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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re Joseph M. et al., Persons Coming Under the Juvenile Court Law.	B296945
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.M. et al., Defendants and Appellants.	Los Angeles County Super. Ct. No. CK94107

APPEAL from orders of the Superior Court of Los Angeles County, Harry A. Staley, Juvenile Court Referee. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

This is R.M.'s (father) second appeal in dependency proceedings involving his three children, Joseph M., Michael M., and Alexis M. (See *In re Alexis M.* (May 9, 2019, B289637) [nonpub. opn.] (*Alexis M.*)). In his first appeal, father challenged the juvenile court's orders denying his petitions under Welfare and Institutions Code¹ section 388, filed after the court set a selection and implementation hearing for all three children, seeking to vacate the court's jurisdiction findings and disposition orders because the Department of Children and Family Services (Department) failed to provide father adequate notice of the children's dependency proceedings. We affirmed the juvenile court's orders denying father's petitions in *Alexis M.*

Here, father appeals from the court's orders terminating his parental rights over Joseph and Michael. Father raises only two arguments, both of which relate to the court's orders denying his section 388 petitions. First, father asserts we must reverse the orders terminating his parental rights if the California Supreme Court reverses our decision in *Alexis M.* That argument is now moot because the Supreme Court denied father's petition for review in *Alexis M.* while this appeal was pending, and we have since issued remittitur in that case. Second, father argues we must reverse the orders terminating his parental rights because the Department failed to provide him adequate notice of the children's dependency proceedings. We reject father's second argument because it is identical to the one he raised in *Alexis M.* and, therefore, precluded by the law of the case doctrine.

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

Accordingly, we affirm the orders terminating father's parental rights over Joseph and Michael.

FACTUAL AND PROCEDURAL BACKGROUND²

1. The Family's History and the Initiation of the Underlying Proceedings

In September 2016, the children were detained and placed in foster care after their mother, G.S. (mother), was arrested for attempting to steal from a market and the children were found left alone inside a car.³ At the time, mother and the children were homeless, Joseph and Alexis weren't enrolled in school, and father's whereabouts were unknown.

In late September 2016, the Department filed a section 300 dependency petition on the children's behalf. As later sustained by the court, the petition alleged: (1) mother failed to make "an appropriate plan for the children's ongoing care and supervision" when she was arrested (b-1 allegation); (2) mother placed the children "in an endangering and detrimental situation by leaving the children alone and unsupervised in a vehicle in a public parking lot" (b-2 allegation); (3) mother has a history of substance abuse and is a current abuser of methamphetamine and marijuana (b-4 allegation); and (4) father has a history of abusing methamphetamine and a criminal history including convictions for possession of controlled substances for sale (b-5 allegation).

² We draw some of the facts and procedural history from our opinion in *Alexis M.*

³ Mother is not a party to this appeal.

2. The Department's Search for Father

Shortly after the children were detained, the Department interviewed the family about father's whereabouts. Father hadn't contacted the family for about a year. Alexis and Joseph last saw father "a long time" ago in Orange County, but they believed he had since been incarcerated. Mother heard that father was in custody in San Diego, but she wasn't sure because she had "not been keeping up with his whereabouts" since they split up the previous year. The children's maternal grandmother reported that father was "in San Diego," and she believed he had been arrested for transporting illegal drugs about five months earlier.

On November 2, 2016, the Department submitted a due diligence report for father. The Department had searched numerous databases, including the Department of Motor Vehicles, the "Probation Index," and the armed forces' records, using father's name, social security number, and date of birth. Most of the Department's searches returned no valid addresses. While a search of the "California CHILD SUPPORT Automated System" (Child Support System) showed that father had been incarcerated at the San Diego Metropolitan Correction Center since at least April 5, 2016,⁴ the Department reported the Federal Bureau of Prisons database showed there was "No Active Record" for father.

The Child Support System also listed two residential addresses for father, both on East 87th Place in Los Angeles. The Department visited the addresses, which were located on the

⁴ The Child Support System listed two "Start Date[s]" for father's incarceration—February 19, 2016 and April 5, 2016—but it did not list any release date.

same property. The occupant of one of the units told the Department that mother and father no longer lived there. The Department concluded that father's "whereabouts remain unknown."

3. Jurisdiction, Disposition, and Permanency Planning

In January 2017, the court held a jurisdiction and disposition hearing, at which mother and father did not appear. After sustaining the petition's b-1, b-2, b-4, and b-5 allegations, the court declared the children dependents of the court and ordered them removed from mother's and father's custody. The court denied mother and father reunification services under section 361.5, subdivisions (b)(1), (b)(10), and (b)(13). The court later found father to be the children's presumed father.

In October 2017, the court held a selection and implementation hearing. The court signed Letters of Guardianship for Alexis, appointing her maternal relatives as legal guardians. The court continued the selection and implementation hearing for Joseph and Michael to April 2018.

4. Father's Section 388 Petitions

In January 2018, father made his first appearance in the children's case. In February 2018, he filed three petitions under section 388, asking the court to set aside its jurisdiction findings and disposition orders as to all three children, as well as its order appointing the maternal relatives as Alexis's legal guardians. Father claimed the Department failed to use reasonable efforts to notify him of the children's proceedings by not interviewing family or friends, looking for him on social media, or locating him in prison. Father asserted it would be in the children's best interests to vacate the prior orders and findings "[p]ursuant to

Ansley v. Superior Court (1986) 185 Cal.App.3d [477 (*Ansley*)], [because] it is always in the best interest of the child to set aside ‘a judgment that is proven void due to lack of due process notice.’” Father did not submit a declaration or any other evidence with his petitions. The court granted father an evidentiary hearing.

After father filed his section 388 petitions, the Department interviewed him and his probation officer. Father had been serving a 24-month prison term in federal custody from mid-February 2016 until late-November 2017. At the time he appeared in this case, father was on “three years of supervised release” and living in an in-patient drug-treatment program in San Diego.

In April 2018, the court heard father’s section 388 petitions. Father did not testify or submit any evidence to support his petitions. The court denied the petitions, finding the Department made reasonable efforts to locate and notify father about the children’s dependency proceedings. The court also found it would not be in the children’s best interests to grant father’s petitions and vacate the court’s prior orders and findings. After denying father’s petitions, the court scheduled a selection and implementation hearing for Joseph and Michael. Father appealed from the court’s orders denying his section 388 petitions.

5. Termination of Father’s Parental Rights and Resolution of Father’s First Appeal

On April 4, 2019, the court held a selection and implementation hearing for Joseph and Michael. Father testified at the hearing. The court found no exceptions to adoption existed, ordered adoption as Joseph’s and Michael’s permanent plans, and terminated mother’s and father’s parental rights as to Joseph

and Michael. Father appealed from the court's orders terminating his parental rights.

In May 2019, we affirmed the court's orders denying father's section 388 petitions in *Alexis M.* We concluded the court properly found the Department made reasonable efforts to notify father of Alexis's, Joseph's, and Michael's dependency proceedings and that, in any event, it would not have been in the children's best interests to vacate the court's jurisdiction findings and disposition orders.

In July 2019, the California Supreme Court denied father's petition for review in *Alexis M.* On July 30, 2019, we issued remittitur in *Alexis M.*

DISCUSSION

In this appeal, father raises two arguments: (1) we must reverse the court's orders terminating his parental rights as to Joseph and Michael if the California Supreme Court reverses our decision in *Alexis M.*; and (2) the Department failed to provide him adequate notice of his children's dependency proceedings, which requires us to reverse the orders terminating his parental rights. Both of father's arguments lack merit.

Father's first argument is moot. Because the Supreme Court denied father's petition for review in *Alexis M.* and we have since issued remittitur in that case, the juvenile court's orders denying father's section 388 petitions are final and remain undisturbed. Accordingly, there is no basis to reverse the court's subsequent orders terminating father's parental rights on the grounds the court improperly denied father's section 388 petitions.

As for father's second argument, it is precluded by the law of the case doctrine. "The doctrine of 'law of the case' deals with

the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.’ [Citation.]” (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491 (*Morohoshi*).)

Father argues we should reverse the court’s orders terminating his parental rights because he was not provided adequate notice of the proceedings leading up to and including the children’s jurisdiction and disposition hearings. That argument is identical to the one we rejected in *Alexis M.* Because *Alexis M.* is final, we are bound by the legal principles we established in that decision—i.e., that the court properly found the Department made reasonable efforts to notify father of the children’s dependency proceedings and, in any event, vacating the court’s jurisdiction findings and disposition orders would not be in the children’s best interests. (*Morohoshi, supra*, 34 Cal.4th at p. 491.) Accordingly, we must reject father’s argument that the orders terminating his parental rights over Joseph and Michael should be reversed because the Department failed to properly notify father of the children’s dependency proceedings.

DISPOSITION

The court's April 4, 2019 orders terminating father's parental rights are affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.