Filed 4/27/18 In re J.G. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.G., a Person Coming Under the Juvenile Court Law.	B285140 (Los Angeles County Super. Ct. No. DK05290)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.G., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Emma Castro, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Minor J.G. appeals from the denial of his petition pursuant to Welfare and Institutions Code[1] section 388 to be moved from his current foster placement to the foster home that houses his three brothers. He contends the dependency court abused its discretion in failing to grant a full evidentiary hearing on his petition. He further argues that the court erred in finding he had not met his burden to show a change of circumstances and that it would be in his best interests to move. Faced with the decision between two potentially beneficial homes, we find the court did not abuse its discretion in determining it would be in J.G.'s best interest to remain in the foster placement where he was doing well and had spent most of his young life. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Section 300 Petition*

J.G. was removed from his parents shortly after his birth in February 2016. The Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on March 3, 2016, alleging that both J.G. and his mother, F.R. (mother), tested positive for amphetamines and methamphetamines at his birth. DCFS further alleged that mother had a history of substance abuse and admitted to using methamphetamines approximately two days prior to giving birth to Jordan. J.G.'s maternal half-siblings, sister K.R. (born 2004), and three brothers, Jo.V. (born 2009), Je.V. (born 2012), and

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

Ja.R. (born 2013) were also previous or current dependents of the juvenile court due to mother's substance abuse. Mother's family reunification services as to her other children were terminated in February 2016.

J.G.'s father, R.G. (father), was incarcerated at the time of J.G.'s birth and had a significant criminal history. J.G.'s paternal aunt, who lived in Oregon, requested consideration for placement.

At the detention hearing on March 3, 2016, the court found a prima facie case for detaining J.G. pursuant to section 300, subdivisions (b) and (j).[2] J.G. was placed with his paternal grandparents, with monitored visitation for mother, and then for father after his release from prison. In an amended petition, DCFS further alleged that father had a chronic and unresolved history of substance abuse.

At the adjudication hearing on June 6, 2016, the court sustained the petition and ordered J.G. to remain detained with paternal grandmother.

B. *Supplemental Petition*

DCFS filed a supplemental petition under section 387 on June 28, 2016. The petition alleged that paternal grandmother allowed mother and father to have "unlimited, unmonitored[,] and overnight contact with the child" and that mother continued to abuse illicit drugs. Paternal grandmother told the social worker that she recently had surgery and, "out of desperation"

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2 Neither mother nor father is party to this appeal. As there is no challenge to the court's jurisdictional or dispositional findings, we provide only a limited summary of those proceedings.

while she recovered, she allowed J.G. to stay with father and mother. She also had allowed an earlier unmonitored visit.

As a result, J.G. was removed from paternal grandmother's home and placed into an emergency foster home on June 23, 2016. J.G. was then placed in a different foster home for about five days. On June 29, 2016, he was moved to the foster home of the C. family. In a January 2017 status report, DCFS stated that J.G. had "adjusted well" to the C. family's home. Foster mother, Mrs. C., stated that J.G. initially was very fussy and cried often, but he was now thriving, learning to crawl, and was able to say "papa" and "no."[3]

On March 15, 2017, the court terminated family reunification services for father and ordered permanent placement services for J.G.[4] DCFS continued to investigate possible placement for J.G. with paternal aunt, who remained willing to take the child.

C. *Permanency Plan*

In a last-minute information filed April 4, 2017, a social worker reported that she had discussed permanency options with the C. family and they wanted to adopt J.G. because they loved him. Mr. and Mrs. C. lived with their three adopted children, ages 5, 11, and 13. Paternal aunt also told the social worker that she was no longer willing or able to care for J.G. because she did

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[3] In August 2016, a social worker noted that J.G. was exhibiting "clear signs of prenatal drug exposure," including constant body movement, difficulty staying asleep, and easily becoming startled. J.G. was diagnosed with developmental delays and received services from DCFS as a result.

[4] Previously, the court denied family reunification services for mother in July 2016.

not have a bond with him. She approved of J.G.'s adoption by the C. family. DCFS concluded that the recommended permanency plan for J.G. was his adoption by the C. family.

J.G. had been having one visit per month with his brothers Jo.V., Je.V., and Ja.R. (the brothers) at the home of the P. family. The P. family had fostered the brothers since April 2015 and were seeking to adopt them. Mrs. P. reported that the sibling visits were going well.

DCFS filed another last-minute information on May 10, 2017. The social worker noted that Mr. and Mrs. C. "have worked diligently to seek out necessary services" for J.G., including weekly baby massage therapy to help with his symptoms, and kept all related appointments for services and medical care. The report stated that the C. family and J.G. "have grown a strong and loving bond with each other." The social worker observed J.G. "crying and reaching out his arms to be held by Mr. and Mrs. C. As soon as they hold him, child J[.G.] will immediately stop crying." The social worker further observed J.G. was often smiling and happy with Mr. and Mrs. C. and that their other children were attached to J.G. and would carry him and kiss him on the cheek. Mr. and Mrs. C. reiterated that they loved J.G. very much and wanted to provide him a permanent home. They agreed to allow ongoing contact between J.G. and his brothers and understood the importance of maintaining that sibling relationship. J.G. had no contact with his siblings other than the monthly visits.

The social worker also reported that she had reached out to Mrs. P. regarding placement at the time of J.G.'s detention in February 2016. Mrs. P. stated that "she had a lot going on" caring for J.G.'s three brothers, including their multiple weekly

medical and therapy appointments. At the time, "it was determined that Mrs. [P] would be too overwhelmed if child [J.G.] was placed in her home." As of May 2017, the brothers had approximately seven separate weekly appointments. In addition, Mr. and Mrs. P. had three other biological and adopted children in their home. DCFS noted that they would need a licensing exemption to be able to have J.G. placed in their home as a seventh child. Following these assessments, DCFS again concluded that it would be in J.G.'s best interest to allow him to remain with the C. family.

At a progress hearing on May 10, 2017, the court set the matter for mediation and ordered a supplemental report from DCFS to address whether the recommendation was permanent placement for J.G. with the C. family or the P. family.

DCFS filed a last-minute information on June 28, 2017. It reported the same assessment of the C. and P. families and again concluded that it would be in J.G.'s best interest to remain with the C. family, where he had been for the past ten months. Mr. and Mrs. P. and Mrs. C. attended mediation on June 30, 2017. They entered into a visitation agreement under which the party who did not receive custody of J.G. would be allowed visitation twice a week.

D. *Section 388 Petition*

The court scheduled a permanent plan hearing under section 366.26 for July 12, 2017. The morning of the hearing, counsel for J.G. filed a request to change court order pursuant to section 388 (section 388 petition). He requested that J.G. be transitioned to permanent placement with his siblings with the P. family. The request noted the following changed circumstances: J.G.'s brothers' "medical conditions have

stabilized" and J.G. was not placed with his paternal aunt, as previously planned. In light of those circumstances, Mr. and Mrs. P. were now willing to adopt J.G.

J.G.'s counsel attached to the section 388 petition a letter from the social worker from the Foster Family Agency assigned to the P. family. She related her observations that Mr. and Mrs. P. provided "exceptional care" to the brothers "in meeting their emotional, developmental, and medical needs." She stated that her agency supported placing J.G. with the P. family, "should the Court and DCFS determine this to be in [J.G.'s] best interest." She further noted that the P. family would have to obtain a capacity exception to take in J.G. as a seventh child, but nevertheless believed Mr. and Mrs. P. "can provide [J.G.] with the same exceptional care they have provided" to his brothers. The petition also included a letter from Jo.V. stating that he loved his brother and wanted them to live together, as well as photos of the brothers together.

In anticipation of the scheduled permanent plan hearing, DCFS submitted its section 366.26 report on July 12, 2017. At this time, J.G. had been living with the C. family for over a year. DCFS reported that J.G. "has grown a strong and loving attachment toward Mr. and Mrs. C.," and would call them "mama" and "pa." The social worker observed that J.G. would immediately seek out Mrs. C's attention after a visit with mother, and would "hold on tightly to Mr. C." and lay his face "against Mr. C.'s face and chest." Mr. and Mrs. C. "continue to express their willingness and commitment to providing child [J.G.] with a permanent and loving home through adoption." DCFS also noted that J.G. had celebrated "his first birthday and several holidays" with the C. family. Accordingly, DCFS recommended that the

court terminate parental rights for mother and father and place J.G. for adoption with the C. family.

DCFS also filed a last-minute information reporting on the adoption home study for the C. family. The social worker stated that it was "highly likely" that J.G. would be adopted by Mr. and Mrs. C., noting that they had previously adopted through DCFS and appeared committed to adopting J.G. The report noted that Mr. C. had a criminal history, but that a criminal waiver had been completed and approved. Mr. and Mrs. C. also had four child welfare referrals between 2008 and 2015, all of which were closed as inconclusive or unfounded. The social worker found that Mr. and Mrs. C. "demonstrate a strong commitment to meet [J.G.'s] needs" and had integrated the child into their home. The adoption social worker observed that J.G. "seemed comfortable and well attached" to Mrs. C., and Mrs. C. was "affectionate and attentive" to J.G.'s needs.

Upon receipt of J.G.'s section 388 petition on the morning of July 12, 2017, the court granted J.G.'s request for a hearing on the petition and put the matter over along with the section 366.26 hearing to the afternoon. At the hearing, the court first addressed the section 388 petition. Counsel for DCFS stated DCFS's position that J.G. not be moved. J.G.'s counsel argued that the fact that J.G.'s placement with paternal aunt was no longer going forward constituted a material change in circumstances. He noted that the visits between J.G. and his brothers were going well. He further argued that it would be in J.G.'s best interests to grow up with his siblings. He admitted that the C. family was "doing a fantastic job," but that if they were allowed to adopt J.G., "we cannot guarantee that the children's relationship will continue." He also noted that J.G.

could continue to visit the C. family pursuant to the mediated agreement. Mother's counsel asked the court to deny the petition, noting that J.G. was extremely bonded to Mrs. C. and he spoke Spanish with the C. family but did not with the P. family, "which would further make this a traumatic and disorienting move." Father's counsel also asked the court to deny the petition, noting that the siblings could continue to see each other under the mediated agreement.

The court noted that J.G. already had several placements "in his very short life," and had been living with the C. family since he was four months old, "in a stable, consistent, loving home where the evidence clearly shows that he has a very strong attachment and bond to, not only the children that reside in that home, but, more importantly, to his adult caretakers, Mr. and Mrs. C[.]." The court further noted that Mrs. P. had previously indicated that she was unable to provide a home for J.G. "as she had many commitments, including therapy and medical procedures" for J.G.'s brothers. Counsel and DCFS were aware as of March 2017 that paternal aunt was not willing to take J.G. and that she approved of his adoption by the C. family. In its May 2017 report, DCFS again concluded that it was not in J.G.'s best interest to be placed with the P. family, based on the needs of his brothers. The court further noted that Mr. and Mrs. P. had six children residing in their home, three of whom had special needs, and that J.G. also had special needs.

The court acknowledged that "much research has been conducted on the importance of sibling relationships." The court continued, "the court realizes that sibling relationships are important. . . . But of equal importance in this case, particularly to the child J[.G.], is his relationship with the family that he has

been provided care for [*sic*] for the last year. This is the only family that he knows." The court noted the mediation agreement, but reduced the required visitation between J.G. and his brothers to every other Saturday for four hours, adding it had "no doubt that [Mrs. C.] will permit more visits than what the court has just ordered."

The court denied the petition, finding by a preponderance of the evidence that there was "no new evidence provided" and the "requested relief to transition child [J.G.] to the siblings' foster home is not in the child's best interest."[5]

J.G. filed a timely notice of appeal.

DISCUSSION

A. *Governing Principles*

Once the court terminates reunification services, "the focus shifts to the needs of the child for permanency and stability"; accordingly, the court sets a hearing pursuant to section 366.26 to select and implement a permanent plan for the child. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*), citing §§ 361.5, subd. (f), 366.21, subds. (e) & (g), 366.22, subd. (a)).) Section 388 "provides a means for the court to address a legitimate change of circumstances" during the time period between termination of reunification services and termination of parental rights. (*Ibid.*) Under section 388, "[a]ny parent or other person having an interest in a [dependent] child . . . or the child himself or herself . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing

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[5] Later, during the section 366.26 hearing, the court terminated parental rights for mother and father. The court also designated Mr. and Mrs. C. as the prospective adoptive parents.

to change, modify, or set aside any order of court previously made." (§ 388, subd. (a)(1).)

The party seeking modification must "make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]" (*Marilyn H., supra*, 5 Cal.4th at p. 310.) At the hearing on a section 388 petition, "the burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interest of the child. [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).) The trial court's determination that the proposed change in placement was not in the child's best interest will "not be disturbed on appeal unless an abuse of discretion is clearly established." (*Id.* at p. 318.)

B. *The Court Granted a Hearing on the Section 388 Petition*

J.G. contends the court erred in denying him a full evidentiary hearing on his petition. He asserts that the court limited the hearing to argument only. We find his contention is not supported by the record.

As discussed above, the July 12, 2017 hearing was originally scheduled as a permanent planning hearing pursuant to section 366.26, but then expanded to include J.G.'s section 388 petition filed that morning. At the start of the hearing, the court stated it was "going to grant the 388 for hearing and hear argument only on this issue." Next, the court summarized the evidence of changed circumstances set forth in J.G.'s petition and its attachments, and stated it would accept the petition and attachments. The court further took judicial notice of all prior

minute orders, case plans, sustained petitions, and prior dependency court reports in J.G.'s case.

The court then asked counsel for DCFS whether she had any evidence to present. She requested that the court take judicial notice of the proposed mediation agreement, which the court did. The court next asked whether counsel for the mother or father had any evidence to present. Both counsel said no. The court then turned to counsel for J.G., stating, "Mr. Mudd, I'll hear from you." At that point, J.G.'s counsel began his argument. He did not offer to present further evidence or request the ability to do so.

On this record, we disagree with J.G.'s contention that the court denied him the right to present evidence in support of his petition. While the court's statement that it would hear "argument only" initially may have been unclear, the court immediately clarified its intent by admitting J.G.'s evidence in support of his petition and then asking counsel for DCFS, mother, and father whether they had evidence to submit. When the court turned back to J.G.'s counsel, he began his argument. Apart from the evidence he submitted, which the court admitted, J.G. has made no showing—either in the trial court or on appeal—of any additional evidence he intended to present. We therefore conclude that the trial court properly held an evidentiary hearing on J.G.'s petition.

C. *No Abuse of Discretion in Denying Petition*

J.G. also contends that the court abused its discretion in finding he had not met his burden to establish that changed circumstances warranted a change in his permanent placement plan. We disagree.

The overriding concern in dependency proceedings is the best interest of the child. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855; see also *Stephanie M.*, *supra*, 7 Cal.4th at p. 320 ["In the context of a motion pursuant to section 388 for change of placement after the termination of reunification services, the predominant task of the court was to determine the child's best interest. . . ."].) Moreover, "[t]he 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. [Citation.]" (*Lauren R., supra*, 148 Cal.App.4th at p. 855.)

Here, as acknowledged by the court and parties, the court was presented with two good options for permanent placement for J.G.: first, the foster family with whom he was fully bonded and which had diligently cared for him since he was four months old; second, the foster family providing excellent care for his three half-brothers. The court recognized the importance of maintaining J.G.'s relationship with his siblings, but found that the relationship could be protected under the mediation agreement and further relied on evidence of the C. family's willingness to cooperate over and above those requirements. In addition, the court was entitled to give substantial weight to the evidence of J.G.'s attachment to, comfort with, and affection for his foster family, his need for stability, and the C. family's demonstrated commitment to providing for his needs. (See, e.g., *Stephanie M., supra*, 7 Cal.4th at p. 326 ["a dependent child has an interest in continuity and stability in placement"].)

J.G. emphasizes that although the P. family was previously unable to take custody of J.G., at the time of the section 388

hearing they wanted to adopt J.G. because the medical needs of the brothers had lessened. The court considered this evidence, along with the repeated findings by DCFS that Mr. and Mrs. P. were already dealing with the needs of six children, three with special needs, and would be overwhelmed by adding a seventh child (also with special needs) to the home. J.G. suggests that the court should have weighed the importance of his relationship with his brothers more heavily in determining his best interests. Conversely, he downplays the importance of stability and bonding with the C. family, arguing that J.G. would "not remember" his time with the C. family "five years from now." These were factors for the trial court to weigh; we will not substitute our judgment or reweigh the evidence. (See *Stephanie M., supra*, 7 Cal.4th at p. 319 [finding that "the juvenile court properly evaluated the evidence, . . . placing special weight on the child's need for stability" and reversing the Court of Appeal where it "improperly reweighed the evidence and substituted its judgment for that of the juvenile court"].)

The record demonstrates that the court carefully weighed all of the evidence and made a determination it felt was in the best interests of the child. We do not find it abused its discretion.

DISPOSITION

The order denying J.G.'s section 388 petition is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J. WILLHITE, J.