

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

| |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.D., a Person Coming
Under the Juvenile Court Law.

B276948
(Los Angeles County
Super. Ct. No. DK12864)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Mother appeals from the juvenile court's order terminating her parental rights. Mother argues the court should have allowed her son A.D.'s maternal great aunt to obtain legal guardianship rather than adopt the child, thus preserving mother's parental rights. Mother claims maternal great aunt did not in fact wish to adopt, and only did so out of fear that the court would otherwise remove the child from her. The record does not support mother's position. Accordingly, we affirm the court's order.

BACKGROUND

A.D. was born in 2013. At the time these dependency proceedings commenced, A.D.'s mother and father were incarcerated, and mother had given maternal grandmother temporary custody of A.D. In August 2015, respondent Los Angeles County Department of Children and Family Services (DCFS) removed A.D. from maternal grandmother's home based on allegations that maternal step-grandfather had sexually abused A.D.'s cousin. On September 9, 2015, DCFS placed A.D. in the home of maternal great aunt.

On October 5, 2015, a social worker spoke with maternal great aunt regarding a concurrent plan for A.D., and maternal great aunt stated she would commit to either adoption or legal guardianship of A.D. On October 28, 2015, maternal great aunt again told the social worker she was "committed in keeping [A.D.] and willing to adopt him." On January 14, 2016, maternal great aunt appeared to have changed her position: she told the social worker she wanted to become A.D.'s legal guardian, and that A.D.'s mother had communicated to her that she did not wish to lose her parental rights. In last-minute information provided to

the juvenile court on January 19, 2016, DCFS recommended that maternal great aunt become A.D.'s legal guardian.

At a hearing on January 19, 2016, a DCFS social worker reported she had spoken to A.D.'s father and had told him "we were looking at guardianship" as the permanent plan for A.D. The court asked, "Why do you think we're looking at guardianship?" The court then questioned the social worker about the steps she had taken to determine an appropriate permanent plan for A.D. and to assess the options of adoption, allowing the father to arrange placement, or appointing the maternal great aunt as legal guardian under Welfare and Institutions Code section 360, subdivision (a).¹ Amidst this discussion, the court asked the maternal great aunt if anyone had spoken to her about adoption, to which she replied, "It had came [*sic*] up in conversation, but not like it's coming up now."

After further discussion on other topics, including some questions from maternal grandmother concerning the allegations underlying the dependency proceedings, maternal great aunt indicated she wished to speak and said, "Well, I just want to say before he be removed from me, I'm willing to adopt." The court said, "Okay. I'm glad to hear that," then further discussed the separate option of granting custody to the father with placement with either maternal great aunt or father's sister while father was incarcerated.

On March 16, 2016, DCFS provided an adoption assessment to the court, with the social worker who conducted the assessment recommending a permanent plan of adoption. The assessment stated that maternal great aunt had said on

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

March 10, 2016, that she was willing to adopt A.D. Also on March 16, DCFS provided separate last-minute information to the court regarding an assessment for legal guardianship under section 360, subdivision (a) conducted in January 2016, noting that maternal great aunt at that time expressed willingness to become A.D.'s legal guardian. The guardianship assessment included an undated update in which the social worker recommended legal guardianship "as the caregiver is dependent on the funds she receives from DCFS to care for her nephew."

At a hearing on March 23, 2016, the court stated, "There's a possibility of guardianship or adoption," and set a hearing under section 366.26 to determine a permanent plan for A.D. DCFS submitted to the court a section 366.26 report signed June 15, 2016. It stated that A.D. was adoptable and that maternal great aunt was "strongly committed to adopting" him. The report stated that maternal great aunt had not yet submitted any adoption home study forms, but DCFS anticipated the home study would be completed within 90 days. DCFS recommended adoption as the permanent plan. Last-minute information submitted to the court on July 21, 2016, stated that maternal great aunt had completed some of the adoption home study forms, and another home study interview was scheduled for August 2, 2016.

At the section 366.26 hearing on July 21, 2016, the social worker involved in the adoptive home study testified that she had no reason to be concerned the study would not be approved. Father's attorney stated that father would agree to adoption by maternal great aunt. Mother's attorney asked the court not to terminate parental rights and to seek an alternative such as legal guardianship. Maternal great aunt did not testify, and neither

mother nor anyone else offered evidence or argument concerning whether maternal great aunt would prefer legal guardianship to adoption.

The court issued an order on July 21, 2016, finding A.D. adoptable and terminating parental rights. Mother timely appealed.

DISCUSSION

Section 366.26 governs the juvenile court's selection of a permanent plan for a dependent child. (*In re D.R.* (2016) 6 Cal.App.5th 885, 891.) Absent one of six exceptions, "the juvenile court must select adoption as the child's permanent plan." (*Ibid.*) A parent challenging termination of parental rights has the burden to show one of the exceptions applies. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

Mother claims the juvenile court should have applied the exception under section 366.26, subdivision (c)(1)(A), which allows the court to select legal guardianship over adoption if "[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." Mother's position is that maternal great aunt was in fact "unwilling" to adopt A.D., and therefore the court was wrong to disregard the section 366.26, subdivision (c)(1)(A) exception. We reject this argument.

At the time of the section 366.26 hearing on July 21, 2016, all evidence before the court strongly indicated that maternal

great aunt was willing to adopt A.D. As far back as October 2015, she had told social workers on multiple occasions she was willing to adopt. She said the same to the court in January 2016. The March 16, 2016 adoption assessment stated she was willing to adopt, and the June 2016 section 366.26 report from DCFS stated she was “strongly committed to adopting” A.D. By July 2016, maternal great aunt was engaged in an adoption home study, and the social worker involved testified there was no reason to think the study would not be approved. Mother offered no evidence or argument to contradict the above, despite having the burden to prove the applicability of a section 366.26 exception. Based on this record, the court did not err in concluding that maternal great aunt was willing to adopt A.D.

Mother argues that to the extent maternal great aunt expressed a willingness to adopt, she only did so because she believed if she did otherwise A.D. would be taken from her. This belief, mother claims, stemmed from pressure from the juvenile court during the January 19, 2016 hearing. Mother asserts that at that hearing “the court made it clear to maternal great aunt that if the case went to a permanency hearing, legal guardianship was not acceptable.”

The juvenile court said no such thing, nor even implied it. Indeed, the court expressly questioned DCFS about the possibility of legal guardianship under section 360, subdivision (a), clearly indicating the court was not focused solely on adoption.² In the portion of the hearing transcript cited by mother, the court did question the DCFS social worker about

² Section 360, subdivision (a) allows the court to appoint a legal guardian if the parent consents and the court determines it is in the best interests of the child.

seeking relatives willing to adopt, and also asked maternal great aunt if DCFS had discussed with her the possibility of adoption. But in asking these questions the court was not indicating a preference for adoption over legal guardianship; it was merely trying to determine whether DCFS had adequately assessed all available options for a permanent plan rather than focusing solely on legal guardianship.

These facts are entirely distinguishable from those in *In re Fernando M.* (2006) 138 Cal.App.4th 529 (*Fernando M.*), cited by mother. There, the caretaker relative testified at the section 366.26 hearing that she preferred legal guardianship, but had agreed to adoption after a social worker warned her that otherwise the child would be taken away to be adopted by someone else. (*Id.* at p. 533.) The juvenile court agreed with the social worker, stating that “ ‘the goal is for us to adopt,’ ” and thus guardianship was “ ‘not [an alternative] the court looks to.’ ” (*Id.* at p. 536.) We reversed the court’s order terminating parental rights, holding that the court had applied the wrong legal test by disregarding the alternative of legal guardianship.³ (*Ibid.*)

Here, there was no testimony at the section 366.26 hearing that maternal great aunt preferred legal guardianship; indeed, at the January 19 hearing she explicitly said she was willing to adopt, and by the time of the section 366.26 hearing was engaged in the adoption assessment process. Contrary to mother’s

³ *Fernando M.* concerned a different exception under a previous version of section 366.26, but one that also required a showing that the caretaker relative was “ ‘unwilling or unable’ ” to adopt the child. (*Fernando M.*, *supra*, 138 Cal.App.4th at pp. 535-536.)

characterization, the court never indicated that it would not consider legal guardianship, nor does the record show that a social worker or anyone else warned maternal great aunt that A.D. might be removed from her custody if she did not adopt. *Fernando M.* has no application to this case.

Mother points to evidence in the record indicating that maternal great aunt at some point preferred legal guardianship to adoption, possibly as late as March 2016. Even accepting that as true, it does not indicate that any change of heart was a result of pressure from the court, especially given the lack of evidence of any impropriety. Maternal great aunt was entitled to change her position throughout the proceedings; what is important is that by the time of the section 366.26 hearing in July 2016, the record indicates that maternal great aunt clearly wanted to adopt A.D.⁴

DISPOSITION

The order of the juvenile court is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

⁴ Mother also notes the adoption home study was not complete at the time of the section 366.26 hearing, stating “maternal great aunt did not appear to be in any hurry to complete the adoption home study.” But this delay was not sufficient to show maternal great aunt was unwilling or unable to adopt A.D., especially given that DCFS stated the home study would be completed and approved in a timely fashion.