Filed 3/8/18 In re Kim W. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KIM W., a Person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.W. et al., Defendants and Appellants.	B281923 (Los Angeles County Super. Ct. No. CK89770)

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

K.W., in pro. per., for Defendant and Appellant K.W.

Roosevelt Williams, in pro. per., for Defendant and Appellant Roosevelt W.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Roosevelt W. (Father) and K.W. (Mother), each self-represented, appeal the juvenile court's orders terminating parental rights over their child "Kim" under Welfare and Institutions Code section 366.26 and denying Father's last-minute request to appoint new counsel or permit him to represent himself.[1] For the reasons discussed, we affirm the court's orders.

Appellants seek to raise a number of other issues that previously have been raised -- such as the court's power to assert jurisdiction over the children or over Father -- or what have become final -- such as the court's findings supporting dependency jurisdiction under section 300 and its decision to terminate reunification services. We do not consider matters that have been or should have been resolved in prior appeals or by way of writ review.

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Proceedings*

1. *K*

Appellants are the parents of three children -- son "K" born in 2007, daughter "Ky" born in 2012, and daughter "Kim," the subject of the current proceeding, born in 2013. In 2011, prior to the birth of Ky and Kim, Mother had a mental breakdown. As a result, custody of K was given to his maternal grandparents, with whom Mother and K had been living. At the time, Father was living in Alabama and not providing support for K.

At the initial jurisdictional hearing, the court found true that Mother had mental and emotional problems rendering her incapable of providing regular care for K. Father was deemed non-offending. He filed a section 388 petition seeking custody of K. However, Mother, who had taken K to Alabama to live with Father for a brief period and was pregnant with Ky, filed a section 388 petition alleging that Father had physically abused her, including holding a knife to her throat, choking her and raping her.[2] Father admitted slapping Mother, hitting her legs with a jump rope

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[2] Father told the caseworker Mother was behaving bizarrely and stated he did not want her caring for K and did not want K exposed to her behavior. Among other things, Father reported that Mother threw knives at him and spanked K for inappropriate reasons. K, who had lived with Father only during the brief period he and Mother were in Alabama, said he did not want to live with Father.

and tying her to a chair because she was "acting crazy." Mother admitted throwing boiling water on Father and hitting K with a belt. At a second jurisdictional hearing, the court sustained allegations that Mother and Father had a history of engaging in violent altercations, specifically finding true that Father had struck Mother with a rope, tied her to a chair, and slapped her, and that Mother had thrown boiling water at Father and disciplined K inappropriately.

In November 2013, the court terminated reunification services for both parents with respect to K.[3] Father and Mother filed writ petitions seeking review of the court's order, which this court denied. (See *Roosevelt W. v. Superior Court* (Mar. 24, 2014, B252748) [nonpub. opn.].)

2. *Ky*

When Ky was born in 2012, she tested positive for marijuana.[4] She was detained and placed with K, in the home of their maternal grandparents. Mother conceded jurisdiction, which was based on her use of marijuana, her

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[3] The court had ordered Father to participate in a domestic violence program. Father participated in one month of therapy with an Alabama therapist, which the court found to be insufficient compliance. Mother's progress vacillated. Prior to the court's termination of her services for K, she claimed she no longer needed to participate in therapy and stopped contacting the caseworker.

[4] Ky also suffered from torticollis, which caused her neck to incline to one side, a cranial deformation, and developmental issues.

continuing mental and emotional problems, and the prior allegations found true by the court. Because Mother claimed another man was Ky's father, the court did not find that Father was the presumed father until April 2013.

After Ky's birth, Mother enrolled in Narconon, where she participated for nearly a year in parenting and life skills classes, a drug education and relapse prevention program, a domestic violence/anger management program, and individual counseling. In January 2013, she obtained a letter from the Los Angeles County Department of Mental Health, indicating she did not have a mental condition requiring psychotropic medication. However, she began making bizarre claims about the grandparents and threatening K during visitation. In May 2013, Mother was discharged from Narconon for missing classes, yelling and screaming at her counselor, and exhibiting hostility toward staff members.

At the November 2013 hearing at which Father's reunification services with respect to K were terminated, the court initiated reunification for Father with respect to Ky, denying his request for home-of-parent placement and requiring him to participate in an approved domestic violence program. The court further ordered six more months of services for Mother. Mother and Father appealed the court's orders, seeking return of Ky or unmonitored visitation. In October 2014, this court affirmed the orders. (*In re K.G.* (Oct. 14, 2014, B252758) [nonpub. opn.].)

In October 2014, Father commenced an approved domestic violence program. Although the caseworker described him as belligerent and uncooperative, his visits with the children were going well and his counselor recommended unmonitored visitation. In June 2015, the court granted Father weekly unmonitored day visitation with K and Ky. A month later, the court issued a restraining order against Father, after the caseworker presented evidence that Father had threatened him in a telephone conversation the day after the caseworker testified at the review hearing. Father appealed, contending Kim should have been placed in his custody at the June 2015 hearing, or that he should have been allowed unmonitored visitation. Father also appealed the restraining order, contending it was not supported by substantial evidence. In August 2016, this court affirmed the court's orders. (See *In re Kimoni G.W.* (Aug. 15, 2016, B265472) [nonpub. opn.].)

At the same June 2015 hearing that was the subject of the 2016 appeal, the court terminated both parents' reunification services with respect to Ky and additional reunification services it had granted Mother with respect to K. In April and May 2016, K reported that Father had spanked him and hit him in the stomach. The court ordered Father's visitation with the children to revert to monitored. The Department of Children and Family Services (DCFS) recommended termination of parental rights with respect to K and Ky so they could be adopted by the maternal

grandparents.[5] In August 2016, the court terminated parental rights over K and Ky to allow the grandparents to adopt and continue to parent them. In July 2017, this court affirmed the order. (See *In re Kingston W.* (Jul. 28, 2017, B277764) [nonpub. opn.].)

B. *Current Proceeding (Kim)*

When Mother gave birth to Kim in August 2013, she was living with a maternal aunt and uncle. Because the baby was being well cared for, Mother was complying with her case plan, and Father appeared to have returned to Alabama, DCFS did not intervene until April 2014. At that time, it received reports that Father had either moved into the home or was a daily visitor, and that while accompanying Mother to a medical appointment for one of the children, Father had been "combative" and "verbally aggressive" toward Mother and the maternal grandmother. Mother denied that Father was living with her or visiting regularly, but during an unannounced visit, a caseworker found Father at the home. Kim was removed and placed with her older siblings in their grandparents' home.

At the September 2014 jurisdictional hearing for Kim, the court found, among other things, that Father had "failed

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[5] K, then six, said he wanted to remain in his grandparents' home, where he had lived his entire life except for the brief period when Mother took him to Alabama. He again stated he did not want to live with Father.

to comply with Court Ordered counseling and . . . continues to be aggressive and have angry outbursts when in [Mother's] and the children's presence," and that Mother "minimizes [Father's] threatening and aggressive conduct." The court instructed Father to participate in a 52-week domestic violence program and individual counseling to address anger management and domestic violence, and instructed Mother to participate in individual counseling to address domestic violence and empowerment.[6]

Father began participation in a 52-week domestic violence program in October 2014. By May 2015, he had completed 37 weeks. His counselor described him as remorseful about his past actions of domestic violence and expressed the opinion that unmonitored visitation with the children should be allowed. In June 2015, DCFS instead recommended termination of reunification services. The caseworker said Father remained belligerent and uncooperative, and expressed concern that Mother was allowing herself to be controlled by him. Counsel for Kim joined DCFS in requesting termination of reunification

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[6] The court also ordered both parents to participate in an Evidence Code section 730 psychiatric evaluation. Father's evaluation revealed no mental illness. Mother's evaluation concluded she met the criteria for a diagnosis of psychotic disorder not otherwise specified. The evaluator stated Mother would benefit from psychiatric treatment and anti-psychotic medication, and recommended that any liberalization of visitation with the children be contingent on compliance with psychiatric treatment.

services, pointing to evidence that Father continued to blame others for his issues, and expressing concern that his "pattern of dishonesty" would cause future domestic violence to be covered up. The court found that Father was making substantial progress, and ordered additional reunification services.

Father began receiving weekly unmonitored visitation with Kim sometime in 2016.[7] The caseworker was unable to evaluate his home for overnight visitation because he denied having a home in California. In May 2016, Father's visitation reverted to monitored after K reported that Father had spanked him and hit him in the stomach. Thereafter, neither Father nor Mother cooperated with the caseworker's efforts to set up a monitored visitation schedule.[8] In September 2016, the court terminated reunification services with respect to Kim.[9]

After his visitation reverted to monitored, Father stopped visiting Kim. Mother stopped visiting the child in September 2016.[10] Both parents thereafter declined to meet

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[7] As discussed, the court had permitted weekly unmonitored visitation with K and Ky in June 2015.

[8] Mother purportedly had moved to Alabama to give birth to a fourth child.

[9] Mother and Father did not seek writ review, as required by section 366.26, subdivision (l)(1), and that order became final. (See *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-816.)

[10] In January 2017, the caseworker confirmed that Mother was residing in Alabama.

with the caseworker to establish a visitation schedule. They called the grandparents' home three to four times a week and spoke to Kim for ten to 30 minutes on a speaker phone, but the child, who was only three, would sometimes walk away from the speaker. The grandparents reported that during these calls, Mother and Father had outbursts and attempted to discuss case issues with the older children, or to advise the children that the grandparents were not their "'real family.'" As the grandparents' adoption home study had been approved and Kim was thriving in their home (as were her two older siblings), DCFS recommended termination of parental rights over Kim.

At the March 14, 2017 hearing on the termination of parental rights, Father's counsel asked for an evidentiary hearing. When asked to supply an offer of proof on the pertinent issues, he referred to the evidence that the parents spoke with Kim telephonically several times a week. The court found the offer insufficient. Father interrupted, and was escorted from the courtroom. Father was allowed to re-enter to provide testimony, but stated that the only subject he was willing to discuss was the court's lack of jurisdiction. He was once again escorted out.

Kim's counsel joined counsel for DCFS in asking the court to terminate parental rights. Father's counsel objected to termination, contending the parent-child relationship exception applied. Mother's counsel raised a general objection to termination, without stating a basis. The court terminated parental rights as to Kim.

C. *Procedural matters*

1. *Prior Proceedings*

As discussed in our July 2017 opinion, Father and Mother made various procedural motions prior to the September 2016 order terminating reunification services with respect to Kim, including *Marsden*-type motions seeking appointment of different attorneys,[11] untimely peremptory challenges to the presiding judicial officer, Judge Downing, motions to disqualify Judge Downing under Code of Civil Procedure section 170.1, and Mother's request for self-representation. Father also objected to the court's assertion of jurisdiction over him and over the children on multiple occasions.[12]

All of these matters were discussed in our July 2017 opinion, in which we found, among other things, (1)

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[11] As explained in our July 2017 opinion, *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) provides the procedure a trial court must follow when an indigent criminal defendant requests that his or her court-appointed attorney be relieved. It is not clear that this procedure is required in dependency proceedings when parents are dissatisfied with appointed counsel. (See *In re M.P.* (2013) 217 Cal.App.4th 441, 458 ["inappropriate" to "rigidly and unthinkingly" apply *Marsden* to dependency proceedings].) However, the court here followed the procedure on several occasions and referred to the hearings as *Marsden* hearings and appellants' motions for new counsel as *Marsden* motions. We will do the same.

[12] In addition, Father briefly substituted in private counsel and on three occasions, his attorneys requested permission to withdraw.

jurisdiction over Father and the children was appropriate, as California was their home state under Family Code section 3421; (2) personal jurisdiction over the parent was not required for the court to assert jurisdiction over the children, but Father had waived any objection he might have had to personal jurisdiction by his many appearances in the proceedings; (3) the court had discretion to deny a request for self-representation, and had not abused that discretion; and (4) Father had previously sought review of the request to disqualify Judge Downing by writ, which had been denied for failure to demonstrate entitlement to relief.

2. *Current Procedural Matters*

At the March 14, 2017 section 366.26 hearing, Father's attorney once again asked Judge Downing to recuse herself and challenged the court's jurisdiction as to Father. The court, observing that these matters had been previously resolved, denied the recusal request and found that jurisdiction over the children was appropriate because they were residents of California. Counsel asked for reconsideration of the court's initial assertion of dependency jurisdiction over Kim. The court denied the request. Counsel for Mother asked for a continuance because Mother was not present. The court denied the request, observing that Mother had been given notice and had chosen to miss multiple hearings in the past. Father asked that new counsel be appointed. The court conducted an in camera hearing to review the reasons for Father's dissatisfaction

with his attorney. Father stated that counsel was refusing to press the court on jurisdiction and recusal, and that he would rather represent himself. The court denied the request for a new attorney and the request for self-representation, finding that Father had no reasonable basis for dissatisfaction with current counsel.

In March 2017, Father filed a notice of appeal, claiming to be appealing the March 14, 2017 order terminating parental rights, the September 2016 order terminating reunification services, the multiple orders between September 2014 and February 2016 in which Judge Downing refused appellants' requests that she recuse herself, and the multiple orders denying the *Marsden*-type requests, including the March 14, 2017 request. Mother filed a notice of appeal from the order terminating parental rights and the order terminating family reunification services.

DISCUSSION

As in the 2017 appeal, appellants filed lengthy briefs invoking the Bible, the United States Constitution, and myriad news article and Web sites, with scant citation to appropriate legal authority or argument. Where "an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority," we generally treat the point as forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784,785; accord, *Nelson v. Avondale Homeowners Assn.* (2009) 172

Cal.App.4th 857, 862.) "An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) "It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Appellants also seek to relitigate multiple orders entered in the proceedings, continuing their claim that Judge Downing should have recused herself, and that the court lacked jurisdiction over the children and a basis for assertion of dependency jurisdiction under section 300. We are constrained by the limits of appellate jurisdiction from addressing claims of error in prior orders that were themselves appealable. (See *In re Elizabeth G.* (1988) 205 Cal.App.3d 1327, 1331.) """An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed."""" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7.) In addition, to the extent appellants seek review of the order terminating reunification services and setting the section 366.26 hearing to consider terminating parental rights, such orders are generally reviewable only by way of writ petition. (§ 366.26, subd. (l)(1).) The sole orders from which appeal was properly and timely taken are the March 14, 2017 order terminating parental rights over Kim, and the order denying Father's request for new counsel and self-representation.

A. *Order Denying Father's Request for New Counsel/Self-Representation*

Father appealed the order denying his request, under *Marsden*, for new counsel and his request for self-representation. Preliminarily, we observe there is no clear right to a *Marsden* hearing in dependency proceedings. As explained in *In re M.P.*, "[t]he *Marsden* decision was 'intended to afford protection to the [criminal] defendant's right to counsel as guaranteed by the Sixth Amendment' . . . . [Citations.] '[T]he Sixth Amendment does not govern civil cases.'" (*In re M.P.*, *supra,* 217 Cal.App.4th at pp. 456-457.) "[W]e think it is inappropriate to rigidly and unthinkingly apply *Marsden* and its progeny to dependency proceedings." (*Id.,* at p. 458.) Moreover, even assuming *Marsden* applies, ""'[a] defendant may not force the substitution of counsel by his own conduct that manufactures a conflict.'"" (*Id.* at p. 458, quoting *People v. Smith* (1993) 6 Cal.4th 684, 696.) The court conducted an in camera hearing and concluded that Father had demonstrated no justification for seeking new counsel. We have reviewed the hearing transcript and find no abuse of discretion. Father disagreed with his counsel's refusal to press matters that already had been decided, including jurisdiction and recusal. That did not warrant granting his request for a new attorney.

As for Father's request to represent himself, the juvenile court had discretion to deny the request if it determined that granting it would cause significant

disruption in the proceedings. (*In re A.M.* (2008) 164 Cal.App.4th 914, 923; *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1083.) In light of Father's behavior throughout the proceedings, the court had ample ground for concluding that allowing Father to represent himself at that late date would be disruptive.[13]

B. *Order Terminating Parental Rights Over Kim*

At the section 366.26 hearing, the court selects the permanent plan for the dependent child, choosing from several options, including termination of parental rights and ordering the child placed for adoption. (§ 366.26, subd. (b); *In re Celine R.* (2003) 31 Cal.4th 46, 53.) "'Adoption is the Legislature's first choice . . . .'" (*In re Celine R.*, *supra*, at p. 53.) If the court determines by clear and convincing evidence that it is likely the child will be adopted, the court "shall terminate parental rights and order the child placed for adoption" (§ 366.26, subd. (c)(1)), unless one of the statutory exceptions applies and "provides a compelling reason for finding that termination of parental rights would

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[13] We stated in our 2017 opinion: "The record reflects that Mother and Father were frequently admonished and occasionally removed from the courtroom for interrupting the proceedings. In addition, they engaged in behavior, such as making the same motion or request after it had been denied and repeatedly requesting new counsel, that suggested their primary motivation was delay." Father's misbehavior and disruption continued during the March 14, 2017 hearing, confirming the court's decision to deny self-representation.

be detrimental to the child." (*In re Celine R.*, *supra*, at p. 53.)

There was no dispute that Kim was adoptable, as her grandparents had made clear their desire to adopt. At the hearing, Father's counsel sought to invoke the exception found in section 366.26, subdivision (c)(1)(B)(i): "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The evidence did not establish regular visitation. Father and Mother had not visited Kim consistently for some time, and Mother appeared to have moved out of state.

Moreover, a parent seeking to forestall termination of parental rights under this exception must establish: (1) "the existence of a beneficial parental . . . relationship" and (2) that "the existence of that relationship constitutes a 'compelling reason for determining that termination would be detrimental.'" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315, quoting § 366.26, subd. (c)(1)(B), italics omitted; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 622.) Satisfying the exception "requires the parent to prove that 'severing the natural parent-child relationship would deprive the child of a substantial positive emotional attachment such that the child would be greatly harmed,'" and that the relationship "'"promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."'" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643, italics omitted,

quoting *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) "'[A] child needs [a] parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.'" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, quoting *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.*, *supra*, at p. 466, italics omitted.) In determining whether the exception has been established, the court may consider such factors as "the age of the child, the portion of the child's life spent in the parent's custody, . . . and the child's particular needs . . . ." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

The court did not err in concluding that termination of parental rights would not be detrimental to Kim. Kim was detained when she was less than a year old and had been in the sole care of her grandparents for three years as of the March 2017 hearing. Neither Mother nor Father had assumed a parental role since the detention. Mother's visitation never progressed past monitored. Father's brief period of unmonitored visitation, which never progressed to overnight visitation due to his lack of candor about his residence, ended when he hit Kim's older brother K. There was no evidence to suggest that Kim would be greatly harmed by the termination of parental rights.

DISPOSITION

The court's March 14, 2017 orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.