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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SAMANTHA S. et al., Persons
Coming Under the Juvenile Court
Law.

B278876
(Los Angeles County
Super. Ct. No. DK16057)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RAUL G. et al.,

Defendants and Appellants;

SAMANTHA S. et al.,

Respondents.

APPEALS from an order of the Superior Court of
Los Angeles County. Natalie P. Stone, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant Raul G.

Andre F.F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant Susana S.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Marissa Coffey, under appointment by the Court of Appeal, for Minors.

Susana S. (mother) and Raul G. (father) separately appeal from the juvenile court's October 21, 2016, order making paternity and disposition findings regarding their three children, Samantha S. (Samantha, born July 2004), Jonathan G. (Jonathan, born Apr. 2007) and M.G. (M., born Mar. 2008). Mother challenges that part of the order finding father to be the presumed father of the children, contending the finding was not supported by substantial evidence and was not in the children's best interest. We disagree.

Father challenges the disposition part of the order, in which the children remained suitably placed with a maternal aunt, contending respondent Los Angeles County Department of Children and Family Services (DCFS) failed to comply with Welfare and Institutions Code section 309's¹ mandatory requirements to conduct a search for all adult relatives and to notify them of the dependency proceedings. We find no error. The October 21, 2016, order is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

The Petition

On March 15, 2016, DCFS filed a section 300 petition on behalf of Samantha, Jonathan, M., and mother's youngest child, Daniella P. (Daniella, born Sept. 2014). Daniella's father is Arturo P. (Arturo).² As amended and sustained, the petition alleged that on February 8, 2016, mother placed the children at risk of harm when she and the maternal grandmother transported 20 pounds of methamphetamines in a car, while the drugs were placed below Daniella's feet. Daniella tested positive for methamphetamines the following day. The petition also alleged that mother and Arturo engaged in physical altercations in the children's presence, including Arturo choking mother.

The Children's Placement

Mother was arrested. DCFS placed Samantha and M. with a maternal aunt and placed Jonathan with a maternal uncle. Daniella was released to the custody of Arturo. In a paternity questionnaire, mother answered that father was present at

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

² Neither Daniella nor Arturo are parties on appeal.

Samantha's and M.'s births, but that he did not hold himself out as the children's father or provide for them financially. Mother claimed she did not know his whereabouts, other than to state he had been deported to Mexico. The juvenile court declared father to be an alleged father.

The social worker filed a due diligence declaration regarding efforts to locate father. In June 2016, father contacted the social worker and stated that he had received notice of the proceedings, but he refused to provide his address and referred the social worker to his attorney. On July 12, 2016, father called the social worker again and agreed to be interviewed. He was living in Indiana. He told the social worker that he lost contact with the children after mother moved with them to California and she would not allow him to see the children. Mother did allow contact with the paternal grandmother, who also lived out of state, but only on condition that the grandmother not report anything about the children to father. Father stated that he was married. He and his wife had a two-year-old son and his wife was pregnant again. Father wanted custody of Samantha, Jonathan and M., if mother could not care for them. The children, however, did not want any contact with father. DCFS obtained the children's birth certificates; father was not named on any of them.

In June 2016, the maternal aunt and uncle requested that Samantha, Jonathan and M. be removed from their care. On June 24, 2016, the children were placed with Martha B., referred to in the record as both a maternal aunt and a nonrelated extended family member.

Father's Section 388 Petition

On August 5, 2016, father filed a section 388 petition seeking presumed father status. Father declared he was at the hospital when Samantha was born in Indiana and M. was born in Louisiana, but he did not sign their birth certificates because he did not have identification. Mother and father lived together as a family with Samantha and were also living together when mother became pregnant with Jonathan. At the time of Jonathan's birth in California, father was out of state. Mother, Samantha and Jonathan joined father after Jonathan's birth, and lived with him as a family until after M.'s birth, with father supporting them financially. Mother moved to California with the children in July 2008, but then moved with the children out of state to live with the paternal grandmother for a year.

Father was deported in 2009, and mother moved back to California. The paternal grandmother travelled to California two to three times per year to visit the children; father gave the paternal grandmother money to give to mother and the children. After father returned to the United States in December 2010, he attempted to contact mother, but she refused to speak to him. Mother threatened to deny the paternal grandmother any contact with the children if the grandmother persisted in asking mother to communicate with father. Father last saw the children two or three years ago; the paternal grandmother last saw them at the end of 2015.

In her response to father's petition, mother declared that father did not sign Samantha's and M.'s birth certificates despite having an identification card from Louisiana. Mother admitted living with father in his aunt's house and that he helped financially. After she and father separated, she moved with

Samantha to Mexico, where she learned she was pregnant with Jonathan. Mother returned to California for Jonathan's birth. She and the children then moved back with father until after M.'s birth in 2008. Father then sent the family to California so he could pursue another relationship. Mother denied living with the paternal grandmother, and stated the paternal grandmother saw the children five or six times in six to seven years.

Father submitted a reply, acknowledging he had an identification card when Samantha was born, but in his excitement he forgot to ask whether he needed to sign any documents. He could not recall whether he signed any documents at M.'s birth. He also stated the entire time they lived together as a family he worked to provide for them. After mother moved with the children to California, he still sent her money until he "went to prison for something dumb." He repeated that mother and the children lived with the paternal grandmother for a year, and stated that the paternal grandmother continued to give the children money while they were in California.

DCFS's Recommendation

DCFS reported that none of the children wanted to live with father; they had no relationship with him, did not have a recollection of him, and considered Daniella's father as their father. Samantha did not want any contact with father, but Jonathan was open to contact by phone or mail, and M. by mail only. It was DCFS's "assessment that there is the likelihood that the mother was keeping the children from [father], but in the same token it does not appear that the father made much of an effort to be in the children's lives." However, given that Jonathan and M. both expressed an interest in having some contact with father and that mother was serving a prison term with an

unknown release date, DCFS concluded it would serve the children's best interests to grant father presumed father status and reunification services.

The Rulings

The juvenile court held the disposition hearing on October 21, 2016, first addressing the paternity issue. After reviewing the documents and hearing argument, including the recommendation of the children's counsel to deny father's request for presumed father status, the juvenile court granted father's request for presumed father status. The court found that father "did receive the children into his home and held them out as his children, and the court does believe that mother did play some role in preventing the children from having further contact with [father]."

The juvenile court then proceeded to disposition. It declared the children dependents of the juvenile court, removed them from the custody of mother, who remained incarcerated, found it would be detrimental to place the children with father and that they were suitably placed, and ordered DCFS to provide reunification services for both mother and father. Father was granted monitored visits for three months, then unmonitored visits after substantial contact.

In support of its finding that it would be detrimental to place the children with father, the juvenile court noted: Father lived in Indiana, so placement with him would interfere with mother's reunification efforts; moving the children out of state would uproot them from their home environment; father had a criminal history and precarious immigration status placing him at risk of deportation; and his living situation in Indiana had not been fully investigated. The court ordered DCFS to facilitate

Skype and phone contact between father and the children and to initiate an Interstate Compact on the Placement of Children (ICPC).

Mother and father both appealed.³

DISCUSSION

I. Presumed Father Status

Family Code section 7611, subdivision (d) establishes presumed paternity for a parent who “receives the child into his or her home and openly holds out the child as his or her natural child.” Thus, the establishment of presumed parenthood is not based on the person’s relationship with the other parent, rather, it is a question of whether the person entered into a familial relationship with the child. This promotes well-established California policy that “whenever possible, a child should have the benefit of *two* parents to support and nurture him or her.” (*E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1085.)

We review paternity findings for substantial evidence. (*In re Bryan D.* (2011) 199 Cal.App.4th 127, 138.) In so doing, we do not reweigh the evidence, but draw all reasonable inferences in favor of the trial court’s order. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) So long as there is substantial evidence to support the order, it must stand even if there is evidence to support a contrary conclusion. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 706.) Thus, a party raising a substantial evidence challenge has a difficult burden on appeal.

We conclude substantial evidence supports the juvenile court’s finding of presumed father status. As to the first prong,

³ Samantha, Jonathan and M. were appointed counsel on appeal and a respondent’s brief was filed on their behalf, incorporating and augmenting mother’s arguments.

the evidence supports the finding that father received the children into his home when they were young. In her response to father's section 388 petition, mother admitted that she and the children lived with father. Samantha was born in July 2004, and lived with mother and father as a family unit until she was about three years old. During that time, father supported the family financially. He and mother separated during mother's pregnancy with Jonathan; mother then moved with Samantha to Mexico, then to California for Jonathan's birth in April 2007. Thereafter, mother and father reconciled and again lived together as a family unit with Samantha, Jonathan and M., and stayed together until several months after M.'s birth. In July 2008, mother moved back to California with the children. Father was arrested and deported in 2009, returning to the United States in December 2010. While the paternal grandmother continued to visit the children with mother's permission, the record supports the finding that mother impeded father's efforts to have more contact with the children following his return to this country.

As to the second prong, the evidence supports the finding that father held the children out as his natural children. It is undisputed that father is the biological parent of Samantha, Jonathan and M., and that no other person has sought to establish paternity over them. Father, mother and the children lived together as a family while the children were young, including in the paternal aunt's home, and father has always acknowledged the children as his own. The children had an ongoing relationship with the paternal grandmother until late 2015.

Mother argues the juvenile court's paternity finding was inconsistent with its finding that placing the children with father

would be detrimental to them. According to mother, the detriment finding shows that granting father presumed father status was antithetical to the children’s best interests. We disagree. A finding of presumed parent status is not dependent on a finding that it would be in the child’s best interest to be immediately placed with the parent. This is particularly true here, where there was no ICPC yet, and father’s living arrangement with his new family in Indiana had not been investigated and the children did not want to live with him.

II. Section 309

Father contends DCFS failed to comply with the mandatory relative search and notification requirements of section 309, necessitating reversal of the disposition order. In particular, he points out there is nothing in DCFS’s reports to suggest that any steps were taken to locate paternal relatives and notify them of the dependency proceedings. We find no grounds for reversal.

A. Law

Section 309 explains actions that must be taken by DCFS after a child is detained. Within 30 days of a child’s removal from a parent’s custody, the social worker “shall use due diligence” (§ 309, subd. (e)(3); Cal. Rules of Court, rule 5.637(a)) “to identify and locate all grandparents, . . . adult siblings, and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents.”⁴ (§ 309, subd. (e)(1).)

⁴ Section 319, subdivision (f)(2) defines “relative” as “an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ‘great,’ ‘great-great’ or ‘grand’ or the spouse of any of these

The social worker shall then provide located relatives with written notice, and oral notice when appropriate, of the child's removal (§ 309, subd. (e)(1)(A)), and "[a]n explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond." (§ 309, subd. (e)(1)(B); Cal. Rules of Court, rule 5.534(b)(3).)

In enacting section 309, the Legislature declared: "The state has established a clear goal that children removed from their home be placed in the home of a relative, whenever possible, in order to provide the child with continuity and minimize any trauma that may be caused by the removal. Existing law allows children to be placed with relatives who are not licensed or certified foster parents. However, child welfare agencies are required to conduct an in-home visit and safety assessment prior to placing a child in the home of a relative." (§ 309 [Stats. 2000 ch. 421, § 1(d)].) Thus, the primary focus of the statute is placing detained children with relatives.

B. Forfeiture

As father acknowledges, he did not raise the issue of the sufficiency of DCFS's search and notification of relatives in the juvenile court. DCFS argues he has forfeited the issue. We agree. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.) Dependency cases are not exempt from the forfeiture doctrine. (*Ibid.*) "The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they

persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child."

may be corrected.” (*Ibid.*) Any other rule would ““permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.” [Citations.]” (*In re Christian J.* (1984) 155 Cal.App.3d 276, 279.)

Father argues the issue was not forfeited because relative search and notification rights lie with the children and relatives, and should therefore be treated as analogous to a tribe’s rights under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). According to father, because an ICWA notice issue is not forfeited by a parent’s failure to object below, the relative search and notification issue should likewise not be deemed forfeited. But unlike the tribe in an ICWA case, the children here were already parties and represented by counsel. The children have not appealed the disposition in this matter. And unlike ICWA—a federal law that gives tribes certain rights, including the right to intervene as parties in cases involving Indian children—section 309 does not give relatives any rights. Rather, it imposes a duty on DCFS to conduct a search for relatives and to notify them of proceedings, so that detained children may be placed with relatives whenever possible. If father believed DCFS was delinquent in this regard, he should have brought the matter to the attention of the juvenile court.

C. No Prejudice

Even if father had not forfeited the issue, as he notes the real question here is whether he was prejudiced by DCFS's failure to notify paternal relatives.⁵

Father argues he was prejudiced because he was "denied his rights to have his relatives considered for placement" and to have them "involved and active on his side." But father never requested that any paternal relatives be assessed as a placement option. And he did not identify any paternal relatives, other than perhaps the paternal grandmother, who had any interest in the children. Presumably, father informed the paternal grandmother about the children's status, but there is nothing in the record to indicate that she came forward before the disposition hearing seeking to be involved in the case.

Moreover, there is no indication that any paternal relatives live in California. As the juvenile court aptly noted in making its finding that it would be detrimental to the children to place them with father, forcing the children to move out of state when they were suitably placed with a maternal relative in California would greatly disrupt their lives. Indeed, when determining whether placement with a relative is appropriate, "the county social worker and court shall consider . . . [t]he best interest of the child." (§ 361.3, subd. (a)(1).) There is no reason to believe that had the social worker contacted paternal relatives the outcome of the disposition hearing would have been any different.

⁵ Although father suggests DCFS also failed to meet its statutory obligations regarding maternal relatives, this suggestion is unpersuasive. DCFS immediately placed the children with maternal relatives upon detention and later moved their placement to another maternal relative.

DISPOSITION

The juvenile court's October 21, 2016, paternity and disposition order is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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