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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re GABRIEL C. et al., Persons Coming
Under the Juvenile Court Law.

B252934
(Los Angeles County
Super. Ct. No. CK76970)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRIDGET M.,

Defendant and Appellant.

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

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Navid Nakhjavani, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

The mother, Bridget M., appeals from the juvenile court's November 20, 2013 order terminating her parental rights. She argues it was error to terminate her parental rights. She asserts the Los Angeles Department of Children and Family Services (the department) improperly removed the children from the maternal grandmother's care. The mother argues the department was required to file a petition under Welfare and Institutions Code¹ section 387 before it could remove the children from the maternal grandmother's home. We affirm because the mother lacks standing to challenge the removal of the children from the maternal grandmother's care.

II. BACKGROUND

On March 25, 2010, the department filed a petition on behalf of then 3-year-old Gabriel and 18-month-old E.C. The petition alleges the mother and father, Adolfo C., had a history of engaging in violent altercations in the children's presence. Although the father violently assaulted the mother, she continued to reside with him and allow him unlimited access to the children.

On May 4, 2010, the juvenile court sustained the petition under section 300, subdivision (b). The sustained count b-1 states: "The [parents] have a history of engaging in violent altercations in the children's presence. The mother was unable to protect the children in that the mother continued to reside with the father and allowed the father to have unlimited access to the children. Despite Juvenile Court Services and remedial [department] [s]ervices the father continues to violently physically assault the mother. Such violent altercations on the part of the father against the mother and the mother's inability to protect the children endangers the children's physical and emotional

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

health and safety and places the children at risk of physical and emotional harm, damage, danger and failure to protect.” The mother retained custody of the children with family maintenance services. The mother was ordered to participate in parenting classes and individual counseling. The father was granted reunification services including parenting classes and individual and domestic violence counseling.

On March 22, 2011, the children were detained from the mother and placed with Anne M., the maternal grandmother. On March 25, 2011, the department filed a section 387 supplemental petition. The supplemental petition alleges: the mother’s new husband, Gilbert T., physically abused Gabriel; Gilbert allegedly struck Gabriel with a close fist in the back and the youngster’s face and buttocks with a belt; and the mother knew Gilbert was physically abusing Gabriel and failed to take action to protect the child. On March 25, 2011, the juvenile court ordered the children detained with the maternal grandmother. On April 12, 2011, the juvenile court sustained the section 387 petition. The juvenile court ordered, “Custody is to be taken from parent, and placed in care of [the department] for suitable placement–RELATIVE.”

On October 12, 2011, the juvenile court terminated the father’s reunification services. The father appealed the October 12, 2011 decision made at the 18-month review hearing which did not set a parental rights termination hearing. On August 14, 2012, we affirmed the juvenile court’s order in an unpublished opinion. (*In re Gabriel C.* (Aug. 14, 2012, B236840) [nonpub. opn.].) On March 19, 2012, the juvenile court granted the mother an additional period of reunification services. The department was allowed discretion to release the children to the mother’s care.

The mother later gave birth to the children’s half siblings, Jade in August 2011, and Noah in September 2012. On September 28, 2012, the department filed a non-detained petition on behalf of Jade and Noah T. The petition alleges Jade and Noah’s father, Gilbert T., physically abused Gabriel. In addition, the mother knew of the abuse but failed to protect Gabriel. On October 31, 2012, the juvenile court sustained the new

section 300 petition filed on behalf of Jade and Noah T. under section 300, subdivision (j).

The October 31, 2012 status report indicated the maternal grandmother was interested in adopting Gabriel and E.C. On January 8, 2013, the maternal grandmother again expressed interest in adopting the children. In the May 1, 2013 section 366.26 report, the department identified the maternal grandmother as the prospective adoptive parent. The maternal grandmother was provided all documents to be completed before her home study could be submitted for approval. The department requested a 60-day continuance to complete the adoption assessment including the Live Scan check and home study.

The July 31, 2013 last minute information for the court document was prepared by children's social worker Sandra Gonzalez. The maternal grandmother stated she no longer wanted to adopt the children. The children were removed from the maternal grandmother and placed in the home of their second cousins, Patricia W. and Joaquin L., in July 2013. The maternal grandmother had no objection concerning the children's placement in a new home. Ms. Gonzalez believed the maternal grandmother was overwhelmed by the children and she had possible depression. In addition, the children suffered from flea or bed bug bites since April 2013, which the maternal grandmother failed to take appropriate steps to control. Although the maternal grandmother had sprayed the carpet, cleaned the apartment and bought Gabriel a new mattress, the children continued to have flea or bed bug bites. In addition, Ms. Gonzalez reported the maternal grandmother inappropriately disciplined E.C. The maternal grandmother placed E.C. in the shower. E.C. was placed there with her clothes on and cold water was turned on to discipline her.

Ms. Gonzalez also expressed concern that there were unapproved adults living with the maternal grandmother. The maternal grandmother allowed an adult daughter, Mercedes, a boyfriend, and their 11-month-old infant to reside in the home. They slept in the bedroom designated for Gabriel. Mercedes and her boyfriend did not have a criminal

record but there was limited space in the two-bedroom apartment. Gabriel stated, “My grandma tells me to make sure that I tell you that my [aunt] sleeps somewhere else and I sleep in the bedroom where my [aunt] Mercedes sleeps.” Ms. Gonzalez also reported the maternal grandmother was struggling to make ends meet because she was unemployed.

Ms. Gonzalez reported the mother’s visits were infrequent and inconsistent since August 2012. The mother visited the children once in April 2013 but did not visit in May 2013. In June 2013, the maternal grandmother reported the mother was trying to visit the children once a week. According to the maternal grandmother, the children were happy to see the mother. But Ms. Gonzales wrote: “Mother also has a pattern of indicating to maternal grandmother and the children that she is going to visit on a certain day and then does not visit or call to say that she is unable to make the visit. The maternal grandmother has indicated that [t]his has been emotionally difficult on the children and that mother’s lack of contact with the children has impacted the children’s behavior and functioning. Per maternal grandmother she believes that child Gabriel has been affected the most as he would become upset and cry when mother did not visit. Maternal grandmother has stated that she also notices that child [E.C.] also is being negatively impacted by the lack of visit by her mother.”

The November 20, 2013 last minute information for the court document stated the department had identified a new prospective adoptive parent, a paternal aunt. The children had been placed with the paternal aunt since October 1, 2013. It was anticipated the adoption home study would be completed by March 1, 2013. The department recommended termination of parental rights so the children could be adopted.

At the November 20, 2013 section 366.26 hearing, the juvenile court found: the children were adoptable; the children were young, healthy and their caretaker, a paternal aunt, was very committed to adopting them; there was no evidence it would be detrimental to terminate parental rights; the mother did not visit the children for the first five months of the year; the mother did not call the children, particularly on important holidays such as Christmas; and the mother did not cancel visits in advance, which

disappointed the children and was detrimental to them. The juvenile court stated: “No evidence has been presented that these children have such a significant emotional relationship with their parents, either of them, that it would be detrimental to sever that relationship. [¶] The children are stable where they are and well-cared for. [¶] There isn’t evidence that the relationship with mother or father is so great that it overcomes the strong preference for [the] children to have to the opportunity of permanency provided through adoption. [¶] And therefore, I order that the parental rights be permanently terminated.”

III. DISCUSSION

At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Our Supreme Court has summarized the juvenile court’s options at the section 366.26 hearing: “In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption (the choice the court made here); (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds ‘that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.’ (§ 366.26, subd. (c)(1).)” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; *In re Hector A.* (2005) 125 Cal.App.4th 783, 790-791.) One exception to adoption is the relative caregiver exception set forth in section 366.26, subdivision (c)(1)(A). (*In re K.H.* (2011) 201 Cal.App.4th 406, 414-415; *In re Xavier G.* (2007) 157 Cal.App.4th 208, 213.) The mother does not challenge the adoptability finding. However, she contends it was error to terminate her parental rights. The mother argues the department failed to file a section 387 petition before removing the children from the maternal grandmother’s care. As noted, the children have been placed with a relative.

interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision.” (*In re K.C.*, *supra*, 52 Cal.4th at p. 236; *In re D.M.*, *supra*, 205 Cal.App.4th at p. 293.) The mother must show prejudicial error affecting her interest to prevail on appeal. (*In re D.M.*, *supra*, 205 Cal.App.4th at p. 294; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) The mother cannot urge errors which affect only another party who does not appeal. The mother does not have standing to challenge the department’s placement decision removing the children from the maternal grandmother’s custody. (*In re K.C.*, *supra*, 52 Cal.4th at p. 236 [father, whose parental rights were terminated, has no standing to challenge juvenile court’s refusal to place the child with the grandparents]; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1561-1562 [parent does not have standing to raise the child’s right to visit her adult siblings after parental rights were terminated]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035 [father has no standing to challenge relative placement order]; see *In re J.T.* (2011) 195 Cal.App.4th 707, 719.)

IV. DISPOSITION

The order under review is affirmed.

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TURNER, P. J.

I concur:

KRIEGLER, J.

MOSK, J., Concurring

I concur.

I believe mother had standing because a reversal of the placement order “advances [her] argument against terminating parental rights” (*In re K.C.* (2011) 52 Cal.4th 231, 238; see *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10), including the relative caregiver exception set forth in Welfare and Institutions Code section 366.26, subdivision (c)(1)(A).) Nevertheless, mother failed to object to the removal of the children from the grandmother without the filing of a Welfare and Institutions Code section 387 petition, and this forfeited that argument. I would affirm the order.

MOSK, J.