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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B264068

(Los Angeles County
Super. Ct. No. CK90463)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Debra Losnick, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jennifer L. King, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jessica Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

L.L., born in August 2014, is the seventh child of Sylvia H. (mother). Hospital workers alerted the Department of Children and Family Services (DCFS) when L. tested positive for methamphetamine and amphetamine at birth. L.'s six older half-siblings lived with their maternal grandmother, H.R. (grandmother), in a three-bedroom house, along with the siblings' aunt, occasionally another aunt, and four cousins. After L. was born, DCFS placed L. at grandmother's house for eighteen days until it found him suitable placement at a foster home. Since then, L. has lived with his foster family, the Ds, who want to adopt him. L. has had visits with his siblings, and the Ds are amenable to an open adoption in which the siblings continue their relationship with L.

L.'s eldest sibling, J.M., petitioned the court under Welfare & Institutions Code section 388¹ to have L. placed back in grandmother's home. J. argues that maintaining close sibling relationships is in L.'s best interest. The trial court denied the petition. J. has not demonstrated that moving L. from his home would be in L.'s best interest, and we therefore affirm the trial court's order denying J.'s petition.

FACTUAL AND PROCEDURAL BACKGROUND

L.'s six siblings were born between 1998 and 2009. DCFS received neglect complaints about the children in November 2009 (a report that J. had an untreated infection in her eye), January 2011 (a report that the children were left alone), and May 2011 (a report that the children were inadequately supervised); DCFS found these complaints to be unfounded. In June 2011, one of the siblings, four years old at the time, was found wandering a public street alone at 1:40 a.m.; DCFS found the related neglect complaint to be substantiated. When questioned about the incident, grandmother and her adult daughter, Isabel, told police they had been watching the children while mother was away, and no one realized the child had left the house.

In October 2011, another complaint that the children were neglected was found to be substantiated for mother and inconclusive as to grandmother. DCFS found that

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

grandmother and Isabel were inadequately caring for the children, ranging in age from 2 to 12 at the time, while mother's whereabouts were unknown. Ten children (mother's six children and Isabel's four children) were unsupervised in the home while grandmother and Isabel were both asleep. The officer who responded to the complaint observed that the children had dirt caked on their feet, and they were eating old food off the kitchen floor. The apartment was "filthy, dirty, cluttered, and infested with roaches and flies." Chemical cleaning products were accessible to the children; grandmother and Isabel told the officer they did not have money to buy child safety locks for the cabinets. The children were detained and placed in foster care. Eventually custody of the six children was awarded to their father, A.M. After mother failed to comply with reunification requirements, reunification services were terminated in August 2012.² Shortly after A.M. was awarded custody, he returned to Mexico either for a family emergency or because he was deported; the record is unclear. He left the children with grandmother.

L. was born in August 2014, and tested positive for methamphetamine and amphetamine. Mother initially denied drug use, but then admitted smoking methamphetamine regularly throughout her pregnancy, including on the day L. was born. L.'s father, A.L., told social workers that he maintained an occasional relationship with mother, but he was married and had other children with his wife. A.L. also tested positive for methamphetamine.

DCFS temporarily placed L. with grandmother when he was discharged from the hospital on August 15, 2014. Grandmother reported to social workers that she lived in a three-bedroom home with mother's six children, her daughter Isabel, and Isabel's four children. Another of grandmother's daughters, Luisa, also stayed in the home on the weekends. Social workers found grandmother's house to be disorganized but not unsanitary. There were flies in the home because it was in a rural area with farm animals nearby. Grandmother said she had trouble getting the children services, such as doctor

² Because reunification services for mother were terminated as to the six siblings before L.'s birth, it appears that reunification services for mother relating to L. were never instigated.

appointments, because she was not their legal guardian. The children generally reported appropriate care and appeared healthy. Although grandmother was willing to keep L., the social worker informed her that L. would not be able to remain with her while so many people were living in the house.

The court found jurisdiction under section 300, subdivision (b) for all seven children. The six eldest remained placed with grandmother. Placement was found for L. on September 2, 2014. A social worker reported that the siblings were sad to see him go. L. was placed with a foster family, the Ds. The trial court ordered the foster parents to participate in visitation with the siblings. The court also noted that DCFS was to evaluate placement of L. with other family members.

On September 30, social workers interviewed the six siblings at grandmother's house. The children were developing normally and attending school. They all reported being generally happy and cared for, and said they wanted to remain living with grandmother. The four-year-old sibling showed the social worker a shotgun³ in the closet of the boys' bedroom. The 12-year-old, 7-year-old, and J. (age 16) said the shotgun did not have any bullets. The 7-year-old said that their grandfather lived in the home as well, and he sometimes got drunk; the 12-year-old said that their grandfather only visited on occasion. The 4-year-old said, "My grandpa hits us sometimes." The 12-year-old mentioned that the family has no money for gas.

Grandmother told social workers that she hoped to become legal guardian for the children. She said the shotgun did not have bullets, and she kept it only in case she needed to scare intruders, because the family lived in a desolate area. Grandmother complied with social workers' requests to remove the weapon from the house, and gave the shotgun to her daughter Luisa. Grandmother agreed not to keep any weapons that were not fully secured.

³ Different parts of the record reference a "shotgun" and a "rifle," but these appear to be references to the same weapon.

Social workers also spoke with A.L.'s wife, who said A.L. had been deported. She also reported that A.L. denied that L. was his child, and wanted a DNA test to confirm paternity.

Social workers spoke with grandmother's daughter Luisa, who was interested in having L. placed with her. Luisa lived with her brother, his wife, and their five children in a three-bedroom house. She said she had not initially finished high school because she needed to help her mother raise L.'s six siblings, but she recently had earned her diploma. She was unemployed and looking for a job, and mentioned the possibility of furthering her education.

Baby L. was healthy and developing normally. His foster parents said that if reunification was not successful, they would like to adopt L. The foster parents requested permission to take L. with them to a family reunion in Florida in November 2014, and the trial court granted the request.

A DCFS report in February 2015 stated that L. had been with the Ds continuously since September 2014, and "The Ds have been ensuring that all of his medical and developmental needs are being met." The report also said, "The Ds are very interested in adopting [L.]. There are no known family members who are able, or willing, to have [L.] placed with them. Therefore, DCFS will be recommending that [L.] be adopted by current caregivers. . . ." The report noted that foster parent J.D. had graduated from college and was employed as an engineer, while foster parent M.D. had a bachelor's degree and was managing a local coffee store. They had been together since 2007, registered as domestic partners in 2010, and married in 2013. The report noted that L.'s siblings "have visited on at least one occasion and there are future plans for visitations. [L.] lives over 60 miles from his siblings and since the children are in school it has been difficult to facilitate visits."

At a February 11, 2015 hearing, the trial court ordered DCFS to "re-evaluate placement for [L.] with maternal grandmother." The court also said, "RPP report due on 4/16/15 is to include an update on sibling visits, and re-placement of [L.] with maternal grandmother."

On February 25, 2015, counsel representing “J[.]M[.], et al.” filed a section 388 petition to change a court order. The checkbox form asked the court to “recognize my relationship with my brother or sister.” The request also stated that grandmother “request[s] placement of L[.]L[.] in her home. [Grandmother] is able and willing to provide care and ensure that the siblings grow up together in the same home. [Grandmother] is able to commit to a permanent plan for[L.]” An attachment to the petition noted that the siblings were all happy and well-adjusted in grandmother’s home, and that L. would form a lasting bond with his siblings if he could live with them. The attachment also noted that sibling visitation was difficult because the siblings lived 60 miles from L. In response, the trial court granted the request for a hearing and ordered DCFS to prepare a progress report.

DCFS visited grandmother’s home on March 31, 2015. It was unclear who was living there at the time. The children’s grandfather was staying in the house; DCFS noted that he had a history of violence with mother and grandmother. Grandmother said that grandfather recently had been injured in a fall from a roof and he was unable to walk, so he stayed with grandmother during the day and his son at night. Another social worker who had been there the week before, however, saw grandfather at the house; the grandfather was able to walk, and grandmother said he was temporarily living there.

Grandmother reported that one bedroom was shared by the boys (the 6-year-old and 8-year-old), another bedroom was shared by the girls (J. (age 16), the 13-year-old, the 11-year-old, and the 5-year-old), and grandmother occupied the third bedroom. The 11-year-old and 13-year-old also said this. The 6-year-old, however, said that grandmother slept in the boys’ room; he also said that grandmother slept in the third bedroom with the grandfather. The 5-year-old said grandmother slept in the boys’ room, their aunt Ariana (another of grandmother’s adult daughters) slept with the girls in their room, and Isabel, her husband, and their children slept in the third bedroom. The 11-year-old said that grandfather sleeps on the couch. The shotgun that had been given to Luisa was back in the house.

The report stated that DCFS was concerned about the number of people living in the house, and that grandmother was not forthcoming about who was living there. DCFS was also apprehensive about the grandfather's presence in the home, both because of his domestic violence history against mother and grandmother, as well as the siblings' comments that he sometimes hit them or got drunk. DCFS also expressed concern that the shotgun was back in the house and not secured.

DCFS found that L. was "thriving in his placement" in foster care. L. made good eye contact with the social worker and was smiling. The report stated, "Minor and caretakers seem to have formed a strong bond with each other." The report also said, "It would be detrimental for minor [L.] to be taken from his caretakers." The report noted that the foster parents had started taking Spanish lessons to be able to communicate better with grandmother.

L. and his siblings had visited each other twice, and "[b]oth times, the minors really enjoyed this visit." L.'s foster parents said they were amenable to an open adoption with continued visitation with the siblings. DCFS said it would facilitate monthly visits.

The DCFS report also noted concerns that placing L. in grandmother's home could have detrimental effects on some of the other children. The report noted, "[I]f minor [L.] were to be released to [grandmother], minors [J.] and [the 13-year-old] will be the main caretakers of the baby as they have already stated they will care for him. Minor [J.] is already very parentified and this will affect them in their schooling and in their future." The report concluded, "DCFS continues to recommend that minor [L.] not be replaced to [grandmother's] home, due to lack of space, [grandmother] is already supervising 6 children, emotional/parentification to the older siblings, [grandmother] not being forthcoming with information as to who is living in the home: such as maternal grandfather and her daughter Isabel with her husband and 4 children. [Grandfather] having a history of being violent and having a problem with alcohol."

At the hearing on the section 388 petition, counsel appeared on behalf of the siblings. She pointed out that there were no allegations of abuse or neglect; the only

concerns about placing L. with the siblings were that grandmother's house was small and grandmother had limited financial resources. The siblings were happy, well cared for, up-to-date on their immunizations, and doing well in school. She stated that grandmother was caring for the six siblings "without any financial assistance from the department, from the mother, or from the father." The siblings' attorney also argued that the older girls' offers to help with L. did not mean they were parentified.

The siblings' counsel admitted that the grandfather was staying in the home to recuperate after his injury. She also admitted that "the adult sister" (presumably Isabel) and her children had been living there "for a few weeks" because she had separated from her husband, and grandmother "wanted to provide a safe home for her grandchildren and her daughter." Counsel argued that L. would bond with the family if he were allowed to live with them.

DCFS argued that problems with grandmother's home extended beyond it being too small and limited financial resources. Counsel said that although DCFS was recommending that grandmother become the legal guardian of L.'s six siblings, getting there had been a "long and rocky road." It had been difficult to set up a home visit with grandmother, and once that visit occurred, DCFS found that various people were living in the home, including the grandfather, who had a domestic violence history and possible issues with alcohol abuse. DCFS also noted that grandmother had not been forthcoming about who was living in the home. In addition, L. was doing well in his current placement and he had bonded well with his foster parents—the only parents L. had known.

Counsel for L. joined DCFS's arguments, and noted to the court that there were thirteen people living in grandmother's house. She also pointed out that L. had been with his foster parents for all but about two weeks of his life.

In rebuttal, the siblings' attorney told the court that the grandfather, Isabel, and Isabel's children were only temporarily living in the home, "so this is not a permanent situation. They do plan on moving."

The court denied the petition, saying that there were too many children in the home, and grandmother had not been forthcoming with social workers about who was living in the home, which did not allow for background checks for the safety of the children. The court concluded, “I do not feel that there is a change of circumstances in what’s been shown to me, unfortunately, and I cannot find also that it is in the child’s best interest because my fear is that, if I released the child [L.] to the grandmother, the department could go out and say well, there are too many kids here and detain the other children and disrupt the ASFA approval of the current caretaker as it is now.” The court agreed that sibling visitation should continue.

The court granted the siblings’ request that they be permitted to participate in the section 366.26 hearing that would determine whether L. could be placed for adoption.⁴

J. timely appealed.

STANDARD OF REVIEW

A petition under section 388, subdivision (a) or (b) is addressed to the sound discretion of the juvenile court. The court’s decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*Hector A.*, *supra*, 125 Cal.App.4th at p. 798.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

DISCUSSION

J. asserts that her petition was filed under section 388, subdivision (b), which states, “Any person . . . may petition the court to assert a relationship as a sibling . . . to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or

⁴ A sibling of the child proposed for adoption must obtain an order pursuant to section 388 to become entitled to participate in the section 366.26 hearing. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 793 (*Hector A.*).

permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child.” (§ 388, subd. (b)(1).)

“[A] person petitioning under section 388 must demonstrate that the proposed order or request would be in the best interests of the dependent child.” (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1338.) The focus under section 388, subdivision (b) is the best interests of L.—not the interests of the siblings seeking to assert a relationship with him. (*Ibid.*) J. therefore was required to show that the change she sought—to have L. placed in grandmother’s home—was in L.’s best interests.⁵

The law recognizes that dependent children’s sibling relationships are important. “Section 388, subdivision (b) is but one of the numerous additions that have been made to the Welfare and Institutions Code since 1992 recognizing the importance of sibling relationships to the psychological health of dependent children and of the need to preserve such relationships whenever possible. [Citations.]” (*Hector A.*, *supra*, 125 Cal.App.4th at p. 794.) In proposing the bill to amend section 388 to include subdivision (b), “[t]he arguments in favor of the amendment pointed out that ‘[s]ibling bonds and mutual support can be one of the most important linkages to a young person entering the juvenile dependency system,’ and the bill’s author stated, ‘[F]oster children have very few people who remain constant in their lives, and a brother or a sister may be the only person a child can turn to for support.’” (*In re E.S.*, *supra*, 196 Cal.App.4th at p. 1336, quoting Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of A.B. 1987 (1999–2000 Reg. Sess.) as amended August 24, 2000, p. 6.)

J. argues that L.’s placement with his siblings would be in his best interest because sibling relationships are important. She cites section 16002, subdivisions (a) and (b), for

⁵ The parties question whether under section 388, subdivision (b), J. was required to show that changed circumstances warranted a change in the trial court’s order, which is a required showing under section 388, subdivision (a). We do not address that question here. It is clear that, at a minimum, under section 388, subdivision (b), J. was required to show that the change would be in L.’s best interest. Because her petition fails on that basis, we do not reach the issue of whether a showing of changed circumstances was required.

the proposition that “the law provides that maintaining and strengthening [L.’s] bond with his siblings was in his best interest.” These statutes do not make sibling bonds paramount to other considerations of a child’s best interest, however. Section 16002, subdivision (a)(1), states that if possible, when siblings are removed from parental care “the siblings will be placed in foster care together, unless it has been determined that placement together is contrary to the safety or well-being of any sibling.” Section 16002, subdivision (b) states, “When placement of siblings together in the same home is not possible, a diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child.”

The court’s order meets these criteria. When the court assumed jurisdiction over the seven children, it kept the six elder siblings together with the caregiver they knew best—grandmother. The court determined that placement of baby L. at grandmother’s home, with ten children and several adults living in a three-bedroom house, was contrary to the safety or well-being of L. While L. was placed separately from his siblings, the court ordered that the siblings maintain visitation with him. Although the siblings live 60 miles away from L., making visitation somewhat difficult, DCFS said it would attempt to facilitate visitation and L.’s foster parents are amenable to participating in visitation. Section 16002, subdivisions (a) and (b) therefore do not call for a result different than the one that occurred in this case.

The importance of L.’s relationships with his siblings has been recognized by the court, and the court has taken steps to allow the children to maintain those relationships. A desire to maintain sibling relationships, therefore, is not a persuasive basis to reverse the trial court’s order.

To show that a change in L.’s living situation would be in his best interest, J. was required to demonstrate that living with his siblings at grandmother’s house, instead of living with his foster parents, would be in L.’s best interests. J. did not make such a showing. DCFS reported to the court that L. is “thriving” in his placement in foster care. He has formed a strong bond with his foster parents, who want to adopt him while

maintaining the relationships between L. and his siblings. The DCFS report submitted to the court also found that “[i]t would be detrimental for minor [L.] to be taken from his caretakers.”

Once parental reunification services have been ordered terminated, which occurred here,⁶ “the focus shifts to the needs of the child for permanency and stability.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) “[T]he strength of a child’s bond to his or her present caretakers, and the length of time a child has been in the dependency system in relationship to the parental bond are also vital. [Citation] While the bond to the caretaker cannot be dispositive [citation], lest it create its own self-fulfilling prophecy . . . the disruption of an existing psychological bond between dependent children and their caretakers is an extremely important factor bearing on any section 388 motion.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531.)

Moreover, the court found that grandmother had not been forthcoming about who was living at her house, which barred DCFS from completing necessary background checks and otherwise ensuring the children were protected. At the hearing, counsel for the siblings stated that grandfather was living in the home; he had a history of domestic violence and may have had issues with alcohol. In addition, Isabel and her four children were living at the home as well, so that thirteen people (three adults and ten children) were living in the home. The trial court was appropriately concerned that the home lacked sufficient space, and that DCFS lacked sufficient information to ensure a safe, healthy environment for L.

J. has not demonstrated that the court’s holding exceeded the bounds of reason. Although sibling relationships are indeed important, the court’s order acknowledges those relationships and encourages them to continue. J. has not shown that a change in L.’s living situation would be in L.’s best interests. In sum, J. has not demonstrated that the trial court abused its discretion by denying her section 388 petition.

⁶ The record does not indicate that reunification services were ever initiated for A.L., who was deported shortly after L.’s birth and disputed that he was L.’s father.

DISPOSITION

The order of the trial court is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.