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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

R.B.,

Petitioner,

v.

SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B245586

(Los Angeles County
Super. Ct. No. CK76077)

ORIGINAL PROCEEDINGS in mandate. Philip L. Soto, Judge.

Petition denied.

Law Office of Timothy Martella Los Angeles Dependency Lawyers,
Rebecca Harkness and Hans Wei-Han Chen for Petitioner.

No appearance for Respondent.

Office of the County Counsel, John F. Krattli, County Counsel, James M.
Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel,
for Real Party in Interest.

R.B. (father) seeks writ review of jurisdictional findings and dispositional orders removing four-year-old S.P. from his custody, denying family reunification services and setting a permanency planning hearing (Welf. & Inst. Code, § 366.26) on February 20, 2012.¹ (Cal. Rules of Court, rule 8.452.) We deny father's petition.

FACTS AND PROCEDURAL BACKGROUND

Mother has three children, four-year-old S.P., three-year-old Z.P. and one-year-old A.G.² Social reports filed by the Department of Children and Family Services (the Department) indicate S.P. previously was taken into protective custody on January 23, 2009, after mother left the child with an unrelated adult female who was under the influence of methamphetamine. S.P. was released to father. Mother failed to reunify and, in December of 2009, the juvenile court granted father sole custody of S.P.

On February 28, 2010, the Department received a referral alleging general neglect of Z.P. and he was detained from mother on July 1, 2010. On July 6, 2010, the Department filed a dependency petition which alleged neglect of Z.P. due to mother's drug abuse. Mother fled with Z.P. and the juvenile court issued a protective custody warrant for Z.P.

In December of 2011, A.G. was detained after he was born with a positive toxicological screen for methamphetamine. The juvenile court declared A.G. a dependent child and denied mother family reunification services.

On May 29, 2012, the Department received a referral indicating mother, a parolee with an outstanding arrest warrant, had been located in a motel in Chino. Police officers found methamphetamine and drug paraphernalia in mother's motel room within access of S.P. and Z.P. Mother was arrested for violation of parole. S.P. and Z.P. were taken into protective custody and placed in foster care.

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

² R.B. is not the father of Z.P. or A.G.

Mother admitted to a social worker she had smoked methamphetamine that morning and that she habitually used methamphetamine after she absconded with Z.P. from a rehabilitation facility in 2010. Mother stated father recently had been taken into custody and father's girlfriend, Heather, brought S.P. to the motel to visit mother and Z.P. Mother indicated S.P. just happened to be visiting when the officers arrived.

On June 1, 2012, the Department filed a dependency petition on behalf of S.P. based on mother's permitting the child to have access to drugs and drug paraphernalia, mother's history of substance abuse and father's incarceration and failure to make an appropriate plan for her care. (§ 300, subds. (b) & (g).)

When interviewed for the jurisdiction report, mother indicated S.P. and Heather had just arrived when the police appeared. Mother described Heather as a good person and indicated Heather was present to monitor mother's visit with S.P. Mother believed father had made an appropriate plan for S.P.'s care as S.P. had lived with Heather since the child was four months of age and S.P. calls Heather mom.

Father stated he was not aware he was going to be remanded the day he was taken into custody as father had gone to court on the case several previous times. Father stated Heather went to mother's motel only to meet paternal great-grandmother. Father believed mother had duped Heather into thinking paternal great-grandmother would be present to take custody of S.P. Father claimed he had made an appropriate plan for S.P.'s care as Heather is the only mother S.P. knows. Father stated Heather's children are doing well and she is the mother of father's son. Although father and Heather no longer were together, father described Heather as a "great mom." Father asked that S.P. be placed in Heather's care and stated he had given Heather a "notarized letter." Father had a long criminal history and indicated he faced the possibility of six years and four months in prison.

A social report filed June 22, 2012, indicated Heather was interviewed after the Department received a referral alleging she neglected and failed to supervise her children. Heather indicated social workers visited her home and advised her a letter from father giving Heather custody of S.P. was ineffective because it was not notarized. Believing social workers would not remove S.P. from the care of a relative, Heather called S.P.'s paternal great-grandmother who indicated she would "come down and get" S.P. Mother thereafter told Heather the paternal great-grandmother would be present at mother's motel room to take custody of S.P. Shortly after Heather arrived with S.P., police officers arrested mother. Heather indicated she has known father for 15 years and was in a relationship with him for two years, they have remained friends and they have a three-month-old son. Heather indicated she recently visited father in jail and had the letter regarding custody of S.P. notarized. Heather indicated she has been a consistent mother figure to S.P. and wished to care for her.

The Department concluded the allegations against Heather were unfounded. However, Heather's criminal history included a conviction of burglary and a criminal waiver was required before her home could be evaluated for the placement of S.P.

Reports filed August 16, 2012, indicated father had pleaded no contest to a violation of Penal Code section 22210, manufacturing, importing or selling any instrument or weapon of the kind commonly known as a billy, and had been sentenced to two years in state prison, doubled to four years due to a prior conviction within the meaning of Penal Code section 667, subds. (b)-(i), and had been granted presentence custody credit of 138 days.

On August 16, 2012, the juvenile court granted father monitored telephone calls with S.P. as arranged by the social worker.

On September 7, 2012, father appeared in custody and the juvenile court conducted a contested adjudication. The parties stipulated father would testify he gave custody of S.P. to Heather and the plan was for Heather to care for S.P. until father's release. Counsel for the Department argued Heather took S.P. to mother's

motel room and remained there despite the presence of drugs and drug paraphernalia. Also, the plan for S.P.'s care was inappropriate because Heather was not in a position to obtain medical care or make decisions on the child's behalf.

The juvenile court sustained the petition and continued the matter for a contested disposition hearing.

The disposition report indicated mother recently had tested positive for methamphetamine and a parole warrant had issued a for her arrest. Father waived his appearance for the disposition hearing.

At the hearing, counsel for the Department asked the juvenile court to deny mother and father family reunification services, noting father had been sentenced to four years in state prison and would not be able to reunify with S.P. within the statutorily allotted time. Counsel for S.P. joined in the Department's request. Father's counsel objected to the denial of family reunification services for the record and conceded father faced "quite a lengthy criminal sentence."

The juvenile court declared S.P. a dependent and ordered her removed from parental custody. The juvenile court denied father family reunification services pursuant to section 361.5, subdivision (e)(1), noting the length of father's incarceration prevented reunification. The juvenile court also ordered mother and father not to have contact with S.P. until they had contacted the Department and pending further order of the juvenile court.

CONTENTIONS

Father contends the jurisdictional findings were not supported by substantial evidence, father was entitled to family reunification services and the order for no contact with S.P. was an abuse of discretion.

DISCUSSION

1. *The uncontested allegations sustained as to mother support dependency jurisdiction as to S.P. even if the allegations as to father were reversed.*

As noted by the Department, a jurisdictional finding against one parent is good against both. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491; *In re P.A.* (2007)

155 Cal.App.4th 1197, 1212; *In re Alysha S.* (1996) 51 Cal.App.4th 393.) Because there are sustained allegations against mother which are not contested, reversal of the jurisdictional findings as to father “will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief.” (*In re I.A.*, *supra*, at p. 1491.)

However, even overlooking the uncontested sustained allegations, substantial evidence supports the jurisdictional findings as to father.

2. *The jurisdictional findings as to father are supported by substantial evidence.*

To declare a child a dependent under section 300, the juvenile court must find the allegations of the petition true by a preponderance of the evidence. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; § 355, subd. (a).) Jurisdictional findings are reviewed for substantial evidence. We resolve all conflicts and make all reasonable inferences in favor of the order under review. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

As relevant here, section 300, subdivision (g), permits juvenile court jurisdiction when “the child’s parent has been incarcerated . . . and cannot arrange for the care of the child” *In re Aaron S.* (1991) 228 Cal.App.3d 202 explained, “[S]ection 300, subdivision (g) applies when, at the time of the hearing, a parent has been incarcerated and does not know how to make, or is physically and mentally incapable of making, preparations or plans for the care of his or her child.” (*Id.* at p. 208.)

Father claims he made suitable arrangements by placing S.P. in Heather’s care. Father notes the referral against Heather was deemed unfounded and claims Heather was monitoring a court-ordered visit with mother when police arrived and arrested mother.

However, after social workers advised Heather a letter father gave her regarding custody of S.P. was ineffective, Heather attempted to place the child with

paternal great-grandmother. Heather stated she took S.P. to mother's motel room only to transfer custody of the child to paternal great-grandmother. Father similarly stated his belief mother had lured Heather to the motel on the false pretense paternal great-grandmother would be there to take custody of S.P.

Thus, although father claims his plan was to leave S.P. with Heather, the record indicates Heather's plan was to transfer custody of S.P. to paternal great-grandmother. Further, Heather had a burglary conviction which necessitated a waiver before the Department could assess her home for placement of S.P. Additionally, although father and Heather spoke of the notarized letter father had provided Heather regarding the care and custody of S.P., the record does not indicate the document granted authority to make medical or educational decisions for S.P.

For these reasons, the juvenile court properly could conclude father failed to make an appropriate plan for S.P.'s care during his period of incarceration, thereby rendering S.P. a dependent child within the meaning of section 300, subdivisions (b) and (g). (See *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Athena P.* (2002) 103 Cal.App.4th 617, 629-630.) These circumstances also support the juvenile court's removal of S.P. from father's custody. (See § 361, subd. (c)(5).)

3. *The dispositional orders are supported by the record.*

The juvenile court denied father family reunification services, citing the length of his prison sentence. Father contends this order, as well as the order directing father not to contact S.P. without first contacting the Department and having the matter brought before the juvenile court to address visitation, was erroneous. We disagree.

Regarding the denial of family reunification services, section 361.5, subdivision (e)(1) states, in pertinent part: "If the parent or guardian is incarcerated [or] institutionalized, . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child . . .

the length of the sentence . . . the likelihood of the parents' discharge from incarceration or institutionalization . . . within the reunification time limitations”

Here, father was sentenced to a second strike term of four years in prison. He therefore was entitled only to 20 percent custody credit against the term. (Pen. Code, § 667, subd. (c)(5).) Given that father had only a few months of presentence custody credit, it is apparent father will be incarcerated well beyond the maximum reunification period which, absent extraordinary circumstances, must end 18 months after the child is detained. (§ 361.5, subd. (a)(3); *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.) Given these facts and S.P.'s young age, we find no abuse of the juvenile court's discretion in the denial of family reunification services.

With respect to the order directing father not to have contact with S.P. until father contacted the Department and the matter was brought before the juvenile court, father forfeited the right to raise this issue on appeal as he failed to object in the juvenile court. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 fn. 2.)

Moreover, the juvenile court did not deny father visitation. It merely delayed a determination of the parameters of father's visitation pending father's contact with the Department and a further hearing. Because visitation with father would require transporting S.P. to the prison where father is incarcerated, it was not unreasonable for the juvenile court to require father to contact the Department before the juvenile court establishing a visitation schedule. (See *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104 [“The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion.”].)

DISPOSITION

The petition for extraordinary writ is denied. This decision is final immediately as to this court. (Cal. Rules of Court, rule 8.490 (b)(3).)

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.