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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ZOE T., a Person Coming Under the  
Juvenile Court Law.

B261328  
(Los Angeles County  
Super. Ct. No. CK98986)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Julie Fox Blackshaw, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

B.C. (Father) appeals from the juvenile court's order denying a continuance of a Welfare and Institutions Code section 366.26<sup>1</sup> hearing and terminating Father's parental rights over his daughter, Zoe T. (Child), age three. Father contends the court abused its discretion in denying a continuance because the results of his paternity test were revealed to him at the hearing and he needed time to "consider" them. We disagree and affirm.

### **BACKGROUND**

On December 13, 2012, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging Tiffany T. (Mother) was physically abusing Child. In April 2013, after four months of observation, DCFS removed Child from Mother's custody, placed her with her maternal grandmother, and filed a juvenile dependency petition.

At the detention hearing on April 15, 2013, Father was not present because he could not be located. The court declared Father the presumed father based on Mother's representations that Child's birth certificate named Father as the father and that Father signed a Voluntary Declaration of Paternity at the hospital. The court continued Child's placement with the maternal grandmother.

Father appeared at a combined jurisdiction and disposition hearing on June 6, 2013. He requested a paternity test, leading the court to conclude he was denying paternity and to change his parental classification from presumed to alleged father. Father did not object. The court ordered a paternity test pursuant to Father's request. The court granted Father monitored visitation to be supervised by DCFS and ordered DCFS to provide him with service referrals for drug testing, counseling, and anger management. The court did not order DCFS to provide unification services, however, as Father was denying paternity. The court admonished Father he needed to appear at future hearings to represent his interests and to update his address if he moved.

At a hearing on August 14, 2013, which Father did not attend, Father's counsel represented that Father did not want, and was "refusing" to take, a DNA test. The court

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

found Father was “denying paternity.” On the same date, however, Father filed a Statement Regarding Parentage in which he stated that he did not know whether he was the father, but believed himself to be. He asserted he had lived with Child for the first few months of her life, changed her diapers, and bought her formula, baby food, and clothes. A DCFS report filed the same date indicated Father had not been visiting Child.

At a hearing on March 7, 2014, which Father did not attend, the court found the parents were not in compliance with the case plan, terminated all reunification services, and set a section 366.26 hearing for June 24, 2014. The court concluded “that the parents have not consistently and regularly contacted and visited with the minor, that they have not made significant progress in resolving the problems that led to the minor’s removal from the home, and that they have not demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the minor’s safety, protection, physical and emotional well-being, and special needs.”

On June 24, 2014, at the scheduled section 366.26 hearing, the court reminded Father of the “order for [him] to take a DNA test to assert the paternity in this case” that had been “outstanding for a year.” Father stated he wanted to assert his paternity. The court granted a four-month continuance for Father to obtain a DNA test, “even though we would otherwise be ready to go forward with the .26 hearing.” Notwithstanding the continuance to obtain Father’s DNA results, the court concluded that “[t]he permanent plan of adoption is appropriate and is ordered continued as the permanent plan.”

At the continued section 366.26 hearing on October 27, 2014, Father’s counsel requested a continuance to allow Father to consider the results of the DNA test establishing Father’s paternity. The court denied the request, noting that the hearing had already been continued once. The court reasoned that Father “ha[d] been a party in this case and represented by counsel for well over a year” and it had taken him “a year . . . to provide the samples to do the DNA test.” The court also noted Father had offered no evidence in opposition to the termination of his parental rights.

During the hearing, the court granted father’s request to address the court. Father claimed he had requested the DNA test “last year,” but was “denied” when he arrived at

the testing facility because he “was not formally put inside of the computer to test.” He claimed to have “made further requests,” which were “denied primarily because [his] court date wasn’t . . . for another year or so.” According to Father, “in that timeframe, I had several visitation opportunities that weren’t brought to my attention because I wasn’t in touch with the social worker. She made a few attempts at several different addresses from my past, but didn’t reach me in enough time to present any kind of documentation to . . . make me aware of any of the other hearings that I wasn’t present for.” Father stated that “my whole issue was the fact that I needed to know that I was a father,” but maintained that, in any event, “visiting the child was almost impossible on any level.” Asking for a “second chance,” Father said, “There was so many smoke and mirrors in this process. I felt like I haven’t been given an opportunity until this very moment when it’s on documentation I am the father.”

The court responded that since Child’s birth, Father had had the opportunity to “get involved” in Child’s life and assert his rights as a parent; Child’s birth certificate named him as father; he had lived with Child for a period of time; he was represented in the case for more than a year; and he was present at the initial section 366.26 hearing. The court found Father’s claim that the DNA results would lead him to be more involved with Child “less than credible,” especially given that Father had “been a part of this child’s life since the child was born.” The court terminated the parental rights of Mother and Father. Father appealed.

## **DISCUSSION**

**The juvenile court did not abuse its discretion by denying Father’s request to continue the section 366.26 hearing.**

Father argues the juvenile court abused its discretion by declining to further continue the section 366.26 hearing because a four-month continuance for him to “consider” the DNA test results indicating he is Child’s biological father would have led him to make a better effort to be involved in Child’s life and thus impacted the court’s

custody determinations.<sup>2</sup> We disagree. Father withdrew his argument that the court’s incorrect classification of him as an alleged father caused him to be denied reunification services, which negatively impacted his parental relationship with Child.

Continuances are discouraged and denials are reversed only for abuse of discretion. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810.) Under section 352, subdivision (a), and California Rules of Court, rule 5.550(a), a continuance should be granted only on a showing of good cause and for that period of time shown to be necessary, and should be denied if contrary to the minor’s best interests. (*In re Malinda S.* (1990) 51 Cal.3d 368, 384.) In determining the “best interest” of the child, “the court shall give substantial weight to a *minor*’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (§ 352, subd. (a), italics added.) Assessing a request for continuance “[a]fter the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the *child* for permanency and stability’ [citation] . . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317, italics added.) More specifically, a “26 hearing is concerned only with a long-term placement plan for the child, the preferred alternative being adoption and termination of parental rights.” (*In re Ninfa S.*, *supra*, 62 Cal.App.4th at p. 811; § 366.26, subd. (b); *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The scope of issues at a section 366.26 hearing is therefore “quite limited,” and the primary issue, the range of placement options among which to select for the child, does not “‘directly involve[] the parent.’” (*In re Sarah C.* (1992) 8 Cal.App.4th 964, 979.) Genetics are “irrelevant” in a section 366.26 hearing to “either the likelihood of [a child’s] adoption or any of the four enumerated exceptions which might make termination of parental rights detrimental to” the child. (*Ninfa S.*, at p. 811.)

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<sup>2</sup> Father claims a four-month delay occurred between the time the DNA results were reported to DCFS and the time DCFS reported the results to him and as a result maintains that the court should have continued the section 366.26 hearing for four months.

The only possibility at this juncture that could avoid termination of Father's parental rights would be if he could prevail on one of the enumerated exceptions to termination, in this case the father-child relationship under section 366.26, subdivision (c)(1)(B)(i). (*In re Sarah C.*, *supra*, 8 Cal.App.4th at p. 979.) Under this exception, "the parent must show more than frequent and loving contact or pleasant visits." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953–954.) Instead, the "parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent." (*Id.*, at p. 954.) A "juvenile court may reject the parent's claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. . . . Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Such a finding is highly unlikely at this stage of the proceedings.

First, Father did not even commit to trying to establish such relationship. Second, he presented no plan to demonstrate that he had any chance of accomplishing this goal. Third, his only relevant involvement with Child, who was three years old at the time of the 366.26 hearing, occurred more than two and a half years ago. Given these historical facts, particularly his lack of parental contact with Child for more than two years, it is extremely unlikely, if not impossible, to create a father and child relationship in so short a time as four months. It thus would not be in the best interest of Child to delay the benefits stability and permanency afforded by terminating Father's parental rights based on such an improbable benefit.

Child has a chance to be adopted by her maternal grandmother, giving her the opportunity to grow up in a stable household. Even if Father's contact with Child were to increase during the proposed continuance, "a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to

some degree but does not meet the child's needs for a parent.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Father finally claims he was “confused about his rights and responsibilities and was hesitant to participate in the dependency case” due in part to the undetermined status of his paternity and “the court’s and the department’s fluctuating postures on his status” as a parent. But whatever his status, Father himself conditioned his acceptance of a parental role on the results of a paternity test, yet failed to follow through on obtaining a DNA test for more than a year. Any failure to obtain help from DCFS or be informed of the hearings was due to his own failure to keep DCFS informed of his address. Further, although he was aware of the court’s order granting him visitation, he failed to visit Child or display any interest in his parental rights or obligations. Nor did he object to the court’s reducing his status to alleged father. The juvenile court was correct to deny a continuance given Father’s lack of diligence in pursuing a relationship with Child.

#### **DISPOSITION**

The order denying Father’s request for a continuance of the Welfare and Institutions Code section 366.26 hearing and terminating Father’s parental rights is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANNEY, J.