Filed 11/21/12 In re K.G. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.G., a Person Coming Under the Juvenile Court Law.	B241208 (Los Angeles County Super. Ct. No. J965916)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.G., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

A.G. (Father) appeals from orders of the juvenile court denying his motion to modify the order ending his family reunification services and terminating his parental rights with respect to his four year old son, K.G.[1] Father contends the court erred in denying his petition to renew his reunification services or to return K.G. to his custody because the evidence demonstrated a change of circumstances and that either of those modifications would be in K.G.'s best interest. Father further contends the court erred in terminating his parental rights because the evidence showed that he had maintained regular contact with K.G. and that K.G. would benefit from continuing their parent-child relationship. Finally, Father contends the termination of his parental rights must be reversed because there was insufficient evidence that K.G. was adoptable. We find no merit in any of these contentions and affirm the orders.

FACTS AND PROCEEDINGS BELOW

Nine-month old K.G. came to the attention of the Department of Children and Family Services (DCFS or Department) in July 2009 when a Department worker investigated a report that Father had physically abused K.G.'s half-brother, Robert. As a result of the investigation, in October 2009, when K.G. was 13 months of age, the court sustained a petition under Welfare and Institutions Code section 300 subdivision (b)[2] as to K.G. and his half-brothers and half-sister. As pertinent here, the petition alleged that K.G. was at risk of "physical abuse, harm and damage" as a result of Father's physical abuse of Robert, his use of marijuana in the presence of the children, his history of convictions for possession and sale of narcotics and the history of domestic violence between Father and K.G.'s mother. The court ordered K.G. suitably placed; monitored visitation for Father at least twice a week; and family reunification services. Father was ordered to participate in domestic violence counseling, a drug rehabilitation program, parenting classes, and individual counseling.

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[1] K.G.'s mother is not a party to this appeal.

[2] All statutory references are to the Welfare and Institutions Code.

At the six month review in June 2010 the DCFS reported that Father enrolled in domestic violence counseling but only attended 10 classes, had four unexcused absences, and then, according to his counselor, "simply dropped out of sight." The Department had no record of Father enrolling in parenting classes or individual counseling. The DCFS report contained no information on Father's attendance at a drug rehabilitation program. Father had 12 monitored visits with K.G. between December 2009 and February 2010. Father was incarcerated in March 2009 for possession and sale of marijuana. Despite the shortcomings in his performance, the court found that Father "is in compliance with the case plan" and that he and K.G.'s mother "regularly contacted and visited with the minor, that they have made significant progress in resolving the problems that led to the minor's removal from the home, and that they have demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the minor's safety, protection, physical and emotional well-being, and special needs." The court continued reunification services for both parents and scheduled a 12-month review.

The 12-month review hearing was held in January 2011. The evidence at the hearing showed that Father was released from the California Correctional Center on October 15, 2010 and began to visit K.G. in November 2010. At a drug test in December 2010, Father tested positive for marijuana use. Father presented evidence that he had completed his parenting and anger management classes while in custody. He had not completed his domestic violence class nor engaged in individual and drug counseling. After reading this report the court found that "father . . . is in compliance with the case plan." The court also found "that the parents have consistently and regularly contacted and visited with the minor, that they have made significant progress in resolving the problems that led to the minor's removal from the home, and that they have demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the minor's safety, protection, physical and emotional well-being, and special needs." Notwithstanding these findings, the court concluded that "there exists no substantial probability [K.G.] will be returned within six months." The court continued

reunification services and set the matter for a permanency review hearing under section 366.22.

Father visited K.G. on November 23, December 6, 14, 21, 2010 and January 11 and 25, 2011. Father attended an initial intake appointment for drug counseling in November 2010 but attended no classes.

In February 2011, Father was again arrested for possession and sale of marijuana. He had been discharged from his drug treatment program the previous week for failure to attend any of the classes. Father's five drug tests between November 2010 and January 2011 had resulted in four positives and one negative.

Father was incarcerated at the time of the permanency review hearing on May 26, 2011. The court found that neither parent was in compliance with their case plan. The court terminated reunification services and set the matter for a permanent placement hearing under section 366.26.

In May 2012, Father filed a petition for modification under section 388 asking the court to return K.G. to his custody or to renew their reunification services. K.G. was then three years old. In support of his petition Father stated that he had been released from custody and that he and K.G. would be living with K.G.'s paternal grandfather; that he had maintained regular telephone contact with K.G. and had arranged a visitation schedule with K.G.'s foster parent; and that two months earlier he entered a 52-week drug rehabilitation program as the court had ordered. The requested modification would be in K.G.'s best interests, Father explained, because K.G. is attached to him and K.G. would benefit from association with Father's family. Lastly, Father stated "I [am] able to provide for [K.G.'s] well-being and meet all of his emotional and physical needs."

The court heard and denied Father's modification petition on May 2, 2012. In the court's view Father had shown neither changed circumstances nor that custody or further reunification services would be in K.G.'s best interests. In denying the modification request the court commented that "[Father's] been very much out of the picture here[.]"

The court proceeded to the section 366.26 permanent placement hearing. It received in evidence reports from the DCFS and heard testimony from a DCFS worker, Father, and K.G.'s mother. Neither the DCFS worker nor K.G.'s mother gave any relevant testimony as to Father or the relationship between Father and K.G.

Father testified that since being released from custody he maintained his relationship with K.G. primarily by telephone. Asked how often they had spoken in the past month, Father testified that they spoke so often "I lost count." They last talked the day before the hearing. In their conversations they talk about "school, his homework, what he learned in school, what he ate for lunch." Father asks K.G. to recite his A-B-C's and do simple math problems. K.G. calls Father "Dad" and sometimes he tells Father that he misses him. Father told the court that he and K.G. had a "close" relationship and that having Father and Father's immediate family in K.G.'s life would benefit K.G. by helping him have a successful life. He asked the court to apply the parent-child relationship exception to the termination of parental rights. (§ 366.26(c)(1)(B)(i).)

The court terminated Father's parental rights. It found that telephone conversations with K.G. did not establish a parent-child relationship and that the evidence showed that Father "is pretty much a nonentity in his child's life." Accordingly, the court found none of the exceptions to termination of parental rights applied in this case.

Father timely appealed the orders denying his modification petition and terminating his parental rights.

DISCUSSION

I THE COURT DID NOT ABUSE ITS DISCRETION IN DENYING FATHER'S REQUEST FOR CUSTODY OF K.G. OR REINSTATEMENTOF FAMILY REUNIFICATION SERVICES.

A parent seeking modification of a dependency order must show that there has been a change in circumstances since the order was made and that the modification would be in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The court did not abuse its discretion in finding that Father had not shown a meaningful change in circumstances therefore we need not address the issue of the child's best interests.

Father alleged four changes in circumstances: (1) he was no longer incarcerated; (2) he had begun a 52 week drug rehabilitation program; (3) he maintained contact with K.G. via the telephone; and (4) he arranged for K.G. and him to live with his father.

These changes, however, appear to have occurred within the previous two months. Prior to that Father was incarcerated for 15 of the 31 months that K.G. was in foster care. Father delayed entering a drug rehabilitation program for two and a half years after being directed to do so. The court could reasonably find that relatively "last minute" changes in a case that had been pending for almost three years did not qualify as changes in circumstances justifying a modification in custody or reunification services. (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512; *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1082 [starting drug treatment three months before petition did not show a meaningful change of circumstances].)

II. SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S DETERMINATION THAT FATHER FAILED TO ESTABLISH THE "PARENTAL RELATIONSHIP" EXCEPTION TO TERMINATION OF PARENTAL RIGHTS.

There are two prongs to the "parental relationship" exception to termination of parental rights. First, the parent must show that he or she "maintained regular visitation and contact with the child." (§ 366.26, subd. (c)(1)(B)(i).) Second, the parent must show that "the child would benefit from continuing the [parent-child] relationship." (*Ibid.*) Father bore the burden of establishing that the "parental relationship" exception applied in this case. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

Father failed to establish either prong. The court found that Father has "been very much out of the picture" and a "nonentity in his child's life." The record supports those findings. It is true that Father did maintain regular visitation and contact with K.G. when Father was not incarcerated. Unfortunately for K.G., Father was incarcerated nearly half the time K.G. was in foster care. The record does not show that Father had visits or telephone conversations with K.G. or K.G.'s foster parents during the time he was imprisoned. In the two months between Father's release from custody and the permanent

placement hearing Father did not once visit K.G. Father did talk to K.G. on the telephone during that period but, as the court observed, "talking to him on the phone is great" but it does not constitute a parental relationship.

In summary, Father has not played a parental role in K.G.'s life between the time K.G. was taken from Father's custody at 13 months of age and the permanent placement hearing nearly two and a half years later.

III. SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S FINDING THAT K.G. IS ADOPTABLE.

The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).) The court found K.G. adoptable. Father maintains this finding was not supported by substantial evidence. We disagree.

In assessing adoptability, courts have divided children into two categories: those who are "generally adoptable" and those who are "specifically adoptable." A child is "generally adoptable" if the child's traits, e.g., age, physical condition, mental state, and other relevant factors do not make it difficult to find an adoptive parent. A child is "specifically adoptable" if the child is adoptable only because of a specific caregiver's willingness to adopt. (*In re R.C.* (2008) 169 Cal.App.4th 486, 492-494.)

Father's brief does not state whether he contends K.G. is not "generally adoptable" or not "specifically adoptable." He argues that the Department's adoption assessment report was inadequate because it failed to discuss K.G.'s difficulty in walking—his "habit of falling [down]"—and whether the prospective adoptive parent and her partner intended to adopt K.G. jointly. If by this Father means to argue there was insufficient evidence that K.G. was "specifically adoptable" the issue is forfeited because Father did not object to the inadequacy of the Department's report in the trial court. (*In re G.M.* (2010) 181 Cal.App.4th 552, 564.)

In any event, we find nothing in the record to show that K.G. was not "generally adoptable." The report of K.G.'s physical examination conducted seven months before the 366.26 hearing showed that K.G. was of median height and weight for his age, his

hearing was normal and he had no mental health areas of concern. The report attributed K.G.'s "frequent falling" to his being "pigeon-toed and slightly 'knock-kneed.'" The trial court could reasonably conclude that these problems in a four-year old boy would not make it difficult for him to find an adoptive home. Indeed, the existence of a prospective adoptive parent constitutes "evidence that the child's age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1312.)

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.