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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAIRO O. et al., Persons Coming
Under the Juvenile Court Law.

DANIEL O.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B286003

(Los Angeles County
Super. Ct. No. DK13401)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Robert S. Draper, Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc. and Law Office of Katherine Anderson, Christina Samons, Kimberly Repecka, for Petitioner Daniel O.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Kimberly Roura, Deputy County Counsel, for Real Party in Interest.

Daniel O. (Father) filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the dependency court terminating family reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.¹ We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Father filed this writ petition following the 18-month review hearing (§ 366.22), in which the dependency court issued the challenged order. This Court previously affirmed an order made in conjunction with the 12-month review hearing (§ 366.21, subd. (f)). We briefly recount relevant facts from that prior appeal (*In re J.O.* (Jun. 29, 2017, B279794)).

Events through the 12-month review hearing

This matter came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in

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

August 2015. Father's daughter, Dayara O. (DOB 12/2009) reported at school that she did not have a father, was living in a car, and not eating. Upon investigation, DCFS determined that Dayara and her brother Jairo O. (DOB 8/2003) had been living with Araceli M. (Mother) and the children's half-sibling Ilse M. (DOB 10/1997) in Mother's car and, at times, in the home of the children's maternal grandmother.²

Mother had a history of alcohol and drug abuse. Father had been deported to Mexico several years earlier and had not seen the children since. Ilse took care of her younger siblings. Ilse reported that, prior to Father's deportation, he and Mother sold drugs.

In a telephone conversation with a social worker in September 2015, father claimed he was deported for driving under the influence. Father's criminal record, however, showed he was arrested in September 2011 for possession of a controlled substance. Father told the social worker he would be willing to take the children into his home in Mexico while Mother worked to comply with court orders. He denied ever selling drugs.

DCFS filed a section 300 petition in September 2015, alleging Mother had a history of substance abuse. The petition was sustained in October 2015. At the disposition hearing, the dependency court ordered the children removed from Mother and found detriment in placing the children with Father in Mexico. DCFS was ordered to provide reunification services to Father.

In November 2015, Father called the social worker and expressed interest in regaining custody of the children. The social worker advised him he needed to complete a parenting

² Father is the parent of Dayara and Jairo but not Ilse.

class. In December 2015, the Mexican consulate contacted DCFS requesting information on Father's court-ordered requirements. DCFS provided the requested information.

The social worker again spoke with Father in February 2016. He had not yet begun parenting classes but had called the children weekly to talk. The children enjoyed speaking with Father but had no interest in living with him in Mexico, preferring to stay with their foster mother or Mother instead. The dependency court continued reunification services at the six-month review hearing.

The 12-month review hearing was held in November 2016. The Mexican social services agency, DIF, had twice visited Father and prepared reports for the court. DIF reported Father was living with his common law wife and his mother in a house in a safe town. Father and his partner both had jobs and a newborn daughter together. There were schools near their residence. Father had completed a parenting class and received a certificate of completion. DCFS reported that Father continued to maintain weekly contact with the children. The children still stated that, though they enjoyed talking with Father on the phone, they had no interest in living with him in Mexico.

The dependency court found Father in compliance with the case plan but elected to continue its jurisdiction, determining that return of the children to Father would create a substantial risk of detriment. The court further found DCFS had provided reasonable reunification services to Father, and ordered DCFS to

obtain passports for the children so they could visit Father.³

Father appealed, and we affirmed the order.

Subsequent events

As of February 2017, DCFS had not obtained passports for the children. Jairo repeatedly told the social worker he did not want to visit or live with Father. Dayara said she did not want to live with Father but may want to visit him because he had a cat. Both children said they enjoyed visiting with Mother, and they liked living with their foster mother.

In March 2017, both children expressed an interest in visiting Father in Mexico, but both adamantly explained that they did not want to live there, though they enjoyed their weekly telephone conversations. The children also liked visiting their older sister Ilse and wanted to have overnight visits with her.

In a subsequent interview, Jairo stated he had been in his foster home “for so long” he considered it “my home.” Dayara also thought of it as her home and as the place she wanted to remain. The foster mother, who provided the children with a safe and stable environment, said the children were considered part of the family. She was concerned that since the children were born and raised in the United States, Mexico would be completely unfamiliar to them.

The children received their passports in May 2017. Jairo, however, did not want to go to Mexico to visit Father, asking “Why does he want to see us now? Why didn’t he do anything before?” Jairo said he would refuse to board the airplane, even if ordered by the court to visit Father. Dayara was also hesitant

³ The dependency court terminated reunification services for Mother.

about visiting Father, though at one point she said she would like to visit him for a few days. She still did not want to live in Mexico, saying “No, I don’t want to leave my family,” referring to Jairo and their foster family.

Father was informed the children did not want to live with him. He responded that they would adjust to living in Mexico.

In June 2017, the dependency court ordered the children to visit Father in Mexico for two weeks. A social worker flew with them. The children were happy to ride on an airplane but indifferent about seeing Father. Upon arrival, Jairo excitedly said, “There’s my dad,” and Father walked up and hugged him. Dayara said “My papi, my papi,” and also hugged Father. Father and the children appeared happy to see each other.

At the conclusion of the two-week visit, the social worker met the children at the airport in Mexico. Father told the social worker he enjoyed his time with the children. He hugged the children and said goodbye to them as he appeared to hold back tears. The children also looked sad. While waiting for their flight, the social worker talked to the children about their visit. Jairo said he liked Guadalajara, where Father lived, and would like to stay if not for the schools. He said he still thought of home as with his foster family, but he would like to visit Father again. Dayara said she also liked visiting Father. When asked if she would like to stay with Father, Dayara teared up, said she was excited to get on the airplane, and looked out the window. Neither child disclosed issues or concerns about the visit. When they arrived in the Los Angeles area, they happily greeted their foster parents.

A few weeks later, the social worker visited the children and interviewed them. Neither wanted to live with Father in

Mexico, and both wished to stay with their foster family. Jairo said he did not speak Spanish well and did not like the schools in Mexico. The social worker asked if there was any other reason he did not want to live with Father. Jairo began to cry and, pointing to his foster family, said, “Because I like them. I don’t like my father.” Jairo stated Father did not pay much attention to him or Dayara during their visit, and claimed he would refuse to go if ordered to live with Father. Dayara also said Father did not pay attention to her. She likewise wanted to stay with the foster family, not Father. The foster mother told the social worker the children were initially anxious after returning from Mexico but were readjusting to life in the foster home. She was willing to pursue legal guardianship and said the children were considered part of the family.

The contested section 366.22 hearing was held on October 11, 2017. The social worker’s report noted Father continued to call the children weekly, but the children still had no desire to live with him. At the hearing, Jairo testified that his visit to Mexico was “good,” that he was able to communicate with Father using a combination of Spanish and English, and that he liked Father, but their phone conversations were boring. Jairo wanted to stay in the United States because “it’s better here” and “I have more family here that I love.” He also preferred school in the United States because his English is better than his Spanish and he can only read “a little bit” in Spanish. Dayara also briefly testified. She said she speaks to Father in English and he understands. She said she wanted to live in the United States because “I love my family.”

DCFS asked the dependency court to terminate Father’s reunification services. Children’s counsel joined, noting the

children's clear desire to stay in the United States, their strong connection to Mother and their sister Ilse, and the fact that they had not lived with Father in more than five years.

The dependency court ordered Father's reunification services terminated and set a section 366.26 hearing. The court noted the children had "established their lives" in the United States and had a bond with the caretakers. It found return of the children to Father would create a substantial risk of detriment to the children.

DISCUSSION

Section 366.22, subdivision (a)(1) provides that at the 18-month review hearing, "the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child."

We review the dependency court's order denying placement of the children with Father, terminating his reunification services, and setting the section 366.26 hearing for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

The dependency court's order here is supported by numerous factors. Although each of these factors, if considered alone, may not warrant termination of reunification services,

when considered in their totality they constitute substantial evidence supporting the dependency court's decision. (See *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425 ["A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm"].)

First, Father's absence from the children's lives was a factor the dependency court could properly consider when determining whether placement with Father would create a substantial risk of detriment to the children. (See *In re C.M.* (2014) 232 Cal.App.4th 1394, 1402; *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705 (*Constance K.*).) After being arrested in September 2011 for possession of a controlled substance, Father was deported in late 2011. Until the children's visit in June 2017, Father had not seen the children in nearly six years. Jairo was critical of Father for his absence and his failure to build a relationship prior to the dependency proceedings. When ordered to travel to Mexico, Jairo stated, "Why does he want to see us now? Why didn't he do anything before?" Meanwhile, Dayara was only two years old or younger when Father was deported, leaving her without an opportunity to build a substantial relationship with him. Indeed, just prior to the time these proceedings were initiated, Dayara said she did not have a father. It is true that, after the section 300 petition was filed, Father maintained frequent telephone contact with the children and completed his case plan. Although laudable, this accomplishment did not require the dependency court to discount Father's years of absence. (See *Constance K.*, *supra*, at pp. 705-709.)

Father's domicile in Mexico, and the attendant difficulties that posed for the children, were also factors properly considered

by the dependency court. (See *In re Luke M.*, *supra*, 107 Cal.App.4th at p. 1426 [detriment finding supported by emotional impact to children if placed with Father in Ohio].) The children were born and had lived entirely in the United States. Jairo, who was 14 at the time of the 18-month review hearing, was justifiably worried about his educational opportunities in Mexico. Although he speaks some Spanish, he explained that he does not speak it well and that he can read only a “little bit.” As for Dayara, she speaks to Father in English, though his primary language is Spanish. The children initially expressed some concerns about visiting Father in Mexico, but generally seemed to enjoy the visit. Nevertheless, throughout the dependency proceedings, both before and after the visit, they remained adamant they do not want to live in Mexico.

The dependency court’s finding of detriment was also supported by the children’s close relationship with their older sister Ilse (see *In re Luke M.*, *supra*, 107 Cal.App.4th at p. 1422) as well as their loving bond with their foster family (see *In re Jasmon O.* (1994) 8 Cal.4th 398, 418-419; *Constance K.*, *supra*, 61 Cal.App.4th at pp. 704-705). If placed in Mexico, the children’s relationship with Ilse would likely be severed (as she is not Father’s child), and the relationship with the foster parents would almost certainly come to an end. Both children think of their foster family’s home as their own home, and the foster mother said the children are considered part of the family. When asked whether they would like to live with Father, the children consistently and clearly responded they wished to continue living with the foster family instead.

Given all these considerations, substantial evidence supports the dependency court’s finding of a substantial risk of

detriment to the children's safety, protection, or physical or emotional well-being if they were placed with Father. The court was under no obligation to order the children ejected from a safe and loving environment and placed in an unfamiliar foreign country with a parent who, until recently, had no contact with them for years.

DISPOSITION

The petition for extraordinary writ is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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_____, J.
CHAVEZ

We concur:

_____, P.J.
LUI

_____, J.
HOFFSTADT