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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B260343
(Los Angeles County
Super. Ct. No. CK88323)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CANDI R. et al.,

Defendants and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County. Amy M. Pellman, Judge. Dismissed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant Candi R.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant Carlos T.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

These appeals relate to now two-year-old Jasmine R. (Jasmine, born Apr. 2013), who is an identified Indian child with the Cherokee Nation and has special needs. Candi R. (mother) and Carlos T. (father) appeal¹ from a juvenile court order placing Jasmine in Oklahoma with a Cherokee family instead of placing her with her maternal great aunt, Rose B. (Rose). We dismiss the appeals. Because mother's parental rights had been terminated, she lacks standing to object to the placement order. (Welf. & Inst. Code, §§ 366.26, 361.31.)² And, father raised no arguable issues on appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Referral to the Department of Children and Family Services (DCFS); Detention; Involvement of Cherokee Nation

On April 24, 2013, DCFS initiated dependency proceedings on behalf of Jasmine shortly after her birth, based on mother's mental health problems, the parents' substance abuse, and their failure to reunify with an older child, James R. (James), who at the time of Jasmine's birth, was almost two years old. Jasmine was detained in foster care.

James previously was identified as an Indian child under the Indian Child Welfare Act (ICWA) based on mother's family ties to the Cherokee Nation of Oklahoma. After reunification efforts failed, James was placed, through the tribe, with a Cherokee family in Oklahoma, who planned to adopt him. In May 2013, the juvenile court terminated parental rights over James.

At the initial detention hearing, the juvenile court detained Jasmine and ordered DCFS to investigate application of ICWA to Jasmine's case. Thereafter, it was determined that Jasmine's matter was also governed by ICWA. The Cherokee Nation became involved at the outset and initially recommended that the parents not be offered reunification services because they had failed to reunify with James. The tribe also

¹ Although father filed a notice of appeal, he does not advance any arguments in his opening brief.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

requested that an interstate compact be initiated to secure Jasmine's placement with the Oklahoma family where James resided. Later, the tribe requested that the parents be offered six months of reunification services and that Jasmine remain in Los Angeles to promote reunification.

Adjudication

On September 17, 2013, the juvenile court sustained an amended petition under section 300, subdivision (b).

Last Minute Information for the Court

DCFS advised that the parents were wholly noncompliant with services. Though they visited Jasmine consistently, they continued to need much redirection and guidance during visits.

Disposition

On November 5, 2013, the juvenile court declared Jasmine to be a dependent of the juvenile court, formally removed her from parental custody, and ordered DCFS to provide reunification services, necessitating that Jasmine remain in Los Angeles. The juvenile court therefore found that good cause existed to depart from ICWA's placement preferences as a due diligence search was completed to find a local, ICWA-compliant home, but no suitable family could be located.

Interim Review Report

DCFS investigated placing Jasmine with her paternal grandmother, but eventually, she decided that she was unable to care for the child.

Maternal relatives were also assessed for placement. Mother's sister, Crystal R. (Crystal) was interested in caring for Jasmine, but the Regional Center counselor reported that she was not stable enough to care for the child. Crystal, along with the maternal grandmother, both parents, and mother's brother, all lived in Rose's home. Rose appeared to be taking advantage of Crystal's disability benefits. And the counselor reported that the home was so filthy to the point where she stopped visiting because of its unsanitary conditions. The counselor further reported that she did not see any person in the home as an appropriate caretaker for Jasmine because all persons residing there

appeared unstable, very dirty, and unhygienic. Moreover, mother, her brother, and Crystal had an extensive history with DCFS when they were children, and mother and Crystal received permanent placement services before they eventually aged-out of the system.

In addition to investigating the maternal grandmother (who had a DCFS and criminal history), the DCFS social worker contacted Rose, who confirmed that she was interested in caring for Jasmine. When asked why she did not express her interest earlier, Rose stated that at that time, her father was also residing in the home and he had a criminal background that would have prevented Jasmine's placement there; her father had since passed away. Rose was the guardian of mother's brother, who was 20 years old and also a Regional Center client. Rose confirmed that the maternal grandmother, Crystal, and the parents also resided in the home. Rose was currently between jobs and understood that the parents and maternal grandmother would not be able to reside in the home if Jasmine were placed there. Rose stated that she would think about whether she was willing to provide long-term care for Jasmine.

In the meantime, the parents were minimally participating in the case plan and both had tested positive for methamphetamine and amphetamine. They visited Jasmine twice per week but had to be reminded each time about their poor hygiene, cigarette smoking, and proper handling of the baby, as she had little muscle control and was currently receiving Regional Center services. Jasmine was doing well, but her progress was slow.

DCFS requested that the juvenile court order an expedited interstate compact (Fam. Code, § 7901, art. 3, subd. (b)) to secure Jasmine's placement in Oklahoma with James.

Progress Hearing

At a February 2014 progress hearing, the juvenile court found that DCFS had made active efforts to place Jasmine in the home of a relative and ordered that the interstate compact be initiated.

Status Review Report

The tribe informed DCFS that if James's adoptive family was not willing to adopt Jasmine, then there was another Cherokee family in Oklahoma who was available.

The parents' progress remained minimal. Notably, father reported that he was trying to end his relationship with mother in order to regain custody of Jasmine. He stated that he had been breaking up fights between mother and her family members, including her brother, Crystal, the maternal grandmother, and Rose.

Visits largely went well, except on one occasion, mother and the maternal grandmother had a fight outside the building; mother became so out of control that the visit was canceled. On another occasion, a visit was cut short because both parents kept falling asleep.

DCFS further informed the juvenile court that between January and April 2014, there were at least seven calls to the police to respond to Rose's home, including one call to serve an eviction notice; two domestic violence calls between mother and Crystal; a trouble call from the maternal grandmother; two arguing/drunken calls from Crystal and mother's brother; and an out of control call regarding mother's brother, who was assessed for psychiatric hospitalization.

Fortunately, Jasmine was making progress with her developmental milestones. DCFS recommended that the juvenile court terminate family reunification services.

Review Hearing

At the hearing, the juvenile court continued the matter for a contested hearing and ordered DCFS to continue to make efforts to place the child with a relative or in a preferred ICWA placement.

Last Minute Information for the Court

Following the juvenile court's order, DCFS again assessed relatives for placement. The paternal grandmother would not return the social worker's telephone calls. The maternal grandmother stated that there were no available relatives. DCFS reminded the juvenile court that when it asked Crystal's Regional Center counselor if Crystal could care for Jasmine, the counselor replied "absolutely not." Rose indicated that she was

interested in caring for Jasmine. She had recently relocated with the maternal grandmother, maternal uncle and Crystal. The social worker submitted an ASFA (Adoption and Safe Families Act of 1997 [42 U.S.C. § 670 et seq.]) referral to assess her home.

The Cherokee Nation did not agree that Jasmine should be placed with maternal relatives “due to the [ongoing] issues/safety concerns in the home.” (Emphasis omitted.) The tribe reported that it had a prospective adoptive home for Jasmine.³

Continued Review Hearing

On June 2, 2014, the juvenile court terminated family reunification services and referred the matter for a hearing to select and implement a permanent, out-of-home plan for Jasmine.

Last Minute Information for the Court

In July 2014, DCFS reported on the ASFA request for Rose’s home. The request could not be processed until the maternal grandmother received a criminal waiver as she resided on the property.

The social worker did speak with Rose about DCFS’s concerns, including her inability to control her own household and the police calls to her home. Rose explained that the fighting was caused by mother being in the home; she would no longer be allowed there because her brother was afraid of her.

The ICWA coordinator reported that the tribe had identified a prospective adoptive family for Jasmine; they had a “completed/approved home study.”

Section 366.26 Report

Meanwhile other concerns surfaced. A family meeting was scheduled for July 2014. When the DCFS social worker asked maternal relatives why father was not present for that meeting, all of the family members indicated that he was out of town visiting

³ The tribe later reported that James’s adoptive family had declined to adopt Jasmine. But, the tribe had found a different match for Jasmine, and that family resided close to James and would ensure regular sibling contact.

relatives. That was not true; in fact, he was incarcerated for assault with a deadly weapon.

Family members continued to lie about his whereabouts. When father was released and the social worker spoke to him, he told her that the family had lied because he had been doing well with his sobriety and they did not want anyone knowing about his arrest. Then, he stated that the maternal grandmother and Rose did not want DCFS “to find out about everything that goes on in their home.” He would not elaborate.

Father’s therapist stated that father had spoken about violence in the home during sessions. Father reported that mother had thrown a hammer at him and had used a weapon against him in the past. He also told the therapist that the maternal relatives fought all the time. The therapist had not witnessed any fighting but, for safety reasons, she conducted her in-home sessions on the outside porch; eventually, she refused to have any sessions in the home.

The paternal grandmother was relieved that there was an identified adoptive family for Jasmine. She felt badly about not assuming responsibility for her grandchild, but she knew that Jasmine needed a family that could provide for her special needs, which the paternal grandmother was unable to do. She expressed great concern about the maternal grandmother or Rose caring for Jasmine, stating that they were not appropriate. The paternal grandmother further reported that both mother and father informed her that the maternal grandmother and Rose took mother’s disability benefits to pay their own bills. The paternal grandmother also confirmed that the home was filthy and that the family members had poor hygiene. The paternal grandmother was very concerned that the maternal relatives just wanted access to Jasmine’s benefits.

Meanwhile, Rose’s home approval was still pending. It was reported that there were safety concerns, so a second assessment needed to be made. The maternal grandmother’s criminal waiver was approved, but there was a notation on it that anyone making placement decisions should carefully consider her statements in the police reports. The tribe had concerns about the maternal grandmother’s waiver.

Jasmine’s attorney opposed placement with the maternal relatives.

Jasmine's Contact with Prospective Adoptive Family

On July 11, 2014, the juvenile court authorized visits between Jasmine and the prospective adoptive family. The visits would take place in California in July and August and, if all went well, Jasmine would have an extended visit in Oklahoma in September 2014. That extended visit commenced September 2, 2014.

The prospective adoptive family was proactive in getting Jasmine's needs met. In response to information from DCFS, the prospective adoptive family notified DCFS that Jasmine would begin occupational and physical therapy in October 2014 to address her overall development delays. The prospective adoptive mother was working with Jasmine daily until a physical or occupational therapist could be assigned. Eventually, Jasmine was referred for a leg brace, a cerebral palsy and MRI assessment, an ophthalmology examination, and physical and occupational therapy.

Jasmine made a smooth adjustment to her Oklahoma placement. The caregivers grew attached to her and stated that they would be heartbroken if she were removed from their home. They remained steadfast in their desire to adopt her. They were open to maintaining relationships with Jasmine's birth family as long as the family members were appropriate and contact with them was in Jasmine's best interest.

Section 366.26 Hearing

At the September 25, 2014, hearing, the juvenile court set the matter for a contested hearing on Jasmine's placement, citing ICWA's preferences and the general relative placement preference. It authorized extending Jasmine's visit in Oklahoma.

Last Minute Information for the Court

DCFS informed the juvenile court that Rose's home would not be approved based on concerns about child welfare, safety, Jasmine's medical needs, and the tribe's position. The tribe, who had been involved with this family since 2011, remained adamant that Jasmine not be placed in Rose's home.

Contested Section 366.26 Hearing

On October 22, 2014, the juvenile court found "more than sufficient good cause to deviate [from the statutory general relative placement preference] and for the child to be

placed with an Indian family who is part of the Cherokee tribe.” After discussion with counsel, the juvenile court terminated parental rights.

Appeals

Mother and father filed notices of appeal challenging the juvenile court’s “denial of good cause to place with” Rose.

DISCUSSION

I. Mother’s Appeal

Mother argues that the juvenile court erred in finding good cause to deviate from the ICWA placement preferences. She claims that the juvenile court’s placement decision was not supported by substantial evidence. However, she does not argue that her parental rights were “improvidently terminated.” (*In re P.R.* (2015) 236 Cal.App.4th 936, 940.) “Because her parental rights have been terminated, and she makes no argument as to how alleged placement errors might be related to the termination decision, she lacks standing to challenge matters related to [Jasmine’s] placement. Her appeal must be dismissed.” (*Ibid.*)

“A parent’s appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child’s placement only if the placement order’s reversal advances the parent’s argument against terminating parental rights.” (*In re K.C.* (2011) 52 Cal.4th 231, 238; see also *In re P.R.*, *supra*, 236 Cal.App.4th at p. 940.) Here, mother does not challenge the termination of her parental rights; thus, mother has no grounds to object to the placement order.

Mother claims that by timely filing a notice of appeal, she preserved her standing to argue this issue. But, as reflected in both her notice of appeal and in her appellate briefs, while mother may disagree with the termination of her parental rights, she offers no argument as to why that judgment should be reversed.

Mother further argues that she has standing because “Jasmine’s placement with Rose could have made termination of parental rights unnecessary in this case.” We do not see how parental rights would not have been terminated even if Jasmine had been

placed with Rose. The cases cited by mother, *In re H.G.* (2006) 146 Cal.App.4th 1 and *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, do not stand for such a proposition.

For the sake of completeness, we note that even if mother had standing to object, the juvenile court's order is supported by substantial evidence. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 645.)

Jasmine was placed in a Cherokee home that is tribally approved; thus, her placement comports with the second preference set forth in the ICWA. (25 U.S.C. § 1915(a), ⁴ (c); § 361.31.⁵)

Mother argues that Jasmine should have been placed with Rose, thereby comporting with the first preference in the statutory scheme. But, the appellate record is replete with evidence showing why Rose's home was not appropriate. The home was very unsanitary and the persons living there were unkempt. Between January and April 2014, there were at least seven calls to the police to respond to Rose's home. Family members lied about father's incarceration for assault with a deadly weapon. Father even told the social worker that the maternal grandmother and Rose did not want the social worker to "find out about everything that goes on in their home." Also, father's therapist reported to DCFS that father had spoken about violence in the home. And, Jasmine's paternal grandmother also expressed great concern about Rose caring for Jasmine, believing that she was not appropriate and only wanted to care for Jasmine for financial gain. Finally, the tribe, who had been involved with this family since before Jasmine's detention, also had great concerns about Jasmine's placement with Rose.

⁴ "In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with [¶] (1) a member of the child's extended family; [¶] (2) other members of the Indian child's tribe; or [¶] (3) other Indian families." (25 U.S.C. § 1915(a).)

⁵ "In any adoptive placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order: [¶] (1) A member of the child's extended family [¶] (2) Other members of the child's tribe." (§ 361.31, subd. (c).)

In light of the overwhelming evidence in support of the juvenile court's placement order, good cause existed to depart from the ICWA's first placement preference.

II. *Father's Appeal*

After father filed his notice of appeal, we appointed counsel to represent him. After examining the record, father's counsel filed a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, indicating an inability to find an arguable issue. On March 10, 2015, we advised father that he had 30 days in which to submit a letter or brief setting forth any arguments he wished for us to consider.

To date we have received no response.

"An appealed-from judgment or order is presumed correct. [Citation.] Hence, the appellant must make a challenge. In so doing, he must raise claims of reversible error or other defect [citation], and 'present argument and authority on each point made' [citations]. If he does not, he may, in the court's discretion, be deemed to have abandoned his appeal. [Citation.] In that event, it may order dismissal. [Citation.]" (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Father has failed to raise claims of reversible error, and he has failed to show any defect. In addition, for the reasons set forth above, we conclude that substantial evidence supports the juvenile court's order.

Father's appeal is dismissed.

DISPOSITION

The appeals are dismissed.

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We concur:

_____, J.
CHAVEZ

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT