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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re N.L. et al., Persons Coming
Under the Juvenile Court Law.

B282135
(Los Angeles County
Super. Ct. No. DK08680)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DEREK L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Marguerite Downing, Judge. Affirmed.

Derek L., in pro. per., for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

Derek L. (father) appeals from the juvenile court's order denying his request to restore reunification services and the order terminating his parental rights as to his children N.L. and E.L. We affirm both orders.

BACKGROUND

1. Detention and Adjudication of N.L.

On December 12, 2014, respondent Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300¹ seeking to detain N.L., born earlier that month, from father and his wife Shana L. (mother). The petition, as later amended, alleged that mother had a history of mental and emotional problems and was incapable of caring for the child, and that father had a history of unresolved anger management issues “including violent and explosive behavior towards the mother.”

DCFS reported that mother and father had previously had eight children removed from their care in 2011 while in Kansas. This stemmed in part from a substantiated finding of physical neglect based on the poor condition of their home, which was dirty, had no beds, and lacked sufficient food, clothing, and blankets. All eight children had since been adopted, seven by a maternal uncle living in Arizona.

The juvenile court ordered N.L. detained. On May 6, 2015, the court sustained the amended section 300 petition, removed N.L. from his parents' custody, and ordered reunification services for both parents. Parents were granted monitored visits. The court ordered an Interstate Compact on the Placement of

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

Children (ICPC)² with the state of Arizona for possible placement with the maternal uncle.

2. Reunification proceedings for N.L.

In accordance with the reunification plan, father completed courses in parenting and anger management and attended individual therapy. DCFS filed status reports for N.L. in July and October 2015. The reports stated that father seemed unable to implement the skills he learned in parenting class during his monitored visits with N.L., and had difficulty assessing N.L.'s needs. The October report concluded that "[i]t appears that father lacks the necessary skills to care for any children."

The reports also expressed concern that father lacked insight into the issues that had led to N.L.'s detention and had failed to take responsibility for them. The reports stated that, although father claimed that he and mother were no longer together, father continued to have frequent contact with mother and provide for her financially.

At the six-month review hearing on January 6, 2016, the juvenile court ordered that N.L. remain under the court's jurisdiction. Father was granted monitored visits of at least three hours per week. The court found "that father has consistently and regularly contacted and visited with the child, that he has made significant progress in resolving the problems that led to the child's removal from the home, and that he has demonstrated the capacity and ability both to complete the objectives of the treatment plan and to provide for the child's

² "The ICPC is a compact among California and other states, the purpose of which is 'to facilitate the cooperation between states in the placement and monitoring of dependent children.' " (*In re Suhey G.* (2013) 221 Cal.App.4th 732, 742.)

safety, protection, physical and emotional well being.” The court found “a substantial probability that the child will be returned to the custody of the father within the next period of review.” The court ordered continued family reunification services to father. The court terminated reunification services as to mother, finding that she had made minimal progress during the last period of review.

In a status report dated February 19, 2016, DCFS reported that father continued to have “frequent contact” with mother. Father had continued to visit N.L. consistently, but had not progressed to unmonitored visits. The report stated that father’s visits with N.L. had improved, which the reporting social workers attributed to N.L.’s “age and stage of development” rather than any progress on father’s part.

3. Detention of E.L.

In July 2015 DCFS reported that mother had been impregnated again by father. Daughter E.L. was born in February 2016. DCFS filed a section 300 petition to detain E.L. on February 26, 2016, based on allegations similar to those in N.L.’s section 300 petition. The court ordered E.L. detained.

4. Adjudication for E.L. and 12-Month Review for N.L.

On April 13, 2016, the juvenile court held a joint hearing regarding E.L. and N.L. Father submitted to the court written stipulated testimony from his therapist, Charles Bastedo. It stated that father had been “diagnosed with an emotional disorder with elements of PTSD.” Father had “been consistent with treatment and has made attempts to meet treatment goals.” The therapist opined “that the child would be at risk if the father continues to have contact with mother.”

In regards to N.L., the court found that father was in compliance with the case plan. The court made findings similar to those at the six-month review, stating that father had consistently visited the child, had made “significant progress” in resolving case issues, and had demonstrated capacity to complete the treatment program and provide for the child. But the court also found no substantial probability that N.L. would be returned to his parents within six months. The court terminated family reunification services.

The court sustained E.L.’s section 300 petition. The court did not grant reunification services to mother or father, citing section 361.5, subdivision (b)(10) and (11), which permit a court to deny reunification services if parents have not “made a reasonable effort to treat the problems that led to removal” of a sibling for whom reunification services or parental rights had already been terminated.

The court set a section 366.26 hearing for both children. Parents were granted monitored visits.

5. Father’s First Section 388 Petition

On August 8, 2016, father filed a petition under section 388 seeking to restore reunification services. Father supported the petition with a declaration stating that he no longer intended to reestablish a relationship with mother and would seek a dissolution of their marriage. He stated that he took full responsibility “for my past participation in argumentative and emotionally disturbing behavior between me and our children[’s] mother.” (Boldface and capitalization omitted.) The court denied the petition on the basis that “the request does not state new evidence or a change of circumstances.”

6. Section 366.26 Report and Status Review Report

DCFS submitted a section 366.26 report dated August 10, 2016. It stated that father during his monitored visits “was never able to show any soothing techniques or bonding to child N.L.” and had “difficulty implementing the techniques that he learned from his parenting classes and from” the monitor. DCFS stated “[t]he prognosis for reunification . . . remains very poor at this time. The parents have not resolved or mitigated the child safety issues that led to the children’s removal from their care.”

A status review report dated October 13, 2016, stated that father had continued to have monitored visits with the children and “ha[d] difficulty in soothing and calm[ing] [E.L.]” Foster family agency social worker Christie Albaugh said E.L. had cried inconsolably during the last three or four visits. Some of the visits were monitored by a professional monitor hired by father; Albaugh expressed concern with the professional monitor’s comfort with children and “her ability to appropriately monitor.” DCFS social worker Sonia Renteria also observed a visit supervised by the professional monitor, and stated that father was “appropriate and attentive to the children’s needs.”

7. Father’s Objection to Placement of Children in Arizona

On December 2, 2016, DCFS requested that the court immediately place N.L. and E.L. with the maternal uncle in Arizona who had adopted seven of their siblings. Father filed an objection on December 20, 2016. Father argued that moving the children would make it difficult for him to visit with them, thus jeopardizing his ability to establish a beneficial relationship and prevent termination of his parental rights. Father argued this violated his due process rights. He submitted reports by the professional monitor, who also testified at the hearing.

On January 18, 2017, the court authorized DCFS to place the children with the maternal uncle. The court stated that even if the visits between father and the children were going well, they were just visits, and at this point the court had to focus on the children's best interests. The court also expressed some skepticism that the visits were going as well as the monitor had reported, given conflicting reports from social worker Albaugh. The court permitted father to continue having monitored visits in Arizona.

8. Father's Second Section 388 Petition

On January 27, 2017, father filed a second section 388 petition seeking to restore reunification services and prevent the placement of the children with their uncle in Arizona. To show a change of circumstances, he attached a "Psychological Testing Report" by Dr. Jerry Brown, additional reports of the professional monitor, and his own declaration in which he acknowledged full responsibility for his participation in conflicts with mother. Father argued that restoring reunification services "would allow more time for bonding between the minor children and their biological father and possible return of the children to their biological father's home."

9. Section 366.26 Hearing and Hearing on Father's Section 388 Petition

On April 5, 2017, the court conducted a section 366.26 hearing as to both children and also heard father's section 388 petition. Father testified that he had filed to dissolve his marriage with mother but, because he did not know where she was, he had not yet served her with divorce papers. Father testified that N.L. and E.L. reacted well to him during his visits and that N.L. appeared confused when the visits ended and he

was taken away from father. Father acknowledged that N.L. exhibited brief separation anxiety at the beginning of visits when his caregivers delivered him to father.

Father's professional monitor testified that E.L. would react with excitement when she saw her father at the visits, and corroborated father's testimony that N.L. appeared confused when the visits ended and he was taken from father. The monitor stated that N.L. exhibited brief separation anxiety when delivered by his caregivers, and E.L. exhibited more substantial anxiety that would last up to 10 minutes.

Dr. Brown testified that father had no mental health issues. He believed the children would be at risk if father continued to have contact with mother. Brown acknowledged that he had never met or observed N.L. or E.L.

After the presentation of evidence, father's counsel argued that the children had a beneficial relationship with father and father's parental rights should not be terminated.

The juvenile court denied the section 388 petition, finding no change of circumstances and no evidence that providing additional reunification services would be in the best interest of the children. The court also found the children adoptable and that no exception to the termination of parental rights applied. The court acknowledged that father had been proactive and diligent in addressing the case issues, but there was no evidence that the children had suffered detriment as a result of father not being part of their lives. The court terminated mother and father's parental rights and designated the maternal uncle in Arizona and his wife as the prospective adoptive parents.

Father timely appealed.

DISCUSSION

1. Section 388 Petition

Father challenges the denial of his section 388 petition. We find no basis to reverse the denial.

“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.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) We review a court’s determination on such a petition for abuse of discretion. (*Ibid.*)

Father’s petition focused on the first prong, claiming a change of circumstances based on evidence that father had no mental issues and that his monitored visits with the children had improved. But even if we accept that this evidence constitutes a change in circumstance, father offered virtually no evidence to support the second prong, that it would be in the best interests of the children to restore reunification services. “In any custody determination, a primary consideration in determining the child’s best interests is the goal of assuring stability and continuity.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Here, the children were in a position to be adopted by their uncle who was already caring for their seven siblings. Were the court to order further reunification services, that move towards “ ‘permanency and stability’ ” (*ibid.*) would be disrupted, and the children’s future would again be open to question.

Father does not explain why such a disruption would be in the children’s best interest. This is not a situation in which the children had a long-standing bond with their father and it would

be to their benefit to maintain the family unit if at all possible. Here the children and father had never lived together or spent more than a few hours a week together. Father's petition implicitly acknowledged this, as it claimed not that the children had a beneficial bond with their father, but that more time was needed to establish such a bond. But the dependency process cannot extend indefinitely: " 'in order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate.' " (*In re Zacharia D.* (1993) 6 Cal.4th 435, 446.) Here, father had been unable to reunify with N.L. after more than two years; under those circumstances, the court reasonably could conclude that the children's interests were better served by placing them with an available family rather than trying to reunify them with a father who had not progressed beyond monitored visits and with whom they had little connection.

2. Termination of Parental Rights

Father challenges the court's order terminating his parental rights. We find no error.

"Section 366.26 sets forth the procedure for permanently terminating parental rights concerning a child who has been removed from parental custody and declared a dependent child of the juvenile court. The statute states that the court shall terminate parental rights if it 'determines . . . by a clear and convincing standard, that it is likely the child will be adopted.' (§ 366.26, subd. (c)(1).) If the court determines it is likely the child will be adopted, certain prior findings by the juvenile court (e.g., that returning the child to the physical custody of the parent would create a substantial risk of detriment to the

physical or emotional well-being of the child) shall constitute a sufficient basis for the termination of parental rights unless the juvenile court finds one of six specified circumstances in which termination would be detrimental.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1522-1523 (*I.W.*.) Those “six specified circumstances” are listed in section 366.26, subdivision (c)(1)(B). (*I.W.*, *supra*, at pp. 1522-1523.)

A party invoking one of the six circumstances has the burden of proving a particular exception applies. (*I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) We will affirm a juvenile court’s finding that a party has not met this burden unless “the evidence compels a finding in favor of the appellant as a matter of law.” (*Id.* at p. 1528.)

At trial father invoked the exception under section 366.26, subdivision (c)(1)(B)(i), which prohibits termination of parental rights if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” “To meet the burden of proving [this] exception the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child.” (*I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

Father does not contest the juvenile court’s finding that the children were adoptable. And the record does not establish as a matter of law that father “occupies a parental role in the life” of either N.L. or E.L., both of whom were taken from his custody just days after birth, and with whom his only contact was supervised visits for a few hours a week. (*I.W.*, *supra*, 180

Cal.App.4th at p. 1527.) Father deserves credit for working to improve his parenting skills and diligently attending visits with his children, but as *I.W.* makes clear, that is not enough to compel the conclusion that the children would suffer detriment if father's parental rights were terminated. There is no basis to reverse the court's order.

3. Additional Arguments

Father raises a number of additional arguments challenging earlier proceedings in this case or the dependency process in general. We address them below.

Father argues that he was not proved to be an unfit parent by clear and convincing evidence, and that the reports by Dr. Brown and the professional monitor confirmed his fitness. He claims the social worker reports criticizing his visits with the children were false, biased, contradictory and/or undercut by other evidence in the record. To the extent the court was concerned about his relationship with mother, father argues that he maintained that relationship to protect the unborn E.L., not to put her at risk. Moreover, any risk created by that relationship was obviated by mother and father's separation and mother moving away. Father also argues that the removal of his children in Kansas should not be held against him.

These arguments are irrelevant to the issues on appeal here. As discussed, father bore the burden of proof both with his section 388 petition and his invocation of an exception under section 366.26. DCFS did not have to prove he was unfit; instead, to establish a right to relief under either section 388 or section 366.26, father had to show that there would be some benefit to the children in continuing reunification and preserving father's parental rights. Father failed to do so, irrespective of any

findings as to his fitness as a father.³ To the extent father is contesting earlier proceedings in which DCFS bore the burden of proof, those orders are not before us on this appeal and we will not address them. (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 340 [“ ‘ “An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed.” ’ ”].)

Father argues that his ability to bond with his children, and thus establish a right to relief under section 388 or section 366.26, was impeded by the court limiting his visitation and placing the children in Arizona. Father claims this violated his due process rights. Father cites no authority for this proposition, which is basis enough to reject the argument. (See *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391 (*Ojavan*) [declining to consider argument that “fail[s] to provide proper legal support”].) Moreover, father did not seek review of the court’s order placing the children in Arizona (issued after father had the opportunity to present witnesses and evidence at a hearing), which was the appropriate time to raise this challenge.

Father claims the juvenile court unfairly restricted his witnesses’ testimony while admitting long reports from DCFS,

³ Father claims his relationship with mother was one of the reasons the court denied his section 388 petition and terminated his parental rights. The record does not support this. In the portion of the reporter’s transcript cited by father, the court explains that father’s relationship with mother was one of the reasons it terminated reunification services at an earlier hearing. The court does not mention the relationship when denying the section 388 petition or terminating parental rights.

and allowed county counsel to confuse and badger his witnesses. It is unclear what particular conduct by the court or county counsel father is referring to in the record, or what additional evidence would have been presented absent this allegedly improper behavior. Regardless, it does not appear that father's trial counsel objected to any conduct on the part of the court or county counsel, and therefore these challenges are forfeited on appeal. (See *In re Carrie W.* (2003) 110 Cal.App.4th 746, 755 ["“““An appellate court will ordinarily not consider procedural defects or erroneous rulings . . . where an objection could have been but was not presented to the [trial] court by some appropriate method”””"].) Even were the challenges not forfeited, we have reviewed the record and find no impropriety.

Father asserts that the court essentially forced him to divorce mother to regain his children, in violation of his right to the free exercise of his religion under the First Amendment to the United States Constitution. As discussed, father's relationship with mother was not at issue in the proceedings being appealed here, so this argument is irrelevant. Also, father cites no legal authority in support of this claim.

Father challenges the constitutionality of the dependency system as a whole, which he claims ignores due process, violates the rule of innocent until proven guilty, allows unconstitutional search and seizure, and denies parents the right to a trial by jury. He argues that DCFS social workers "have almost unlimited powers, virtually no [oversight], and unlike parents have been given immunity from the hearsay rules." He further contends that DCFS social workers have been trained "to remake society with socialism and humanism," which restricts Christian parents' rights under the First Amendment. Father fails to cite legal

authority or evidence in support of these claims, and we decline to consider them. (*Ojavan, supra*, 54 Cal.App.4th at p. 391.)

DISPOSITION

The orders are affirmed.

SORTINO, J.*

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.