



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

In re N.G. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

OPINION

INTRODUCTION

Alleged father Charles H. seeks reversal of Welfare and Institutions Code section 366.26 findings and orders for permanent guardianship of minor N.G. with her maternal grandfather, M.G.¹ We will affirm.

FACTS AND PROCEDURAL HISTORY

Ten-year-old N.G. was living with her mother, T.G. (Mother), and her maternal grandfather, M.G. (Grandfather) when, on February 15, 2011, the Department of Children and Family Services of San Bernardino County (the Department) received a referral alleging that she had not been in school for more than three years. When a Department social worker interviewed Mother, who had a history of mental illness, she presented as delusional and paranoid. She was unwilling to send N.G. to school because she believed that people there had channeled "negative and evil energies" towards her and N.G. Grandfather said Mother was not taking her prescribed medications or complying with psychiatric treatment. He had tried to send N.G. to school but could not because Mother refused to sign the necessary enrollment papers. However, he was unwilling to take guardianship of N.G. or conservatorship over Mother. Grandfather later told the social worker that the alleged father, Charles H., had been absent from the child's life for eight years and that his whereabouts were unknown. Mother said she and Charles H. had never married and had not been living together at the time of N.G.'s conception or birth.

The Department removed N.G. from Mother's custody on April 7, 2011, and on the same date initiated an absent parent search for Charles H. A section 300 petition (the petition) filed on April 11, 2011, alleged, among things, in paragraph (g)(4) that "The current whereabouts of the child's alleged



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

father, Charles [H.], are unknown. The alleged father's ability and willingness to provide adequate care and supervision for the child is also currently unknown." At the detention hearing, Mother told the court that she had no further information about the alleged father.

In the jurisdiction/disposition report filed April 28, 2011, for the hearing set for May 3, 2011, the Department recommended that Charles H. remain as alleged and not entitled to reunification services. On May 3, 2011, the Department filed a declaration of due diligence which outlined its initial search efforts to contact Charles H. Databases searched included, among others, the child support division, Department of Motor Vehicles (DMV) records, social security death files, income verification services ("IEVS"), departments of corrections, federal prison, welfare, voter registration, and "VITALS" death and birth certificate records. In total, the due diligence search yielded six possible addresses and five possible telephone numbers for Charles H. at locations in three states: Oklahoma, Georgia, and California. Two other items were positive. The DMV search indicated that Charles H.'s California Driver's License was expired and had been surrendered to the state of Georgia. The "CII" search, showed a file number but no other information.²

On June 8, 2011, the Department filed a second declaration of due diligence stating that the six addresses and five telephone numbers identified in the first search had been investigated and eliminated. Notices regarding the proceedings had been sent to the two possible addresses, one in California and one in Georgia, which had been identified by the postmaster as places where Charles H. received mail. The one sent to the California address had been returned as undeliverable. A notice was left at the address in Georgia, which "was eliminated by American Eagle."³ The due diligence summary concluded: "Search is complete."

An addendum report filed July 19, 2011, listed an address for Charles H. in Hammond, Indiana. There is no indication of exactly how or when this address was obtained, but a proof of service form attached to the addendum indicated that, on June 21, 2011, Charles H. had been personally served with copies of a number of documents related to the dependency proceedings. These included: the petition, a JV-505 "Statement Regarding Parentage" form, and a "Notice of [the] Review Hearing" set for July 21, 2011, at 8:00 a.m. in San Bernardino Superior Court.

The petition stated that Charles H. was an alleged father whose whereabouts were unknown. The Statement Regarding Parentage form was addressed in bold type "To the alleged parent of the child." This form said that an attorney would be appointed to represent an alleged parent if he could not afford one and that, while an alleged parent had no right to reunification services, a judge could order them if he was found to be the child's parent. Finally, the form stated, "If you want the court to decide if you are the child's parent, fill out this form." There is no completed form in the record.

Paragraph 4a of the Notice of Review Hearing stated, in bold type, "You have the right to be present at the hearing, to present evidence, and to be represented by an attorney. In a dependency matter, the court will appoint an attorney for you if you cannot afford one." The notice included--in a box



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

labeled, in capital letters "ATTORNEY OR PARTY WITHOUT ATTORNEY"--the court's street address and an address and telephone number and for the "Human Services System." Charles H. did not attend the July 21, 2011, hearing. There is no indication that he ever contacted the court or the Department by mail or telephone.

Mother and Grandfather did attend the hearing, where the court found true all the allegations in the petition, including allegation (g)(4). Both parents were denied reunification services. Mother waived her right to services, and the court found that Charles H. was an alleged father not entitled to services. The court also found, by clear and convincing evidence, that reasonably diligent efforts to locate the absent parent had been made, that the efforts were unsuccessful, and that his whereabouts were unknown. N.G. was placed with Grandfather. The court set the section 366.26 hearing for October 19, 2011, but stated "We better do a notice review as to dad" and set that review for September 6, 2011.

Notice of Writ Petition (JV-820) and the Petition for Extraordinary Writ (JV-825) forms were mailed to Charles H. on July 25, 2011. Notice of the location, time, and date of the section 366.26 hearing was mailed to Charles H. on September 2, 2011.⁴ This notice stated, in capital letters that it was a "NOTICE OF HEARING ON SELECTION OF A PERMANENT PLAN" and that the social worker was recommending the "Establishment of a legal guardianship and Assignment of Educational Rights." This notice also stated, in bold type and capital letters set off in a separate box in the middle of the face page: "IMPORTANT NOTICE--A hearing under Welfare and Institutions Code section 366.26 has been set for the date and time below. At the hearing the court may terminate parental rights and free the child for adoption, order tribal customary adoption, establish legal guardianship, or place the child in a planned permanent living arrangement. You have the right to be present at this hearing and have an attorney represent you." Again, the address and telephone number for "Human Services" appeared in a box labeled "ATTORNEY OR PARTY WITHOUT ATTORNEY."

At the notice review hearing on September 6, 2011, the court found notice complete and confirmed the October 19, 2011, date for the section 366.26 hearing.

On October 11, 2011, the Department filed a section 366.26 report. The report stated that N.G. was happy to be back home living with Grandfather and wanted him to become her legal guardian. Grandfather was in complete support of N.G.'s establishing a relationship with Charles H. because, "She needs to have a father in her life." N.G., the report stated, was "having limited contact with the father through e-mail as he lives out of state." The report did not discuss the content of the e-mail communications or say when they had begun.

Charles H. did not attend the October 19, 2011, hearing. The court appointed Grandfather as N.G.'s permanent guardian but did not terminate parental rights. Mother and Charles H. were both denied reunification services. Charles H. was awarded once-a-month visitation rights. The court ordered appeal rights information sent to the parents at their last known addresses. A copy of the JV-800



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

Notice of Appeal [Juvenile] form was sent to Charles H. on October 21, 2011.

On November 4, 2011, Charles H. filed a notice of appeal requesting appointed counsel and stating that he had not been made aware of the court's ruling regarding his daughter. He specified that he was appealing from the orders of the court on "10-19-2011 8:00 AM" and said he had been unable to attend the hearing "due to living out of the state."

DISCUSSION

Charles H.'s sole argument on appeal is that he was not given a meaningful opportunity to be heard in the proceedings below. He claims that, in the interest of "fairness," the court should have appointed an attorney for him, ensured that the Department interviewed him, and afforded him an opportunity to appear at the various hearings, at least by telephone. The Department responds that Charles H. was given all the procedural right due him as an alleged father: notice of the hearings and an opportunity to be heard. He just failed to take advantage of the right to attend the hearings upon receiving the notice. The Department is correct.

Notice and Opportunity to Be Heard

"At each hearing under section 300 et seq., the court must determine whether notice has been given as required by law and must make an appropriate finding noted in the minutes. [Calif. Rules of Court, rule 5.534(l).]"

"Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend. The child welfare agency must act with diligence to locate a missing parent. Reasonable diligence denotes a thorough, systematic investigation and an inquiry conducted in good faith. [¶] However, there is no due process violation when there has been a good faith attempt to provide notice to a parent who is transient and whose whereabouts are unknown for the majority of the proceedings. Thus, where a parent cannot be located notwithstanding a reasonable search effort, the failure to give actual notice will not render the proceedings invalid." (In re J.H. (2007) 158 Cal.App.4th 174, 182.)

Alleged Fathers

The extent to which a father may participate in dependency proceedings depends on whether he is an 'alleged,' 'natural,' or 'presumed' father. (In re Zacharia D. (1993) 6 Cal.4th 435, 448-449, fn. 15 (Zacharia D.)) "A biological or natural father is one whose biological paternity has been established but who has not achieved presumed father status as defined in [Family Code section 7611]." (Id. at p. 449, fn. 15.) A presumed father is one who has married or attempted to marry the mother of the child, or who has consented to have his name on the child's birth certificate, or who has received the child



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

into his home and held the child out as his own. (Fam. Code, § 7611.) "A man who may be the father of a child, but whose biological paternity has not been established, or, in the alternative, has not achieved presumed father status, is an 'alleged' father." (Ibid.) Status as an alleged father limits the rights to which a man is entitled. "Due process for an alleged father, requires only that [he] be given notice and 'an opportunity to appear and assert a position and attempt to change his paternity status. [Citations.]' [Citation.]" (In re Paul H. (2003) 111 Cal.App.4th 753, 760.) If--but only if--an unwed father demonstrates full emotional and financial commitment to his parental responsibilities, will his relationship to the child be protected. (Adoption of Kelsey S. (1992) 1 Cal.4th 816, 849-850 (Kelsey S.).)

Analysis

The Searches and Notice

The record shows that the Department made multiple reasonable attempts to locate Charles H. in order to serve him with notice of the proceedings. It ordered the search on April 7, 2011, the day N.G. was detained. It received the first results on April 21-25, 2011, just two weeks later. The search was hampered by the fact that Charles H. had been absent and apparently "transient" for eight years, living in at least four different states: California (one street address and one post office box); Georgia (two addresses); Oklahoma (two addresses); and Indiana (one address). It is not clear how he was finally located in Indiana, but there is no evidence that the Department's searches for him were not reasonable or made in good faith. Nor is there any evidence to support his suggestion that Mother or Grandfather knew, but were trying to conceal, his whereabouts.

In any case, the record indicates Charles H. was personally served with notice of the jurisdiction/disposition hearing and related documents on June 21, 2011, a full two months before it took place on August 21, 2011. Unfortunately, Charles H. appears to have ignored the notice. There is no evidence that he contacted the court or the Department during those two months; nor did he fill out and return the parentage form he was given. Similarly, he was served with notice of the section 366.26 hearing on July 25, 2011, three months before the scheduled date. Again, he ignored the notice and documents he had received and he made no attempt to clarify his status as a father or to participate in the proceedings. Almost all the forms Charles H. received stated clearly, as we have outlined, the substance of the proceedings and what he needed to do if he wanted to be involved. The court's address, and the Department's address and phone number were listed on nearly every document. Charles H. did not need to "jump on a plane from Indiana," as he puts it, to participate in the proceedings. For the price of a postage stamp or a phone call, he could have indicated an interest in the fate of his daughter.

Citing *Zacharia D.*, *supra*, 6 Cal.4th 435 Charles H. claims that "he was not a father who delayed in coming forward in dependency proceedings." But that is exactly what he was. Also, although he does not expand on the assertion, he characterizes himself as a "non-offending father." The label does not fit. When N.G. was two years old, he disappeared. There is no evidence that he communicated with



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

the child during any of the next eight years or tried to support her financially or emotionally. Had he kept in touch, he might have realized that she was being denied an education and might have tried to help make arrangements for her to attend school. But he did not. He demonstrated very little, if any, commitment to his parental responsibilities. (Kelsey S., *supra*, 1 Cal.4th at p. 849.) These are not the actions of a non-offending parent.

Rights as an alleged father

Moreover, just as the Department argues, as an alleged father Charles H.'s rights were limited to notice and an opportunity to be heard. (In re Paul H., *supra*, 111 Cal.4th at p. 760.) "A [man who is] seeking [the] status [of] a [presumed] father . . . must be clear he wants to be so declared." (In re Elijah V. (2005) 127 Cal.App.4th 576, 582.) Charles H. did not do so. As we have said, there is no evidence that he returned the Statement of Parentage form he was given two months before the jurisdiction/disposition hearing; he did not appear at that hearing; he did not write to the court at the address given on the notice; he did not contact the Department either by mail or via the telephone numbers listed on the various documents; he did not appear at the section 366.26 hearing.

Finally, we note that whatever paternal rights Charles H. may have in relationship to N.G. were not terminated at the section 366.26 hearing. Nor has he been denied contact with her. They e-mail each other. He has court-ordered monthly supervised visits. Grandfather supports their establishing a relationship because "she needs to have a father in her life."

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

We concur: RAMIREZ P.J. MILLER J.

1. All further statutory references are to the Welfare and Institutions Code.
2. CII is an abbreviation for the California Department of Justice's "Criminal Identification Index." The fact that Charles H. has a CII number indicates only that he has been fingerprinted at some point; whether the fingerprinting had to do with an arrest, employment, licensing, or some other purpose, is impossible to tell.
3. "American Eagle" appears to be an attorney services firm used by the Department. On May 12, 2011, American Eagle attempted to serve Charles H. at the address in Georgia, but was informed by the current resident that he did not live there. Two weeks earlier, on April 28, 2011, American Eagle had attempted to serve Charles H. at two addresses in Tulsa, Oklahoma, but was told that he did not live or work at either address.



In Re N.G.

2012 | Cited 0 times | California Court of Appeal | June 13, 2012

4. There is no indication in the Department's section 366.36 report of how it finally obtained his correct address. The notice of the section 366.26 hearing was sent to "Charles [H.] at 1305 175 St Hammond, Inidana 46324." Despite the typographical errors, there is no indication that Charles H. did not receive that notice. His own notice of appeal to this court indicates that the street address listed for him is correct.

