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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ARABELLA V. et al., Persons
Coming Under the Juvenile Court Law.

B251697
(Los Angeles County
Super. Ct. No. CK87921)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAVID V. et al.,

Defendants and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Appeals dismissed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant David V.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant Misty V.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

David V. (Father) appeals from the juvenile court's September 16, 2013 order terminating his parental rights over minors Arabella V. (born in 2000) and Alexander V. (born in 2003), contending that he has standing to challenge the order terminating his parental rights because his interests are directly affected by the order. The sole error he attributes to the trial court is that the minors did not appear at the Welfare and Institutions Code section 366.26 hearing to terminate parental rights and the court erred by failing to ascertain the minors' wishes regarding adoption.¹ Misty V. (Mother) appeals from the order terminating her parental rights on the same grounds.

We conclude that Father and Mother lack standing to appeal any purported error arising from the minors' nonappearance at the section 366.26 hearing and the court's purported error in failing to ascertain the minors' wishes regarding adoption. We therefore dismiss the appeals.

BACKGROUND

A. Background leading up to the section 366.26 hearing

Because the issue on appeal concerns Father's and Mother's standing to appeal based on the alleged error of the trial court, we summarize only briefly the background leading up to the section 366.26 hearing.

On May 20, 2011, DCFS filed a section 300 petition on behalf of the minors. As agreed to by Mother and Father pursuant to mediation, and found true by the juvenile court, paragraph b-1 of the petition alleged under section 300, subdivision (b) (failure to protect) that Mother had been severely depressed; had demonstrated suicidal behavior; had threatened to harm herself; and had spoken of harming the minors. Mother had been hospitalized for evaluation and treatment of her mental health condition and had not provided the minors with adequate care, resulting in the minors being dirty, wearing dirty clothes, and residing in an unkempt home.

The initial detention report of May 19, 2011 explained that Mother "suffers from severe depression and she has a history of hospitalization for attempted suicide due to her

¹ Undesignated statutory references are to the Welfare and Institutions Code.

depression. At the time of the meeting mother reported that she ran out of her medication and she stopped taking her medication. Mother did not follow up with her mental health treatment as previously requested by her doctor. This caused mother's mental health condition to deteriorate, mother became more depressed and her suicidal ideations intensified. At the time of the meeting mother admitted that she had suicidal thoughts. That she thought about killing herself and her children." In May 2011, Mother was determined to be at high risk of suicide and was hospitalized under section 5150.

As found true by the juvenile court, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Father had an unresolved history of substance abuse.

As found true by the juvenile court, paragraph b-3 of the petition alleged under section 300, subdivision (b) that Father had bipolar disorder and had "exhibited delusional behavior during an episode of manic, violent behavior when he kicked down the neighbor[s'] doors in the apartment complex where the [minors] reside."

The initial detention report of May 19, 2011, explained: "[Father] is Bipolar and has failed to take his medication as prescribed by his doctor It was reported to DCFS that [Father] abuses prescription medication. . . . [O]n 3/16/11 [Father] was arrested after he became violent outside his apartment building. [Father] violently kick[ed] down his neighbors doors and he tried to attack a police officer. He claimed to be the 'Mayor of Glendale' and when he was asked why he wanted to get into the neighbors apartment [Father] responded 'Because I wanted to fuck the lady in there.'"

Allegations made pursuant to section 300, subdivisions (a) and (j) were stricken pursuant to the mediation agreement.

On July 7, 2011, the juvenile court declared the minors dependents of the juvenile court; removed them from Mother's and Father's custody; placed them in foster care, and granted Mother and Father monitored visitation, with DCFS having discretion to liberalize visits to unmonitored. The court ordered Mother and Father to maintain mental health management through medication and therapy; and to participate in individual counseling to address case issues, including a substance abuse program, and random alcohol and drug testing.

At some point Mother moved to Colorado and the minors stopped having visits with her. The minors had “limited” telephonic contact with Mother and none with Father, who had been incarcerated since August 6, 2012. The minors had not visited Father at least since the time of his incarceration. Mother and the foster parents reported the minors had “opted to not have much communication with [Mother and Father], based on their personal feelings.” Mother had not participated in any court-ordered services and told DCFS she did not know when she would return to California.

Upon Mother’s and Father’s failure to participate in the court-ordered programs, including failure to appear for drug testing, the juvenile court terminated Mother’s reunification services on November 6, 2012, and Father’s reunification services on November 20, 2012.

From June 10, 2013, to the date of the ultimate section 366.26 hearing, the minors were placed with a couple who wanted to adopt them. Arabella was taking ballet and jazz lessons at a dance studio, enjoyed school, had made good friends, and was well-adjusted. Alexander was participating in soccer and was a bright and excellent student with no behavioral problems. The minors had made a smooth transition into their new home and had established a close bond with the family. The minors were “looking forward to being adopted and being a permanent part of their family.” On August 24, 2013, the minors informed DCFS that they wanted to be adopted by their foster parents.

Meanwhile, Father had been released from jail and was living in Compton, but had made no attempts to contact the minors. Mother still lived in Colorado and telephoned sporadically, but the minors refused to talk to her.

B. The section 366.26 hearing

The first section 366.26 hearing was set for March 18, 2013. The children were present. The hearing was continued to September 16, 2013, while the minors were present. At the ultimate section 366.26 hearing on September 16, 2013, the minors were not personally present but were represented by counsel. The juvenile court noted the minors were not present. The court found that notice of the hearing to the minors had been proper. Mother’s attorney argued against the termination of Mother’s parental

rights and asked for a contested hearing and that the minors be present. Mother's attorney made an offer of proof that Mother could satisfy one of the statutory exceptions to the termination of parental rights, indicating Mother had been in regular contact with the minors. However, Mother's attorney acknowledged that Mother had had no visits with the minors between March 2013 and September 2013. The court found that Mother's offer of proof failed, concluding that she had failed to show regular and consistent visitation and contact.

Father's attorney objected to the termination of Father's parental rights, requested the matter be set for a contested hearing, and made an offer of proof that Father could satisfy an exception to the termination of parental rights, saying Father had been telephoning the minors. Father's counsel acknowledged that since father had been released from jail in March 2013, he had only had telephonic contact with the minors. The juvenile court found that Father's offer of proof failed as well.

The minors' attorney submitted on DCFS's recommendation to terminate parental rights.

The juvenile court stated it had considered the record; found that returning the minors to the parents would be detrimental to the minors based on clear and convincing evidence; found the minors were adoptable; terminated Mother's and Father's parental rights, and transferred the minors' care to DCFS for the purposes of adoptive planning and placement and finalization of the adoption.

The transcript of the September 16, 2013 hearing establishes that neither Father nor Mother brought to the trial court's attention any failure on the court's part to inquire into whether the minors had been given an opportunity to attend or wished to be present at the hearing.

Mother and Father appealed.

DISCUSSION

Father and Mother lack standing to raise the issues of notice and the minors' nonappearance at the section 366.26 hearing

Father and Mother claim they have standing to raise the issues of notice to the children and the juvenile court's failure to inquire into the minors' absence from the section 366.26 hearing. We disagree.

“““In juvenile dependency proceedings, as in civil actions generally [citation], only a party aggrieved by the judgment has standing to appeal. [Citations.]”” [Citations.] ‘To be aggrieved, a party must have a *legally cognizable interest* that is injuriously affected by the court’s decision. [Citation.] The injury must be immediate and substantial, and not nominal or remote.’ [Citation.] ‘An appellant must show prejudicial error affecting his or her interest in order to prevail on appeal. [Citation.] An appellant cannot urge errors which affect only another party who does not appeal.’ [Citation.] [¶] ‘A “lack of standing” is a jurisdictional defect.’ When an appellant lacks standing, the appeal is subject to dismissal. [Citation.]” (*In re D.M.* (2012) 205 Cal.App.4th 283, 293–294.)

A minor who is the subject of a juvenile court hearing is entitled to be present at the hearing. (§ 349, subd. (a).) “If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.” (§ 349, subd. (d).) It should be noted that these rights are conferred on the minors, not on the parents or others.

In re Desiree M. (2010) 181 Cal.App.4th 329, 332–333 (*Desiree M.*), is directly on point. In that case, the two minors had been removed from the mother and placed with a maternal aunt, by whom they wanted to be adopted. The minors were not present at the section 366.26 hearing, but were represented by counsel. The juvenile court found that notice findings had been made. After the minors’ counsel advised the juvenile court that both minors had stated they wanted to be adopted by the maternal aunt, the juvenile court terminated parental rights. The mother appealed the judgment terminating her parental rights, contending that the minors had not been properly notified of the section 366.26 hearing and the juvenile court had not made the statutorily required inquiry into the reason for their absence from that hearing. (*Desiree M.*, *supra*, 181 Cal.App.4th at p. 331.)

The court in *Desiree M.* held that the mother did not have standing to raise the notice issues on behalf of the minors, noting that “[i]n general, ‘[a]n appellant may contest only such orders which injuriously affect him or her. The appellant cannot urge errors which affect only another party who does not appeal.’ [Citations.] ““For a valid appeal one must be injuriously affected by the court’s ruling in an immediate and substantial manner, and not as a nominal or remote consequence.”” [Citation.]” (*Desiree M.*, *supra*, 181 Cal.App.4th at p. 333.) The court explained in *Desiree M.*: “[Mother is] not asserting an exception to termination of parental rights that she bears the burden to establish. Rather, she is attempting to assert a statutory right that belongs solely to [the minors]. [Citation.] Whether [the minors] received notice of the continued 366.26 hearing and whether the court failed to inquire as to their absence from that hearing are matters affecting their rights, not [Mother’s]. [The minors] have been represented by counsel at all proceedings in this case, and have not appealed.” (*Id.* at p. 334.)

Further, the court in *Desiree M.* held that the mother had forfeited any right to raise the notice and inquiry issues by failing to bring the issues to the attention of the juvenile court, which could have remedied any error. (*Desiree M.*, *supra*, 181 Cal.App.4th at p. 334.)

Under *Desiree M.*, we conclude that Father and Mother lacked standing to raise the issues of the minors' absence from the section 366.26 hearing or the court's lack of inquiry as to their opportunity to attend. In addition, had Mother or Father brought the matter to the attention of the juvenile court, it could have remedied any error. (*In re Desiree M., supra*, 181 Cal.App.4th at p. 334.) They did not. Thus, Mother and Father forfeited their right to raise the issues on which they base their appeals.

Accordingly, the appeals are dismissed due to lack of standing. (*In re D.M., supra*, 205 Cal.App.4th at pp. 293–294 [appeal subject to dismissal where appellant lacks standing].)

DISPOSITION

The appeals are dismissed.

NOT TO BE PUBLISHED.

MILLER, J.*

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.