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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re STEPHANIE Y., a Person Coming Under the Juvenile Court Law.	B173952 (Los Angeles County Super. Ct. No. CK41032)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. GEOFFREY Y., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Affirmed.

Mark A. Massey, under appointment by the Court of Appeal, for Defendant and Appellant.

Larry Cory, Assistant County Counsel, Jerry M. Custis, Senior Deputy County Counsel, for Plaintiff and Respondent.

Father, Geoffrey Y., appeals an order terminating parental rights as to his daughter, Stephanie Y. (born October 2001).[1] Contrary to his contention, father received adequate notice of the continued hearing (Welf. & Inst. Code, § 366.26),[2] at which the order was made. Notice was mailed to father's last known address, notice was given to his attorney, and notice was given by publication.

FACTUAL AND PROCEDURAL SUMMARY

Stephanie was born suffering from symptoms of drug withdrawal. Her mother had a history of drug abuse, and father used narcotics. Father also had several criminal convictions, including felony convictions for transportation or sale of narcotics, possession of marijuana, and passing checks with insufficient funds and the intent to defraud. Soon after Stephanie was born, the Los Angeles County Department of Children and Family Services (DCFS) took her into its custody. Neither parent at any time thereafter had custody of Stephanie. At the initial detention hearing in October of 2001, which father attended, the court ordered both parents to keep DCFS informed of their addresses.

In February of 2002, the juvenile court found the allegations in the first amended dependency petition true, including allegations of father's criminal history, his current use of cocaine, and his violation of parole. The court further found that father's violation of parole was resolved by his entering a treatment program, but that Stephanie was at risk because he was not in a position to provide her with a stable environment.

The court declared Stephanie a dependent of the court (§ 300, subds. (b) & (j)), ordered family reunification services for father, and ordered that he attend drug

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[1] The court also terminated the parental rights of the mother, Daniela M., who has not appealed.

[2] Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

counseling with random drug testing, parenting classes, and alcoholics anonymous or narcotics anonymous programs. The court further admonished father not to disappear: "[Y]ou only have six months to do what you need to do. . . . But if you flake off and disappear, well, then we stop trying to return her [Stephanie] to you." In June of 2002, at a six-month hearing (§ 366.21, subd. (e)), the juvenile court ordered continued family reunification efforts for father and unmonitored visits for him with Stephanie.

However, by the 12-month hearing (§ 366.21, subd. (f)), held on December 23, 2002, and January 14, 2003, father had stopped visiting Stephanie. After December 11, 2002, father did not visit Stephanie because he was too "busy" and found it "a waste of time" to travel to see her. Father also had stopped drug testing and missed 12 tests. And by mid-2002 father had stopped attending court hearings.[3]

Just prior to the 12-month hearing dates, which father did not attend, the social worker had on three occasions seen father in person at his residence in North Hollywood. The social worker mailed him notice of the 12-month review hearings scheduled for December and January. Those notices informed father that DCFS recommended termination of his reunification efforts. Father acknowledged to the social worker he had received her report of the December 23, 2002, session and her notice of the January 14, 2003, session.

By the time of the 12-month review hearing, Stephanie had become attached to her foster mother and formed a relationship with that family, which ultimately wanted to adopt her. The social worker recommended adoption. At the conclusion of the hearing, the court found father not in compliance with the case plan, deemed reunification efforts for him unsuccessful, terminated family reunification, and set a date for a section 366.26 selection and implementation hearing.

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[3] In fact, of the 14 juvenile court hearings in Stephanie's case, father attended three of the first six hearings--the detention, adjudication, and six-month review hearings--but none thereafter.

The section 366.26 hearing was continued through four dates--April 22, August 19, and October 28 of 2003, and then January 27, 2004, concluding with a finding that Stephanie was likely to be adopted and terminating the parental rights of both parents. The social worker hand-served father with notice of the first session on April 22. The notice informed father that the court might terminate his parental rights. As to the second and third sessions of the hearing, held on August 19 and October 28, the social worker mailed father notice at his North Hollywood address. The mailed notice for the October 28 hearing was returned (but *not* the notice for August 19) with a message indicating that father no longer lived there. There was no evidence father had notified anyone that he had moved.

At the October 28 third session of the section 366.26 hearing, the juvenile court authorized notice of the final January 27, 2004, session by service on father's attorney. Counsel was present in court then, and notice was mailed to her, as well as to father's North Hollywood address. The court also authorized further service on Stephanie's mother by publication, and the notice as published was directed not only to Stephanie's mother, but to all persons claiming to be her father.

At the January 27, 2004, hearing, the juvenile court found that both parents had been given adequate notice. Father's attorney attended that hearing. As of the final section 366.26 hearing on January 27, father had not seen Stephanie for two years, and he had seen her only once during the prior two years and five months. Stephanie had no bond with her father, but had bonded with the prospective adoptive parents. Stephanie was sociable and healthy and had no developmental problems. The social worker opined she was highly likely to be adopted.

Father at some point learned of the January 27 order terminating his parental rights and filed a timely notice of appeal. The notice of appeal indicated father lived in Van Nuys.

DISCUSSION

Father contends that the juvenile court violated his statutory (see § 294) and procedural due process rights to notice of the section 366.26 hearing, which had been continued three times to a fourth date on January 27, 2004. Although adequate notice is required by statute and mandated by constitutional due process concerns (see *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 551; *O'Brien v. Cseh* (1983) 148 Cal.App.3d 957, 961), the circumstances here reveal that father was adequately notified of the hearing.

Father emphasizes that although he was personally and properly served by DCFS with a notice of the original date for hearing (April 22, 2003) and served by mail at his last known address for the next two continued hearing dates (August 19 and October 28, 2003), the notice mailed for the October date was returned by the post office as undelivered because father no longer lived at that address. He thus urges that since DCFS became aware he did not receive the mailed notice of the October date, DCFS should have made a more diligent effort to locate and notify him of the final January 27, 2004, hearing date.

Notice by mail

However, the procedure used by DCFS fully complied with statutory requirements. Section 294 requires that the *initial* notice to a presumed father be given at least 45 days before a section 366.26 hearing and that such notice be by personal admonition, certified mail, hand or other enumerated methods. (§ 294, subds. (c)(1) & (f).) But the statute further provides that "once the court has made the initial finding that notice has properly been given to the parent . . . subsequent notice for any continuation of

a Section 366.26 hearing may be by first-class mail to any last known address." (§ 294, subd. (d).)[4]

Pursuant to section 316.1, subdivision (a), DCFS may use an address designated by a parent "unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing." (See also *In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) We note that although the juvenile court was not obligated to do so, it warned father back in February of 2002 that if he "flake[d] off and disappear[ed]," it would stop reunification services. Father thus was specifically aware of the necessity to stay in touch with DCFS and the court.

Father also claims error in the failure to comply with the requirement in section 294, subdivision (f)(7), that if the parent's whereabouts are unknown and he cannot be served in a manner specified with reasonable diligence, DCFS shall "file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent." But subdivision (f)(7) deals only with the initial notice of the section 366.26 hearing. Its requirements do not apply to continued sessions. (§ 294, subd. (d); *In re Phillip F.* (2000) 78 Cal.App.4th 250, 258-259.) Here, initial notice is not an issue, since it is uncontested that father was personally served with such notice.

Moreover, father was fully aware that proceedings were under way to terminate his parental rights. He was specifically advised of that fact in each of the notices of the two 12-month review hearing sessions and, most significantly, in the two notices sent in

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[4] Father quotes the latest version of that subdivision which provides for not only notice by mail but also "by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing." (Amended Stats. 2004, ch. 20, § 2, eff. Mar. 5, 2004.) This amendment, however, was effective after the date of the proceedings under review. The amendment, even if construed to support father's position, is thus inapplicable.

advance of the April 22 and August 19, 2003, section 366.26 hearing sessions and notification by personal service of the April 22 hearing session. Neither of these two written notices were returned as undeliverable and are thus presumed received. Nonetheless, father failed to attend either of the two 12-month review hearing sessions or either of the two 366.26 hearing sessions.

Even though father knew the legal process was under way to terminate his parental rights, he moved to another residence without informing the juvenile court or DCFS, or even leaving a forwarding address. DCFS thus properly gave notice of the January 27, 2004, session by first-class mail to father's last known address. This was in compliance with the statutory scheme that puts the burden on the parents to inform DCFS and the court of their address (§ 316.1, subd. (a)), and the burden of DCFS to follow through by sending notice to such address (§ 294, subd. (d)), which it did.

Apart from father's ultimate lack of interest in his daughter, as is apparent from his failure to comply with the case plan and to attend prior court sessions of which he clearly had notice, his lack of interest in the progress of the case defeats his present contention. Father's irresponsible failure to notify of a change of address cannot be distorted into a claim of reversible error. Otherwise, a parent's cavalier hunt-for-me attitude could defeat the child's right to a permanent placement "as promptly as reasonably possible." (*In re Celine R.* (2003) 31 Cal.4th 45, 59.)

Notice through counsel

Service on father was also properly made through his attorney. Such service on counsel for a parent is a satisfactory method of service of notice of a *continued* section 366.26 session. (See *In re Phillip F., supra,* 78 Cal.App.4th at p. 259.) In fact, notice through a parent's counsel is a statutorily approved means of providing even the initial notice of a section 366.26 hearing (§ 294, subd. (f)(7)(A)), and thus satisfies due process. (See Code Civ. Proc., § 1011, subd. (a).)

Here, at the October 28, 2003, session the court specifically authorized notice for father of the upcoming January 27, 2004, session by service on his attorney. DCFS did that, and effectuated proper service through counsel.

Notice by publication

Published notice also satisfies the requirement of due process for service of notice as to the *initial* section 366.26 hearing (§ 294, subd. (f)(7)(A)), and is in general a satisfactory method of giving notice when authorized by court. (Code Civ. Proc., § 415.50; see *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1354.) Since notice by publication suffices for a missing parent who presumably has no knowledge of an initial section 366.26 hearing session, it surely suffices for a parent, such as father in the present case, who did know that the hearing was under way.

Father's notice by publication was as a result of mother's notice by publication, which the juvenile court had authorized at the October 28, 2003, session. The notice by publication was directed not only to mother, but to "all persons claiming to be the father . . . of said minor [i.e., Stephanie]." Father thus had proper notice by publication as well.

Conclusion

Accordingly, since father received proper notice in the form of notice by mail, notice to his counsel, and notice by publication and the notice was consistent with all statutory requirements, there was no error. It is thus unnecessary to address DCFS's alternative position that any error regarding notice of the continued section 366.26 hearing was harmless beyond a reasonable doubt. (See *In re Angela C.* (2002) 99 Cal.App.4th 389, 394-395.)

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

NOTT, J.

ASHMANN-GERST, J.