Filed 6/28/18 In re J.G. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.G., a Person Coming Under the Juvenile Court Law.	2d Juv. Nos. B285453, B286936 (Super. Ct. No. J070311) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. JEFFREY G., Defendant and Father.	

Jeffrey G. appeals the juvenile court's order denying his request to have his minor child J.G. placed with his paternal great-aunt B.G. following a bypass of reunification services. (Welf. & Inst. Code,[1] § 361.3.) He also appeals the court's

[1] All statutory references are to Welfare and Institutions Code unless otherwise stated.

subsequent orders denying his modification petition (§ 388) and terminating his parental rights to J.G. with a permanent plan of adoption.[2] (§ 366.26.) Father contends (1) the court erroneously found that B.G.was not entitled to preferential placement consideration under section 361.3; (2) the court erred in summarily denying his section 388 petition; and (3) the court erred in failing to find that the parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) applied.

We conclude father lacks standing to challenge the order denying his request to have J.G. placed with B.G. and shall accordingly dismiss the appeal from that order. Otherwise, we affirm.

FACTS AND PROCEDURAL HISTORY

J.G. was born in January 2015. Both J.G. and his mother D.G. (mother)[3] tested positive for amphetamine at the time of the child's birth. J.G. was first declared a dependent of the juvenile court in March 2015. Reunification services were initially denied but were subsequently offered to both parents. In August 2016, J.G. was returned to his parents' custody and his dependency matter was dismissed.

On March 6, 2017, the Ventura County Human Services Agency (HSA) filed another dependency petition as to J.G. after both parents were arrested for being under the influence of drugs. (§ 300, subds. (b)(1), (g), & (j)). The petition alleged that J.G. was living in filthy conditions and that methamphetamine, prescription drugs, needles, and glass pipes had been found in

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[2] On our own motion, we consolidated the appeals for purposes of argument and decision.

[3] Mother is not a party to this appeal.

the child's bedroom and the bathroom. The petition also alleged that both parents had recurring substance abuse issues for which they had resisted treatment and "have failed to follow through with medical appointments for the child" and thus have "place[d] the child at high risk of delays due to his prenatal drug exposure." It was further alleged that mother's parental rights to J.G.'s two half-siblings had been terminated following the termination of reunification services as a result of mother's ongoing substance abuse issues.

J.G. was detained and placed with the same foster parents (the prospective adoptive parents) who cared for him during the first dependency proceedings. Mother and father were awarded supervised visitation and father was also ordered to submit to drug tests and attend AA or NA meetings.

The prospective adoptive parents informed the social worker they would be able to offer J.G. a permanent home if needed. Mother and father wanted J.G. to be placed with his paternal great-aunt B.G., who lives in Malibu. B.G., however, told the social worker "she would like to wait until a decision was made in regards to whether the parents would receive reunification services or if the [HSA] was looking for a permanent placement for the child." B.G. made clear that she was unwilling to take custody of J.G. for at least 30 days. At the social worker's suggestion, B.G. began biweekly supervised visits with J.G. and completed a Resource Family Approval application (§ 16519.5, subd. (a)).

In its report for the jurisdictional and dispositional hearing, HSA recommended that J.G. be declared a dependent of the court and that services to mother and father be bypassed pursuant to

section 361.5, subdivision (b).[4] HSA also noted that J.G. appeared to have retained the attachment he formed with the prospective adoptive parents during his prior dependency and that the prospective adoptive parents were committed to providing the child stability and permanency.

At the conclusion of the June 15, 2017 jurisdiction and disposition hearing, the court denied services to both mother and father under section 361.3 and set the matter for a permanency planning hearing under section 366.26. The resolution of B.G.'s placement request was continued pending the completion of her Resource Family Approval. Following a hearing on August 10, the court found that B.G. was not entitled to the relative placement preference and that placing J.G. with B.G. would not be in the child's best interests.

On October 30, 2017, father filed a section 388 petition (form JV-180) requesting a change of the juvenile court's order bypassing reunification services based on new evidence and/or changed circumstances. On November 3, the court summarily denied the petition after finding that (1) father had failed to

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[4] HSA recommended that services be bypassed as to father pursuant to subdivision (b)(13) of section 361.5, which provides that reunification services need not be provided if there is clear and convincing evidence "[t]hat the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

make a prima facie showing of either changed circumstances or new evidence; and (2) providing father reunification services would not be in J.G.'s best interests.

On December 1, 2017, following a contested section 366.26 hearing, the court terminated mother and father's rights to J.G., found that J.G. was likely to be adopted, and selected adoption as the child's permanent plan. The court rejected father's claim that the parental relationship exception to adoption applied.

DISCUSSION

Relative Placement Preference (§ 361.3)

Father contends the juvenile court erred in denying his request to have J.G .placed with his paternal great-aunt B.G. pursuant to the relative placement preference set forth in section 361.3. HSA responds that father lacks standing to challenge this ruling because it was made after the court had denied father reunification services pursuant to section 361.5, subdivision (b)(13).

We agree with HSA. "[P]arents have no standing to appeal based on section 361.3. 'Section 361.3 gives "preferential consideration" to a relative request for placement, which means "that the relative seeking placement shall be the first placement to be considered and investigated."' [Citation.] Until parental rights are terminated, if the child requires a new placement, any relative who has not been found unsuitable must again receive preferential consideration. [Citations.] *Once a parent's reunification services have been terminated, the parent has no standing to appeal relative placement preference issues.* [Citation.]" (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1459-1460 (*Jayden M.*), italics added.)

The juvenile court ruled on the relative placement preference issue almost two months after it had ordered that father be denied reunification services. Moreover, father fails to show how placing J.G. with B.G. advances an argument against the denial of reunification services or the subsequent termination of his parental rights. (*Jayden M.*, *supra*, 228 Cal.App.4th at p. 1459.) Although there are circumstances in which the placement of a child with a relative may render the termination of parental rights unnecessary, such circumstances are not present where, as here, the relative seeks to adopt the child. (*In re Isaiah S.* (2016) 5 Cal.App.5th 428, 436.) Father's attempts to distinguish *Jayden M.* and establish that the case was incorrectly decided are equally unavailing. Accordingly, father lacks standing to challenge the order declining to place J.G. with B.G. and his appeal from that order must be dismissed. (*Jayden M.*, at pp. 1459-1460.)

Even if father had standing to challenge the order, his claim would fail. When the court issued its ruling in August 2017, only grandparents and adult aunts, uncles, or siblings were entitled to preferential placement consideration under section 361.3. Great aunts, great uncles, and great-grandparents were not included. (*In re M.H.* (2018) 21 Cal.App.5th 1296, 1303.) Effective January 1, 2018, the statute was amended in relevant part to include "all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons . . . ." (§ 361.3, subd. (c)(2); *M.H.*, at p. 1303.) B.G. would thus now be entitled to relative placement preference under section 361.3, but only if J.G. had to be moved from his current placement with the prospective adoptive parents. (*M.H.*, at p. 1303; *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854.)

Moreover, "'[t]he overriding concern of dependency proceedings . . . is not the interest of extended family members but the interest of the child. "[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected." [Citation.] Section 361.3 does not create an evidentiary presumption that relative placement is in a child's best interests. [Citation.] The passage of time is a significant factor in a child's life; the longer a successful placement continues, the more important the child's need for continuity and stability becomes in the evaluation of her best interests.'" (*In re M.H.*, *supra*, 21 Cal.App.5th at pp. 1303-1304.) In declining father's request to have J.G. placed with B.G., the court expressly found that granting the request would not be in the child's best interests. Substantial evidence supports that finding.

Modification Petition (§ 388)

Father claims the court erred in summarily denying his section 388 petition, which sought a change of the court's order bypassing reunification services on the grounds of changed circumstances and/or new evidence. After reviewing the court's ruling for an abuse of discretion (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250), we conclude otherwise.

Under section 388, a parent may petition the juvenile court to change or set aside any previous order based upon changed circumstances or new evidence. In addition to making such a showing, the petitioner must also demonstrate that changing the prior order would be in the child's best interests. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) Although a section 388 petition should be liberally construed, it may be summarily

denied without a hearing if its allegations "do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

Father's petition is insufficient to the extent it refers to circumstances that preceded or coincided with J.G.'s removal. Father also offered evidence that he was currently receiving mental health treatment, that he was "restarting" his pharmaceutical treatment for his attention deficit disorder (ADD), and that "[r]apid improvement is expected with proper treatment." A letter from his treating physician stated that "[w]ithout his medications [father] is unable to focus, becomes disorganized, forgetful, late for work, and even lost his job."

But father failed to explain how an improvement in his ADD symptoms warranted a change in the order bypassing reunification services, which was based on his illegal drug use and his prior refusal to comply with drug treatment. The same is true of father's assertion that he had recently completed an alcohol and drug program. Father's evidence makes no representations regarding the duration or stability of his sobriety. At most, this evidence would demonstrate that the circumstances that resulted in the bypass of services are changing rather than changed. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Even if father had made a prima facie showing of changed circumstances or new evidence, his petition fails to demonstrate that a change in the order denying father reunification would be in J.G.'s best interests. In attempting to make this showing, father essentially offered to prove that J.G. "has spent the bulk of his life with his parents" and that "[w]hen raised by his biological

parents, [J.G.] will have a life where he knows all of his extended family, such as his aunt [B.G.], and others." No mention is made of the strong bond J.G. has with his prospective adoptive parents, which is highly relevant to the determination of the child's best interests. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224.) The court did not abuse its discretion in denying father's petition without a hearing. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250)

Parental RelationshipException
(§ 366.26, subd. (c)(1)(B)(i))

In terminating parental rights and selecting adoption as J.G.'s permanent plan, the court rejected father's assertion that the relationship exception to adoption applied. Father contends the court erred in finding the exception did not apply. We disagree.

"Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship. . . .' (§ 366.26, subd. (c)(1)(B).) '[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.' [Citation.]" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

"Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial

evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination." (*In re Bailey*, *supra*, 189 Cal.App.4th at p. 1314.) The other component of the inquiry—i.e., whether a child's existing relationship with a parent and/or sibling constitutes a compelling reason for determining that the termination of parental rights would be detrimental to the child—is reviewed for abuse of discretion. (*Id.* at p. 1315.)

The court did not err in finding that the parental relationship exception to adoption did not apply. The court found that although father had maintained regular visitation with J.G. and that a bond existed between the two, that bond was not so great as to outweigh the stability and permanency J.G. would achieve with the prospective adoptive parents, with whom he had spent a majority of his young life. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316 ["Evidence of 'frequent and loving contact' is not sufficient to establish the existence of a beneficial parental relationship"].) The court also found that the prospective adoptive parents were much more attentive to J.G.'s special needs than his biological parents had been. As HSA notes, "[t]he evidence offered by father did not come close to showing the deep, powerful relationship that is needed to derail the law's preference for adoption." Father's arguments to the contrary essentially ignore the standard of review. Simply put, "[t]his is not the extraordinary case where an adoption should have been foreclosed" by the parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1352.)

DISPOSITION

The appeal from the August 10, 2017 order denying father's request to have J.G. placed with his paternal great-aunt B.G. is dismissed. The November 3, 2017 order denying father's section 388 petition, and the December 1, 2017 order terminating parental rights, are affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Father.

Leroy Smith, County Counsel, Joseph J. Randazzo and Lisa Canale, Assistant County Counsel, for Plaintiff and Respondent.