

B123456

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

In re Angel B., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPT. OF
CHILDREN AND FAMILY SERVICES

Petitioner and Respondent,

v.

LOREDANA S.,

Objector and Appellant.

No. 2 Civ. **B123456**
(Related case: B123455)
(Related case: B123454)

[Los Angeles County
No. CK 54321]

Opening Brief of Appellant Loredana S.
(*In re Phoenix H.* (2009) 47 Cal.4th 835.)

Appeal From an Order of the Superior Court of California
In and For the County of Los Angeles,
Before the Hon. Carlos E. Vazquez, Judge

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Statement of Appealability

This is a timely appeal from orders denying a contested permanent plan selection hearing and continuing the hearing for an additional 120 days for the purpose of finding an adoptive home for the dependent minor. They are appealable as final orders after judgment within the meaning of subdivision (a)(1) of section 395.¹

¹ Unless otherwise indicated, all statutory references herein are to the Welfare and Institutions Code of California and all references to rules are to the California Rules of Court.

Introduction

Angel (born November 2005) and his younger brother, Romeo, are the sons of Alfred S. and appellant Loredana S. (1 CT 20.) Both children were made dependents of the court in 2010. (*Ibid.*) Romeo's dependency resulted in a permanent plan of guardianship with his paternal grandparents. (2Aug. 1 CT 116, 142-144.²) Adoption has been identified by respondent Los Angeles County's Department of Children and Family Services as the plan for Angel, who suffers from autism and serious developmental disabilities, but the juvenile court has not yet selected a permanent plan for him. (1 CT 48, 53.)

This is Loredana's third appeal, which is taken from orders made at a hearing in the ongoing section 366.26 permanent plan selection proceedings.

Her first appeal, this court's case number B252534, Loredana challenged the summary denial of a section 388 petition for modification. The appeal was dismissed as moot when the juvenile court granted a hearing on a request for modification

² The record filed in this appeal is a balance of the record filed in case number B257103, which is in turn a balance of the record filed in case number B252534. A request for judicial notice or motion to augment the record to include select pages from volumes six, seven, and eight of the clerk's transcript filed in B252534 and from the single volume of clerk's transcript in B257103 will be filed with this brief. References to the clerk's transcript in B252534 will be designated as "1Aug." followed by the volume and page number. References to the record in B257103 will be designated as "2Aug." followed by the volume and page number.

while the appeal was pending. (See, docket entry in B25253, July 15, 2014.)

Loredana's second appeal - case number B257103 - is still pending. The issue there is whether the juvenile court's order concerning visits made when it established a guardianship for Angel's brother, Romeo, improperly delegated judicial authority.

No issues are raised in this, her third, appeal.

Statement of the Case

A. The procedural details concerning the section 300 juvenile dependency petition that eventually results in the setting of a section 366.26 permanent plan selection hearing are set forth in Loredana's opening brief filed in B252534, which are incorporated here

A detailed history of the procedural developments leading to the still-ongoing section 366.26 hearing that resulted in this appeal is set forth in the statement of the case appearing on pages 2-5 in Loredana's opening brief filed in her first appeal, case number B252534. That procedural history is incorporated by this reference as permitted by subdivision (a)(5) of Rule 8.200.

Suffice to recall here that, in March 2010, Angel and his brother were made dependents of the juvenile court pursuant to section 300. (1 CT 20.) Family reunification efforts were not successful and the juvenile court terminated them in January 2013. (1Aug. 6 CT 1447.) The juvenile court set the matter for a permanent plan selection hearing pursuant to section 366.26, which began on May 2, 2013 and has not yet resulted in a permanent plan order. (1 RT 1-2, 19-20; 1Aug. 6 CT 1447; 1Aug.

8 CT 1681-1683, 1700, 1877-1878; 1 CT 15-16, 20, 160; see also, request for judicial notice of the juvenile court's January 26, 2015 minute order, submitted for filing with this brief.)

B. The section 366.26 hearing results in a legal guardianship for Angel's brother but a continuance as to Angel because the Department has not found a permanent placement for the child

In April 2014, the juvenile court established a legal guardianship with the paternal grandparents for Angel's brother after finding that it would be detrimental to him to terminate parental rights because that outcome would interfere with his relationship with Angel and because the child would benefit from continuing his relationship with his parents. (2Aug. 1 CT 67, 142-146; 1 CT 22.)

The hearing on Angel's permanent plan has been continued several times to permit the Department time to identify an adoptive family. (1 RT 1-2, 6, 9, 12-13, 19-20; 1Aug. 6 CT 1447; 1Aug. 8 CT 1681-1683, 1700, 1877-1878; 1 CT 15-16, 20, 160; see also, request for judicial notice of the juvenile court's January 26, 2015 minute order, submitted for filing with this brief.)

C. The September 2014 section 366.26 hearing results in another continuance, denial of Loredana's request to set it for a contest, and this appeal

Loredana was not present on September 25, 2014, when her counsel requested the hearing be set for contest to establish the parent-child relationship exception to a permanent plan of adoption. (1 RT 18; 1 CT 159.) Upon ascertaining that Loredana

had been having overnight visits with Angel but that her counsel did not how frequently those visits took place, the request was denied for failure to provide a sufficient offer of proof. (1 RT 19; 1 CT 159.)

The hearing was continued to January 26, 2015 because the Department had yet to locate an adoptive placement for Angel. (1 RT 19-20; 1 CT 159.)

On November 26, 2014, Loredana timely filed notice of this appeal. (1 CT 161-162.)

Statement of Facts

A. Background: the events leading up to the setting of the section 366.26 permanent plan selection hearing are set forth in Loredana's opening brief filed in an earlier appeal, which is incorporated here

The facts leading to the termination of reunification services and the setting of a permanent plan selection hearing for Angel are set forth in detail at pages 6 through 14 in Loredana's opening brief filed in case number B25253, mentioned above. That factual picture is incorporated by this reference as authorized by subdivision (a)(5) of Rule 8.200.

It may be recalled that, in November 2009, a passerby found Angel – an autistic and developmentally delayed child then a few days shy of his fourth birthday – wandering in the middle of a busy traffic intersection some distance away from home. (1 CT 21.) The Department took Angel and his younger brother, Romeo, into custody and they were placed in foster care. (1 CT 25, 51.)

Angel was returned to Loredana's care in January 2011 and remained there until December, when he was removed because Loredana had failed to regularly participate in a drug aftercare program and testing. (1 CT 25, 51.) He was placed with his father for a few months in early 2012, when he father relapsed on methamphetamine. (*Ibid.*) He has been in a regional center group home of Lillian Daniels, known as Jade Ranch, since March 2012. (1 CT 48, 51.)

B. Angel makes some progress while living at Jade Ranch, and has regular visits with Loredana, including overnights in her home

In July 2014, the Department reported that Angel – then eight years old - had made progress in the twenty-eight months spent so far as a resident of Jade Ranch. (1 CT 48, 50-51.) His difficult behaviors had decreased in frequency but increased in duration. (1 CT 48.) He was throwing fewer temper tantrums but his screaming episodes had increased. (*Ibid.*) His hyperactivity and physical aggressiveness had decreased since being placed on medication. (1 CT 57, 118-119.) He continued to require one-on-one supervision and a very structured environment both at home and at school. (1 CT 50, 58, 121.)

Angel and his mother had been participating in unsupervised visits – including overnight and all-weekend visits - since May 2012. (1 RT 3; 1Aug. 6 CT 1235, 1446; 1Aug. 7 CT 1463, 1468, 1579; 1 CT 48.) In its July 2014 report, the Department stated that Loredana's visits had not been consistent

but also said she visited the youngster on a regular basis. (1 CT 49, 58.) Jade Ranch reported that, in the period covered by the report (November 2013-July 2014), Loredana had visited at least once every month. (1 CT 49, 51.) Out of fifteen visits in that time, nine had been overnight visits at her home. (1 CT 51-52.) No information concerning visits between July 2014 and the day of the September 25, 2014 hearing was reported.

C. The Department's May 2013 permanent plan assessment identifies adoption as the appropriate permanent plan and that recommendation remains unchanged as of the September 2014 hearing

The Department has long recommended adoption as the appropriate permanent plan for Angel. (1Aug. 7 CT 1580; 1 CT 26, 54. 145) Although no family had been found that would make a formal commitment to Angel as of September 25, 2014 (nearly two years after reunification services were terminated in January 2013), the Department remained very optimistic that a trained and dedicated family would be found for the youngster. (1Aug. 6 CT 1447; 1 CT 42, 145.)

Applicable Law

I. This Brief Is Filed Pursuant to *In re Phoenix H.* and Includes Requests that Appellant Be Permitted To Submit a Brief on Her Own Behalf If She Chooses To Do So and that Appellate Counsel Be Permitted To Brief Any Issue that this Court Might Identify

This brief is filed pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. The brief does not raise any issues on appellant's behalf.

In *In re Phoenix H.*, the Supreme Court held that in a case such as the present one in which appointed appellate counsel has not found an arguable issue, counsel should file a brief setting forth the "applicable facts and the law." (*In re Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) However, unlike a no-issues situation in criminal and conservatorship cases, the court of appeal is not required in all cases to permit the appealing parent in a juvenile dependency action to personally file a brief when appointed counsel does not raise an issue. (*Ibid.*) Rather, the court of appeal may exercise its discretion to permit filing of a parent's brief. (*Ibid.*) And, it is required to permit the parent to file arguments if the parent makes a "showing of good cause that an arguable issue does, in fact exist." (*Ibid.*)

II. Relevant Statutory Authority

Section 366.26 authorizes the juvenile court to terminate parental rights upon a finding by clear and convincing evidence that the child is likely to be adopted and none of the exceptions to termination contained in the statute are established. (Welf. &

Inst. C. § 366.26, subd. (b)(1).) If the court makes a finding that a child has regular visits and contacts with the parent and that the child would benefit from continuing the relationship, a less permanent plan will be selected. (Welf. & Inst. C. § 366.26, subd. (c)(1)(B)(i).)

Subdivision (c)(3) of section 366.26 provides that, once the juvenile court finds that termination of parental rights would not be detrimental to the child and the child has a probability for adoption but is difficult to place for that purpose and there is not identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family within a period not to exceed 180 days. If a home is not found within that period, then the juvenile court must proceed with the hearing in accordance with subdivision (b) of section 366.26. (Welf. & Inst. C. § 366.26, subd. (c)(3).)

Dated: March 12, 2015

Cornelius B. Fine, Attorney for
Appellant Loredana S., Under
Appointment by the Court of Appeal

Declaration of Counsel

I, Cornelius B. Fine, declare as follows:

1. I am the attorney appointed to represent appellant Loredana S. with respect to her appeal from order of the juvenile court denying her request to set a contested permanent plan selection hearing and the order continuing that hearing.

2. I have reviewed the entire record on appeal, which consists of one volume of clerk's transcript and one volume of reporter's transcript, as well as portions of the transcripts of appellant's prior appeals in case numbers B12345 and B12344.

3. I have written to appellant at her current address on file with this court [add address unless confidential and add email address if applicable] explaining my evaluation of the record and informing her that I have been unable to find any arguable issues. I have sent to her the record and a copy of this brief.

4. I have advised appellant that this court will provide her with an opportunity to file a supplemental brief.

5. I remain available to brief, and will brief, any issue requested by the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 12, 2015

[signature]

Cornelius B. Fine

Word Count Certificate

I, Cornelius B. Fine, certify that the number of words in the body of this brief reported by the word-counting tool in my word processing program is 2185, inclusive of footnotes and counsel's declaration.

[signature]

Cornelius B. Fine