Filed 10/25/18 In re Nathan F. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Nathan F., a Person Coming Under the Juvenile Court Law.	B286719 (Los Angeles County Super. Ct. No. CK50965A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.F., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * * *

In this juvenile dependency case, K.F. (mother) gave birth to Nathan F. (Nathan) in 2002, and the next year disappeared from his life. In 2016, the juvenile court exerted dependency jurisdiction over Nathan because his father's failing health made it impossible for him to continue to care for then-13-year-old Nathan. The day after the juvenile court terminated dependency jurisdiction and named Nathan's half sister as his guardian, mother filed a petition under Welfare and Institutions Code section 388[1] (and a follow-on petition) claiming that she never received notice of the proceedings and seeking to restart the dependency proceedings. The juvenile court denied the petitions, and mother appeals one of the denials. We conclude that the efforts to locate mother complied with due process, and that the juvenile court did not err in denying mother's petitions to reopen this case.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Family History Between Mother and Father*

In 2001, Jason F. (father) and mother met while father was on a business trip in China. The couple returned to California, where Nathan was born in September 2002. Soon after Nathan's birth, the juvenile court exerted dependency jurisdiction over him due to his exposure to domestic violence between the parents and due to mother's "numerous mental and emotional problems."

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

Mother then left the United States, never to see Nathan again. In 2003, the juvenile and family courts issued orders terminating dependency jurisdiction over Nathan, awarding father sole legal and physical custody of Nathan, ordering mother to pay child support, and granting mother visitation rights. At that time, mother provided the family court with an address in Brooklyn, New York. Since 2003, mother has never visited Nathan.

B. *Extended Family*

Father and mother have other children by other partners. Prior to meeting mother, father married and divorced Susan F., and had two children with her—Benjamin and Emily. After leaving father, mother had three or four other children in Germany with different men, apparently leaving each child with the father.

C. *Events Underlying Current Dependency Jurisdiction*

Since 2012, father and Nathan had either been homeless or living in hotels. By 2016, father was suffering from various mental illnesses, including the "possible onset of dementia." Nathan, then age 13, rarely left his father's side so he could help him with his daily activities. When father woke up one day unable to remember where he was, he asked Nathan to contact the hotel manager, who contacted law enforcement.

II. Procedural Background

A. *Allegations, Disposition, and Termination*

In February 2016, the Los Angeles County Department of Children and Family Services (the Department) filed a petition with the juvenile court asking it to exert dependency jurisdiction over Nathan. In May 2016, father entered a plea of no contest and submitted to dependency jurisdiction on the ground that he was "unable to provide adequate care and supervision" due to his

"indefinite[]" "hospitaliz[ation]," which rendered jurisdiction appropriate under section 300, subdivision (b). The juvenile court removed Nathan from father, but ordered family reunification services. In June 2016, Nathan began living with his half sister Emily, now a married adult with a Ph.D from MIT, in Washington State. In May 2017, the juvenile court terminated reunification services. On September 13, 2017, the court terminated its dependency jurisdiction, found Nathan to be adoptable, and named Emily and her husband as Nathan's legal guardians.

B. *The Department's Efforts to Locate Mother*

Mother did not participate in any of the above described dependency proceedings.

Soon after the Department filed its petition, Department officials asked Nathan, Susan (father's prior ex-wife), and Benjamin for mother's whereabouts. Nathan had no idea where mother was; Susan thought she had "moved back to China"; and Benjamin thought she was "residing in Germany." When father's condition improved, officials asked father about mother's whereabouts, and he reported that she moved to Germany after their breakup.

The Department conducted its own search for mother using her date of birth and two different last names. Department officials initially discovered three possible addresses for mother in New York—one in Brooklyn and two others in New York City. They later discovered two Los Angeles-based addresses for mother. The Department served mother at these addresses; the only feedback the Department received was a call from a person living at one of the New York City addresses who reported that mother did not live there.

In September 2017, the Department filed a declaration of due diligence detailing its efforts to locate mother, which included looking for persons matching her name and birth date in (1) federal and state prison records, (2) military records, (3) child support databases, (4) probation and parole databases, (5) DMV records, (6) child welfare databases, (7) voter registration databases, (8) postal service databases, (9) welfare databases, and (10) county jails.

C. *Mother's Section 388 Petitions*

1. *First petition*

On the day after the juvenile court terminated dependency jurisdiction, mother filed a pro se petition under section 388. In that petition, mother alleged that she was living in Kentucky and working on and off in Germany. Mother alleged that Emily had had her e-mail address all along. She asserted in her petition that she wanted "the court to recognize [her] relationship" with Nathan by granting her physical custody and/or visitation, but later told the Department that she was "agreeable with [Emily's] and her husband's guardianship."

The Department opposed the petition. The Department spoke with Emily, who told them that she "has always had mother's e-mail address," but only recently learned mother had moved to Kentucky. Emily indicated she would be supportive if mother wanted to visit Nathan in Washington State.

At a hearing in early December 2017, the juvenile court denied mother's first petition because it was "not entirely clear what [mother] is requesting" beyond "some kind of renewed contact with Nathan" and because "it appears that everybody is okay with that."

2. *Second petition*

In early December 2017, mother—now with counsel—filed a second petition under section 388. In that petition, mother alleged that the Department did not exercise due diligence in trying to locate her, and that her exclusion from the dependency proceedings violated her right to due process. She asked for the court to vacate all of its orders except for its initial order finding dependency jurisdiction, or alternatively, to provide mother reunification services.

At a late January 2018 hearing, the juvenile court denied the petition. The court noted that mother had been "completely absent" from Nathan's life since 2003. The court observed that the Department had "identified some addresses and attempted to notice . . . mother at those addresses." Although the Department did not "technically complete[]" its "due diligence," the court found that the Department's efforts to locate mother, while "not perfect," were nevertheless "reasonable" and thus did not violate due process. The court went on to find that it was not in Nathan's best interest to grant mother's section 388 petition.

D. *Notices of Appeal*

Mother filed timely notices of appeal from the juvenile court's termination and guardianship order as well as its orders denying each section 388 petition.

DISCUSSION

Mother argues that the juvenile court erred in denying her due process based section 388 petition. We review the denial of a section 388 petition for an abuse of discretion (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*)), but review any subsidiary factual findings for substantial evidence (*In re Sarah C.* (1992) 8 Cal.App.4th 964, 974 (*Sarah C.*) [substantial evidence

review of due diligence findings]) and review any subsidiary legal questions—including constitutional questions—independently (*Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396, 403).

As pertinent to this appeal, section 388 empowers a "parent" to petition the juvenile court "to change, modify, or set aside" any of its previous orders. (§ 388, subd. (a)(1).) Before a juvenile court may grant such a petition, the parent must establish (1) the existence of "new evidence" or a "change of circumstance," and (2) that altering the court's previous order is in the best interest of the child. (§ 388, subd. (a); *Stephanie M.*, *supra*, 7 Cal.4th at pp. 316-317; *In re S.J.* (2008) 167 Cal.App.4th 953, 959.) Because "[p]arents have a fundamental and compelling interest in the companionship, care, custody, and management of their children" (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106 (*DeJohn B.*)), "the state, before depriving a parent of this interest, must afford" her due process—that is, "adequate notice and an opportunity to be heard" (*In re B.G.* (1974) 11 Cal.3d 679, 688-689; *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 483-488). Evidence that a parent did not receive constitutionally adequate notice constitutes "new evidence" that may qualify her for relief under section 388. (*Ansley v. Superior Court*, at pp. 481, 487-488; *In re Justice P.* (2004) 123 Cal.App.4th 181, 189 (*Justice P.*).)

As a general matter, notice is constitutionally adequate if it is "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418 (*Melinda J.*), quoting *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314.) Where, as

here, "the whereabouts of a parent are unknown, the issue becomes whether due diligence was used to locate the [missing] parent." (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247 (*Claudia S.*).) Due diligence "denotes a thorough, systematic investigation and inquiry conducted in good faith." (*David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016 (*David B.*).) Due diligence requires "a reasonable search effort"—not a Herculean one. (*Claudia S.*, at p. 247; *Justice P.*, *supra*, 123 Cal.App.4th at p. 191.) A search effort is reasonable if it is the type of effort that a person "desirous of actually informing the [parent] might reasonably adopt to accomplish it" (*Claudia S.*, at p. 247); a search effort is not reasonable if it "'ignores the most likely means of finding the [parent]'" (*In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598-599 (*Arlyne A.*), quoting *David B.*, at p. 1016).

The juvenile court did not err in concluding that the Department acted with due diligence—and thus did not violate mother's due process rights—in trying to locate and notify her about the pending dependency proceeding. The Department started by asking the three people most likely to know of her whereabouts—Nathan, father, and Susan (father's ex-wife, who had cared for Nathan during the pendency of the prior dependency proceedings). It also asked Nathan's half brother Benjamin, even though Benjamin had no blood relation to mother. The Department then consulted several databases and located three addresses in New York and two in Los Angeles, and one of those addresses matched the Brooklyn address mother provided for child support purposes in 2003. The Department's efforts continued as it searched several more federal and California databases using mother's biographical information.

These efforts satisfy due process. (Accord, *Melinda J.*, *supra*, 234 Cal.App.3d at pp. 1416-1419 [searching several databases, mailing to last known addresses, and providing notice to missing parent's parents; due diligence]; *Sarah C.*, *supra*, 8 Cal.App.4th at pp. 970-971 [searching several databases; due diligence]; *Claudia S.*, *supra*, 131 Cal.App.4th at p. 249 [searching databases, sending notice to last known address; due diligence]; cf. *Justice P.*, *supra*, 123 Cal.App.4th at pp. 189-191 [failure to contact parent known to be in jail; not due diligence]; *In re Antonio F.* (1978) 78 Cal.App.3d 440, 450-451 [contacting welfare and immigration authorities, but not mailing notice to mother's last known address; not due diligence].)

Mother raises two categories of arguments in support of her contention that the Department's efforts to locate her did not comply with due process.

To begin, she invites us to apply a more demanding standard under the due process clause. For support, she cites language from *DeJohn B.*, *supra*, 84 Cal.App.4th at page 102, that a search effort is inadequate unless it "leave[s] no stone unturned." She also notes comments in several other cases finding that the Department's efforts were reasonable because, even in hindsight, there was "nothing else that should have been done." (*Melinda J.*, *supra*, 234 Cal.App.3d at p. 1419; *Claudia S.*, *supra*, 131 Cal.App.4th at p. 249.) We decline mother's invitation. *DeJohn B.*'s "no stone unturned" standard, if taken literally, would require *exhaustive* efforts; however, as detailed above, due process requires *reasonable* efforts. (*Claudia S.*, at p. 247; *Justice P.*, *supra*, 123 Cal.App.4th at p. 191.) And the commentary in the other cases did not purport to erect a new

standard; rather, it connoted the reasonableness of the Department's efforts in those cases.

Mother next offers three reasons why the Department did not make reasonable efforts to find her. First, she asserts that the Department could have easily located her if they had simply asked Emily for her e-mail address, which Emily had all along. The Department's failure to do so, mother continues, was to "'ignore[] the most likely means of finding'" her. (*Arlyne A.*, *supra*, 85 Cal.App.4th at pp. 598-599, quoting *David B.*, *supra*, 21 Cal.App.4th at p. 1016.) We reject this argument. The Department *did* ask the people most likely to know of mother's whereabouts—Nathan and father. The Department had no reason to suspect that Nathan's half siblings would know the whereabouts of their father's subsequent ex-wife, a person with whom they had no blood relation. Thus, the Department was not ignoring the most likely means of finding mother by not asking Emily if she knew mother's whereabouts or contact information. That the Department went above and beyond by asking Benjamin did not render its efforts unreasonable for the failure to also ask Emily.

Second, mother contends that the Department's failure to follow the due diligence procedures set forth in its own internal Child Welfare Policy Manual means that its efforts were unreasonable and thus violated due process. The policy manual provides that "[a] search must include," among other things, "[a]sk[ing] all involved parties (i.e., mother, father, children, relatives, siblings' [case social workers], etc.) and available collateral contacts for information regarding the whereabouts and identity (including aliases) of the parent or legal guardian and when and where he or she last had contact with the missing

parent or legal guardian." (Child Welfare Policy Manual, Section 0300-306.75: Due Diligence (Dec. 7. 2016) <http://policy.dcfs.lacounty.gov/default.htm#Due_Diligence.htm#RefPolicyGuides> [as of Aug. 6, 2018].) Even if we assume that this mandate reaches "relatives" and half "siblings" with no blood relation, it is well settled that an agency's failure to follow its own internal policy guidelines does not by itself violate due process. (*Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 570.)

Lastly, mother posits that the Department did not comply with the juvenile court's order to prepare and a file a timely declaration of due diligence. The Department's ultimate declaration detailed the Department's further efforts to locate mother; the untimeliness of its filing does not vitiate the reasonableness of the Department's efforts, particularly in the absence of evidence that a timely filing would have turned up mother's whereabouts.

Accordingly, we conclude that the juvenile court did not err in finding the Department's efforts to locate mother to be reasonable, and thus in denying her section 388 petition for failure to establish "new evidence" of a due process violation. Because this ground is sufficient to affirm, we have no occasion to review the juvenile court's alternative holding that granting relief was not in Nathan's best interest.

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ