Filed 10/30/17 Los Angeles County Dept. of Children and Family Services v. Superior Court CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; M.H., a Minor, Real Party in Interest.	B283814 (Los Angeles County Super. Ct. No. CK86250)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.456.) Robert S. Wada, Commissioner. Petition denied.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Reginald Fleming-Peters, Deputy

County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Petitioner.

No appearance for Respondent.

Ronnie Cheung and Patsy Moore for Real Party in Interest.

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The Los Angeles County Department of Children and Family Services (Department) sought to change a dependent child's placement during the period after his parents' parental rights had been terminated and before he has been adopted. The child has special medical needs. The juvenile court ruled that the Department's proposal to remove the child from his long-term foster parent and from his long-term medical care constituted an abuse of discretion. The Department petitions this court for a writ to overturn this ruling. We deny the petition.

FACTS AND PROCEDURAL BACKGROUND

M.H. was born prematurely in May 2009, and suffers from severe gastrointestinal disorders and mild cognitive delays.

In 2011, the juvenile court exerted dependency jurisdiction over M.H. due to his mother's inability to care for him and his father's absence.[1] In October 2011, the Department placed M.H. with Susan A., who has a background in home health care and was a classroom aide for special needs children; Susan A. received substantial training regarding M.H.'s medical needs so that she could provide the attention he required.

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1 M.H. has six other siblings, none of whom are at issue in this proceeding.

In December 2012, the juvenile court terminated M.H.'s parents' parental rights and selected adoption as the permanent plan.

M.H. has yet to be adopted, and to this today remains placed with Susan A. Over the six years M.H. has been in her care, he has developed a close bond with Susan A. (whom he refers to as his mother), and his medical condition has steadily, but not completely, improved under a team of doctors at UCLA. Although Susan A. initially expressed interest in adopting M.H., she has since vacillated on what she wants to do—from wanting adoption to wanting legal guardianship to wanting long-term foster care and, more recently, back to wanting legal guardianship.

In December 2016, the Department filed an ex parte application with the juvenile court seeking permission to investigate and, eventually, to place M.H. with a prospective adoptive family in rural Virginia. That family consists of a father who is an air traffic controller, a "stay-at-home" mother, and five children; they currently live in a subdivision, but are building a home in the Virginia countryside. After the State of Virginia agreed to accept the adoptive placement under the Interstate Compact on the Placement of Children (Fam. Code, § 7901), and after two sets of successful in-person visits between M.H. and the family, the Department pressed its request to place M.H. with the family pending its adoption of M.H. Counsel for M.H. opposed the move, arguing that Susan A. was effectively the only mother he had ever known and that he "stay at UCLA for his [medical] care since [UCLA's team] knows him the best."

The juvenile court ruled that the Department could not remove M.H. from Susan A.'s care and place him with the

Virginia family pending adoption. Specifically, the court recognized that its review of the placement decision was confined to "determin[ing] whether the agency's placement decision is patently[] absurd [or] unequivocally not in the minor's best interest." The court concluded that removing M.H. from Susan A. was not in his best interests due to (1) M.H.'s "serious medical needs" and "the exceptional care he has been given" by Susan A., and (2) the "bond[]" he has with Susan A.

The Department filed a timely petition for a writ overturning this ruling. (Cal. Rules of Court, rule 8.454 et seq.)

DISCUSSION

Once a juvenile court has terminated the parental rights of a dependent child's parents and declared adoption to be the permanent plan, the local agency—here, the Department—has "exclusive care and control of the child at all times until a petition for adoption . . . is granted." (Welf. & Inst. Code, § 366.26, subd. (j);[2] see also Fam. Code, § 8704, subd. (a) [noting the same].) However, the Department's authority to make placement decisions is "not unfettered." (*Department of Social Services v. Superior Court* (1997) 58 Cal.App.4th 721, 724 (*Department of Social Services*); *In re Shirley K.* (2006) 140 Cal.App.4th 65, 72 (*Shirley K.*).) Instead, posttermination placement decisions are subject to some—albeit circumscribed—review by the juvenile court. (See § 366.3 [juvenile court retains jurisdiction and must conduct periodic review of placement decisions].) In deference to the Department's resources and expertise (*In re F.A.* (2015) 241 Cal.App.4th 107, 118), the juvenile court "is limited to reviewing whether [the Department]

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

abused its discretion" in its placement decision (*Department of Social Services*, at p. 724). In this context, the Department has abused its discretion if it acts "arbitrarily" or "capriciously" by making a "placement decision [that] is patently absurd or unquestionably not in the minor's best interests." (*Id.* at pp. 724-725, 734; *Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 649-650; *In re R.C.* (2008) 169 Cal.App.4th 486, 495; accord, § 366.26, subd. (h)(1) [obligating the juvenile court, in terminating parental rights and making initial placement decisions, to "act in the best interests of the child"].)

Although the decision of what is in a particular child's best interests is necessarily context-specific (accord, *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 437), what a court is to consider in evaluating those interests is not. A court must examine what best serves the child's "health, safety, and welfare," including his or her "special physical, psychological, educational, medical, or emotional needs." (Fam. Code, § 3020, subd. (a); § 361.3, subd. (a)(1); see also *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1123.) And the court must do so against the backdrop of what our Legislature considers to be in a child's best interests as reflected in "the procedures, presumptions, and timelines written into the dependency statutes." (*In re Zeth S.* (2003) 31 Cal.4th 396, 410.) Where, as here, a juvenile court has terminated the parental rights of a child, our Legislature has decreed that stability and permanence are in the child's best interests (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Marilyn H.* (1993) 5 Cal.4th 295, 307), and that the best way to achieve those interests is through adoption, with legal guardianship and long-term foster care serving as increasingly

less desirable options (*In re Celine R.* (2003) 31 Cal.4th 45, 53; cf. *In re Beatrice C.* (1994) 29 Cal.App.4th 1411, 1419). Our Legislature's strong preference for adoption recognizes that "'childhood is brief'" and that the surest way to honor a child's "fundamental independent interest in belonging to a family unit" is through adoption, which is "stable, permanent, and . . . allows the caretaker to make a full emotional commitment." (*In re Marilyn H.*, at p. 306; *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 250-251.)

The juvenile court correctly concluded that the Department abused its discretion in seeking to place M.H. with the Virginia family pending that family's adoption.[3] In making its placement decision, the Department did not sufficiently account for two factors relevant to M.H.'s best interests—namely, his special medical needs and the bond he formed with Susan A. With respect to M.H.'s special medical care, the record contains evidence that M.H. has extensive medical needs; that he has received long-term medical treatment from UCLA; and that his UCLA doctors believe that M.H. should "stay at UCLA for his care since [its team] knows him the best." But the Department presented no evidence that M.H. would be able to receive comparable medical care while living on a farm in rural Virginia. All it presented was the Interstate Compact Request Form with a checked box indicating that a "Financial/Medical Plan" existed (without producing that plan) and the argument of counsel that "there are other hospitals aside from UCLA"; the Department has presented no evidence of whether the hospitals are physically

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[3] Because we independently reach this conclusion, we have no occasion to decide whether to accord the juvenile court's ruling any deference.

close enough and medically equipped enough to handle M.H.'s special medical needs. It is also not clear that the Department gave any meaningful weight to M.H.'s bond with Susan A. A child's bond with his caretakers is a part of the child's emotional needs and must be considered when assessing a child's best interests. (E.g., *Shirley K.*, *supra*, 140 Cal.App.4th at p. 73; *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1355.)

The Department urges that the preference for adoption is paramount, and necessarily outweighs any other consideration when assessing the best interests of a child. We disagree. No one would say that it would be in M.H.'s best interest to be placed where the special medical care he needs to survive is completely unavailable. M.H.'s placement with the Virginia family may or may not present that danger, but the Department did not investigate or answer that question, and in the absence of some assurance that M.H. will be able to receive the medical care he needs, the Department's placement decision is not in M.H.'s best interests and hence arbitrary. And while we agree with the Department that M.H.'s bond with Susan A. is likely to be outweighed by the stability and permanence M.H. would obtain through adoption by the Virginia family, this does not permit the Department to discount entirely the importance of M.H.'s bond with Susan A. That bond is an aspect of M.H.'s emotional interests that can and must be considered, even if it is ultimately trumped by the legislative preference for adoption.

M.H. invites us to go one step further and to construe the juvenile court's ruling on the Department's placement choice as a ruling changing M.H.'s permanent plan from adoption to legal guardianship. We decline this invitation. To be sure, the minute order purporting to memorialize the juvenile court's oral

placement ruling states that M.H. is to "remain in his current placement with Legal Guardianship." This notation could be read as changing the permanent plan. But the juvenile court did not indicate, in its oral ruling, that it was changing the permanent plan. What is more, no one at the hearing understood the juvenile court to be making such a ruling; indeed, M.H.'s counsel asked the court to "set a . . . hearing to consider legal guardianship," a request that would make no sense if the court had already done so. As between the court's oral statements and its cryptic minute order, the oral ruling prevails. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 248-249.) We are hesitant to put words in the juvenile court's mouth, and will wait for the court to make a ruling regarding a change to M.H.'s permanent plan before evaluating that ruling.[4]

In sum, the juvenile court correctly concluded that the Department abused its discretion by failing to consider factors relevant to M.H.'s best interests. In reaching this conclusion, we do not intend to express any view on which placement is in M.H.'s best interests.

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[4] In the supplemental briefing we requested from the parties to clarify the seeming ambiguity, the Department asked us to judicially notice a minute order filed after this appeal. In light of our ruling, we decline this request.

DISPOSITION

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.