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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Adoption of KYLE L., a Minor.

2d Juv. No. B281872
(Super. Ct. No. A017163)
(Ventura County)

W.R.,

Plaintiff and Respondent,

v.

KURTIS L.,

Appellant.

Kurtis L. (father) appeals an order terminating his parental rights and freeing 10-year-old Kyle L. for adoption by his maternal grandfather, Wilburn R. in a consolidated probate and guardianship proceeding. (Prob. Code, § 1516.5; Fam. Code, § 7822, subd. (a)(2).)¹ Father contends that the trial court erred in finding that adoption is in Kyle's best interests. We affirm.

¹ All statutory references are to the Family Code unless otherwise stated.

Factual and Procedural History

Kyle was raised by his maternal grandfather/respondent, W.R., while Kyle's mother (Jennifer R.) and father were in and out of jail. When Kyle was born in 2007, mother had just been released from jail and father was still in jail. Mother returned to jail when Kyle was seven months old and reunited with Kyle in 2009. A few weeks later, a dependency petition was filed for general neglect and caretaker absence. The dependency proceeding was dismissed in September 2009 and mother and Kyle moved to the San Fernando Valley to live with the maternal grandmother and friends in various hotels and motels.

In January 2011, mother was stopped on the freeway and arrested on a parole warrant. Mother called W.R. to pick Kyle up. Mother went back to jail in July 2011 and asked W.R. to take care of Kyle. W.R. was appointed legal guardian on October 20, 2011 and has cared for Kyle the last five years. Since that time, mother and father have had little contact with Kyle.

Mother suffers from substance abuse and has 20 felony convictions for unauthorized use of a credit card, providing false financial statements, grand theft, receiving stolen property, burglary, possession of a controlled substance, and identity theft. Father suffers from substance abuse and has convictions for assault with a deadly weapon, theft, check fraud, and burglary. Father first saw Kyle in October 2008 after he was released from jail. Kyle was 18 months old. Father visited off and on until February 2010, at which time he was again incarcerated. After father was released from prison in February 2012, he made repeated requests to visit and communicate with Kyle which W.R. denied.

First Petition to Adopt

In 2014, W.R. filed a petition to adopt. Following a contested hearing, the trial court found that Kyle was a person described in section 7822 and terminated parental rights. In an unpublished opinion, we reversed on the ground that the parents' financial inability to support or communicate with Kyle was not prima facie evidence of abandonment. (*Adoption of Kyle L.* (Dec. 21, 2015, B264073) [nonpub. opn.])

New Trial

On remand, the trial court ordered a new trial and appointed independent counsel for Kyle. W.R. filed a second amended petition to adopt pursuant to section 7822 and Probate Code section 1516.5. Ventura County Human Services Agency reported that Kyle wanted to be adopted and that W.R.'s wife consented to the proposed adoption.

At trial, it was stipulated that Kyle would testify that: he wanted to be adopted by W.R., is safe and happy with him, is well cared for by him, and loves him. Kyle wanted to visit his paternal grandparents but expressed no interest in visiting father. Kyle was interested in visiting mother more frequently, providing mother maintained contact with him.

The trial court terminated parental rights and freed Kyle for adoption. (§ 7822; Prob. Code, § 1516.5.) It found that "Kyle's only parent in the past six years has been [W.R.] who has raised Kyle Neither parent has ever attempted to terminate the guardianship and neither has made more than token efforts to even re-establish or establish a relationship with Kyle."

Best Interest of the Child

On review, "we look to see whether the [trial] court abused its discretion in applying the law and whether substantial

evidence in the record supported its finding that adoption is in the child's best interests." (*Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1542.) Probate Code section 1516.5 allows a child in a probate guardianship to be declared free from parental custody and control if: (1) the parents do not have legal custody of the child; (2) the child has been in the guardian's physical custody for at least two years; and (3) the court finds the child would benefit from being adopted by the guardian. (Prob. Code, § 1516.5, subd. (a).) "Benefit' in this context means that adoption would be the best alternative for the child [Citation.]" (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1128, fn. 10.) In determining the best interest of the child, the trial court considers the nature and extent of the relationship between the child and his birth parents, siblings, and half-siblings, the guardian and guardian's family members. (Prob. Code, § 1516.5, subd. (a)(3).) Other relevant factors "include the circumstances leading to the guardianship, the parent's efforts to maintain contact with the child, any exigencies that might hamper those efforts, and other evidence of commitment to parental responsibilities. [Citation.]" (*Guardianship of Ann S., supra*, 45 Cal.4th at p. 1132.)

Father concedes that Kyle is an abandoned child within the meaning of section 7822, that father has never had legal custody, and that Kyle has been in the custody of a guardian for more than two years within the meaning of Probate Code section 1516.5. Father, however, argues that adoption is not in Kyle's best interest because Kyle does not want the adoption to negatively impact visits with his parental grandparents and his half-sister, M.L. In an August 10, 2016 interview, Kyle said he wanted to be adopted but also wanted to

continue visiting his paternal grandparents and half-sister. W.R. assured the family that the visits “will continue after the adoption. Those things are important to Kyle. It’s in the best interests of Kyle to have people around him that love him from both sides of the family.” W.R. wanted to adopt “to provide Kyle with a permanent, stable home. . . . ‘I don’t want to keep anyone from him; it’s about protecting him and caring for him. Making sure he has a normal life.’”

The trial court credited W.R.’s testimony that the visits would continue and declined to make a definitive ruling on whether an existing order for visitation by the paternal grandparents would be enforceable after Kyle was adopted. The court ruled that “it is clear that Kyle would benefit by being adopted by [W.R.]. Kyle wants to be adopted [and] . . . wants to continue to live with [W.R., who] . . . has been Kyle’s de facto parent for many years and Kyle has thrived in his care.” On review, we are precluded from reweighing the evidence, determining witness credibility, or resolving conflicts in the evidence. (*In re E.M.* (2014) 228 Cal.App.4th 828, 839.) “[T]he test on appeal is not whether substantial evidence supports a finding that appellant wishes the court had made but rather whether substantial evidence, contradicted or not, supports the conclusions the [trial] court did make. [Citation.]” (*Adoption of A.B.* (2016) 2 Cal.App.5th 912, 925.)

The evidence shows that father abdicated his role as a parent for a life of crime and drugs. It was a concern because father showed up unannounced at W.R.’s home with the paternal grandparents and tried to assault W.R., W.R. obtained a temporary restraining order and a “no contact order” in January 2016, prohibiting father from contacting Kyle during visits with

the paternal grandparents. The trial court found that “Kyle clearly has had an unstable early childhood. But living with [W.R.] where Kyle’s safety was assured, where there has been structure and consistency has clearly benefited Kyle. He has overcome the early behaviors and fears that arose from his unstable upbringing. Kyle wants to be adopted [and] Kyle deserves to know his home is permanent.”

Substantial evidence supports the finding that adoption is in Kyle’s best interest. “The interests served by [Probate Code] section 1516.5 are substantial: affording children in probate guardianships the opportunity to enjoy permanent adoptive homes with familiar caretakers, and giving willing guardians the chance to become adoptive parents.” (*Guardianship of Ann. S.*, *supra*, 45 Cal.4th at p. 1138; see, e.g., *In re Noreen G* (2010) 181 Cal.App.4th 1359, 1384.) The order freeing Kyle for adoption is consistent with section 7822, which was enacted “to serve the welfare and best interest of a child by providing the stability of an adoptive home when those conditions are otherwise missing from the child’s life.” (§ 7800.) Kyle is such a child and clearly needs the stability and permanency that adoption will provide. Childhood is brief and does not wait for a parent to rehabilitate himself or herself. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1014, 1016.)

Disposition

The judgment (order terminating parental rights and freeing Kyle for adoption) is affirmed. W.R. is awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Leslie A. Barry, under appointment by the Court of
Appeal, for Appellant.

Michelle L. Jarvis, for Petitioner and Respondent.