian(s) would create a substantial risk of detriment to the physical/emotional well-being of the minor. WIC 366.2(e)." The trial court then terminated father's reunification services, pursuant to section 361.5, subdivision (a)(3), and section 366.21, subdivision (e),[4] over his counsel's objection and found that reasonable services had been provided.

At the section 366.21, subdivision (f), hearing on May 26, 2010, appellant was not present and his whereabouts were unknown, but he was later located in custody, having been arrested on May 20, 2010 by the Monrovia Police Department for

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[4] Section 361.5, subdivision (a), provides in relevant part: "[¶¶] (3) [¶¶] In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent . . . the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months."

Section 366.21, subdivision (e), provides in relevant part: "The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental."

a misdemeanor charge. DCFS noted in its report that father had failed to maintain contact with DCFS for almost a year (last contact was on June 4, 2009). The court stated that conditions had not changed and it set a section 366.26 hearing for Leila's matter.

At the section 366.26 hearing, held on April 27, 2011, father appeared in custody, and, after receiving DCFS's reports into evidence, the court terminated father's parental rights. Father timely appealed.

CONTENTIONS

Father contends that his due process rights were violated because the trial court (1) failed to sustain any jurisdictional findings against him; and (2) failed to find, based on clear and convincing evidence, that he was unfit to be a parent to Leila. Thus, he argues, the order terminating his parental rights should be reversed.

DISCUSSION

1. *The Trial Court Found Return of Leila to Father Would Be To Her Detriment*

In support of his contention that his due process rights were violated, father asserts that the trial court (1) failed to sustain any jurisdictional findings against him; and (2) failed to find, based on clear and convincing evidence, that he was unfit to be Leila's parent. We disagree.

"A parent's interest in the companionship, care, custody and management of his or her children is a fundamental civil right. [Citation.] ' . . . *Santosky* establishes minimal due process requirements in the context of state dependency proceedings.

"Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." [Citation.] . . . ' [Citation.] ¶ . . . ¶

"California's dependency scheme no longer uses the term 'parental unfitness,' but instead requires the juvenile court make a finding that awarding custody of a dependent child to a parent would be detrimental to the child. [Citation.]" (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1210-1211.) In California, "findings of detriment by clear and convincing evidence can provide an adequate foundation for an order terminating parental rights, if supported by substantial evidence. [Citation.]" (*In re Frank R.* (2011) 192 Cal.App.4th 532, 538.)

As we have previously held that "the absence of a jurisdictional finding that relate[s] specifically to [a non-offending parent] does not prevent termination of [that parent's] parental rights," father's first assertion that the trial court failed to sustain any jurisdictional findings against him is entirely without merit. (*In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212.) As such, we need not address it further.

His next assertion that the trial court failed to find, based on clear and convincing evidence, that he was unfit to be Leila's parent, is simply incorrect. To support his assertion, father relies primarily on *In re Frank R.* In that case, like here, the father submitted to the trial court's jurisdiction, was determined to be non-offending (the allegations in the petition against him were dismissed), was found to be the presumed father of his twin children and did not seek custody. (*In re Frank R.*, *supra*, 192 Cal.App.4th at p. 535.) But this is the end of the similarities with the current

appeal. In *In re Frank R.*, the father's reason for not seeking custody was "because he was living in a motel" and his visitation was sporadic because he had difficulty affording the cost to travel the distance to see them. (*Id.*, at p. 535.) The trial court did not offer him reunification services and specifically stated at the disposition hearing that "it was *proceeding as to mother only* and then found in the singular that, 'clear and convincing evidence . . . [that] Substantial danger exists to the physical health of minor(s) and/or minor(s) is suffering severe emotional damage, and there is no reasonable means to protect without removal from parent's or guardian's physical custody.' . . . At no time during the dependency did the [trial] court ever make the requisite detriment finding by clear and convincing evidence as to [the] father. [Citation.]" (*Id.*, at p. 539; italics added.) The *In re Frank R.* court then reversed the trial court's order terminating that father's parental rights and remanded the case for a determination as to whether a finding of unfitness could be made by clear and convincing evidence. (*Id.*, at p. 540.)

The facts of the current appeal more closely align with those in *In re P.A.*, rather than with *In re Frank R.* In *In re P.A.*, the father submitted to the trial court's jurisdiction, was non-offending (none of the jurisdictional findings related specifically to the father), was found to be the presumed father of the minor and did not seek custody. (*In re P.A.*, *supra*, 155 Cal.App.4th at pp. 1200, 1208, 1209, 1212.) No reunification services were offered because father's whereabouts were initially unknown. (*Id.*, at p. 1201.) Even after DCFS located the father and he attended several hearings, he "never took steps to obtain custody of [the minor], other than to tell the

CSW in an interview that he wanted [her to be] placed with him." (*Id*., at p. 1209.) Despite this statement, the father did not seek an order modifying the order that denied him reunification services. (*Id*.)

On appeal, the *In re P.A.* father contended his due process rights were violated when his parental rights were terminated because the trial court failed to make the requisite finding of unfitness by clear and convincing evidence. But the Court of Appeal rejected this argument and stated that the necessary finding of detriment was made because the trial court "found at the disposition hearing 'by "clear and convincing evidence there exist[ed] a substantial danger to the children and [there was] no reasonable means to protect them without removal from *the parents' custody.*" ' [Citation.]" (*In re Frank R.*, *supra*, 192 Cal.App.4th at p. 538 citing *In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212.) The *In re P.A.* court also stated that the "[trial] court made a second finding of detriment when it denied [the father] family reunification services under section 361.5, subdivision (b) based on [his] whereabouts being unknown."[5] (*Id.*, at p. 1212.) Finally, the court indicated that the findings were supported by the record because the father "had not maintained any involvement in [the minor's] life, he had not provided support for the child and he had not seen the child for two and a half years." (*Id*.) It then concluded that "the findings of detriment made by the [trial] court in this case are sufficient to support the order terminating [the father's] parental rights." (*Id*.)

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[5] Although a section 361.5, subdivision (b), finding is made based on clear and convincing evidence, the *In re P.A.* court did not discuss whether this second finding of detriment alone would have been a sufficient basis for affirming the lower court's order.

With only minor exceptions, the facts in the current appeal are analogous to those in *In re P.A.* Here, father submitted to the trial court's jurisdiction, was non-offending, was found to be Leila's presumed father and did not specifically seek custody although the trial court ordered DCFS to provide him with reunification services. Similarly, the trial court found at the adjudication hearing on April 15, 2009 that it would be detrimental to give custody of Leila to either mother or father, by clear and convincing evidence. The specific language used in the minute order is as follows: "By clear and convincing evidence pursuant to WIC 361(b): Substantial danger exists to the physical health of minor(s) and/or minor(s) is suffering severe emotional damage, and there is no reasonable means to protect without removal from parent's or guardian's physical custody." Although the language denotes the singular, it was generically written and was intended to apply to mother, father and Alphonso with respect to all three children. For example, the petition was sustained against both mother and Alphonso and thus, the language, at a minimum, must be applied to the two of them. Also, the trial court did not state that it was proceeding as to only one of the parents at issue, as the lower court did in *In re Frank R.* Instead, the transcript reveals that the trial court's findings were made as to the parents in total and not to just one. It stated, "By clear and convincing evidence, the care, custody, and control of the children is taken from the *parents and guardians* and committed to the care, custody, and control of [DCFS]." (Italics added.) But the similarities do not end here.

The trial court in the proceeding below also made a second finding of detriment when it terminated father's reunification services at the six-month hearing held on

October 14, 2009. Although this finding was at the lower preponderance of the evidence standard, it serves as yet another confirmation of the trial court's earlier finding. " 'The number and quality of the judicial findings that are necessary preconditions to termination convey very powerfully to the fact finder the subjective certainty about parental unfitness and detriment required before the court may even consider ending the relationship between natural parent and child.' [Citation.] The linchpin to the constitutionality of the section 366.26 hearing is that prior determinations ensure 'the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must align itself.' [Citation.]" (*In re Gladys L.* (2006) 141 Cal.App.4th 845, 848.)

Here we have not just one but two findings of detriment as to father. The first under the constitutionally required clear and convincing evidence standard and the second at a lower standard but providing yet another determination. Now we must address the last requirement as stated in *In re P.A.*, i.e., whether substantial evidence supports the findings of detriment.

2. *Substantial Evidence Supports the Trial Court's Findings of Detriment*

"When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment." (*Scott v. Pacific Gas*

& Electric Co. (1995) 11 Cal.4th 454, 465.) In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment if possible. When a judgment is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

The record shows throughout that father was basically absent from Leila's life, that Leila had been in foster care for over two years by the time his parental rights were terminated, that he did not once visit Leila, that he failed to keep in contact with DCFS and that he failed to comply with any aspect of the reunification plan, to which he did not object. Father also admitted to having a criminal history relating to his prior abuse of methamphetamines. Thus, the trial court's findings of detriment were amply supported by substantial evidence in the record and we hold that father's due process rights were not violated.

DISPOSITION

The order terminating Frank R.'s parental rights is affirmed.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.