Filed 10/17/18 In re A.H. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 A.H. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.H. et al., Defendants and Appellants.	B285546 (Los Angeles County Super. Ct. No. CK57697)

APPEAL from orders of the Superior Court of Los Angeles County, Veronica S. McBeth, Judge. Affirmed.

E.H. and J.H., in pro. per., for Defendants and Appellants.

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

E.H. (mother) and J.H. (father) appeal from several orders of the juvenile court, relating to three children: daughter A.H. (born in 2003), and sons El.H. (born in 2010) and S.H. (born in 2012). Appellants show no error requiring reversal, and we affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

The family's long dependency history has been documented in several opinions.[1] We borrow relevant background facts from the most recent opinion, and we take judicial notice of several orders included in the record of two subsequent dismissed appeals (case Nos. B277657 and B280822).[2]

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[1] See *In re A.H.* (Oct. 29, 2015, No. B261543 [nonpub. opn.]); *E.H.* v. *Superior Court* (Aug. 29, 2014, No. B255970 [nonpub. opn.]); *In re A.H.* (July 16, 2014, No. B251288 [nonpub. opn.]); *In re S.H.* (Dec. 11, 2013, Nos. B245942 & B248323 [nonpub. opn.]); *In re A.H.* (July 20, 2012, No. B236022 [nonpub. opn.]); *In re B.H.* (July 31, 2009, No. B211691 [nonpub. opn.]); *Jeffrey H. v. Superior Court* (June 13, 2006, No. B189786 [nonpub. opn.]).

[2] We take judicial notice of placement and termination of jurisdiction orders made on April 28, 2016; June 20, 2016; November 29, 2016; and January 9, 2017. Aside from those orders, we deny the motion of respondent Department of Children and Family Services (DCFS) to either incorporate or

As relevant here, A.H. and El.H. are two of the six oldest children (of a total of eight) removed from the parents in 2011 based on father's giving A.H. a black eye, mother's failure to protect, and the parents' regularly giving A.H. beer to drink. Reunification services were terminated for these children in 2013 due to the parents' failure to demonstrate progress, father's disruptive behavior, and mother's continued submissiveness to father's control. A Welfare and Institutions Code section 366.26[3] permanent planning hearing was set at that time. Parental rights to the five oldest boys, including El.H., were terminated in 2015.

S.H. was removed at birth. Reunification services as to him were terminated and a 366.26 hearing was set in 2014. Ms. T. has been S.H.'s legal guardian since June 20, 2016. On January 9, 2017, daughter A.H. was also placed with Ms. T.

The parents' eighth child was removed, and jurisdiction over all children except the three at issue in this appeal was terminated between April 28, 2016 and January 9, 2017, due to adoption.

On July 12, 2017 and August 22, 2017, the parents filed notices of appeal from orders dated May 15, 2017; June 13, 2017; July 10, 2017; and August 7, 2017.

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take judicial notice of the entire record in each dismissed appeal. None of the orders in those records is before us, and we decline to engage in disputes over irrelevant facts.

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

DISCUSSION

In recent years, appellants have chosen to represent themselves both in the juvenile court and on appeal. Self-represented litigants are "entitled to the same, but no greater, consideration than other litigants and attorneys" and are "held to the same restrictive rules of procedure as an attorney [citation].' [Citations.]" (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) This appeal suffers from a number of procedural deficiencies, which we cannot ignore.

In their opening brief, appellants request broadly that all orders made between January 1, 2017 and August 10, 2017 be reversed, or that orders made on July 25, 2017 be reversed along with the orders made on the four dates identified in the notice of appeal. (AOB 7, 28) These requests exceed the scope of the notice of appeal. Although a notice of appeal must be liberally construed, when the notice identifies specific orders and those orders are attached, the appeal is perfected only as to them. (See *DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43 ["'[W]here several judgments and/or orders occurring close in time are separately appealable . . ., each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal'"].) We limit our review solely to the orders made on the four dates identified in the notices of appeal.[4]

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[4] In reply, appellants claim they should be excused from giving proper notice of appeal because they have been "at the mercy of the corrupt and incompetent officers of the court," they have been denied notice of orders and records, and have been excluded from secret "star chamber" proceedings. We decline to

II

As relevant to the orders properly before us, appellants have no standing to raise any issues with regard to El.H. Their parental rights have been terminated since 2015, and they no longer have a "legally cognizable interest" in his affairs. (*In re K.C.* (2011) 52 Cal.4th 231, 237.) Hence, we will not consider their arguments about being excluded from hearings regarding El.H.'s adoption on May 15 and July 10, 2017, when the adoption was finalized. Appellants are confused regarding their rights as to this child. Since their parental rights were terminated in 2015 and the child was adopted in 2017, the adoption occurred within the three-year statutory period. And even where adoption is delayed for more than three years, it is the child, not the parents, who may petition for reinstatement of parental rights. (§ 366.26, subd. (i)(3).)

A. May 15, 2017 Orders

On May 15, 2017, the court received some testimony and continued the hearing on mother's section 388 petition and the section 366.26 hearing as to A.H. to June 13, 2017. The court held a review of permanency planning as to El.H. and S.H. and set the guardian's petition to change S.H.'s name for a hearing on July 10, 2017.

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address diatribes that do not raise cognizable legal arguments supported by citations to the record. The record indicates appellants were present in court on July 25, 2017; hence, they were aware of the orders made at the hearing and could have added them to the notice of appeal. Appellants also complain about not having access to the court file, but do not show they have moved to augment the appellate record with documents they appear to be aware of. (See California Rules of Court, rule 8.410.)

Appellants complain they did not receive the social workers' reports before the May 15, 2017 hearing. The only objection at that hearing was mother's objection to DCFS's last minute information report. That report was relevant to mother's section 388 petition as to A.H., and at the hearing mother explained she wanted to call additional witnesses based on the report.[5] At the time, mother identified A.H., social worker Rivera, and Ms. T. as witnesses she wished to cross-examine. The court continued the hearing and did not rule on mother's petition until June 13, 2017.

Appellants' arguments that they were denied due process are not supported by the record. First, any argument regarding other reports that were not served on time is forfeited since the issue was not brought to the attention of the juvenile court. (See *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1152; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 641.) Second, the court made no rulings on mother's petition at the hearing, so it cannot be said it made a decision based on reports mother had not seen. (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 412–413.)

B. June 13, 2017 Orders

On June 13, 2017, the court held the rest of the hearing on mother's section 388 petition and granted the petition in part, awarding mother weekly unmonitored visits with A.H., but denying her request for reunification services. At that hearing, mother requested to cross-examine A.H., social worker

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[5] Father continually interrupted the proceeding even though he was not a party to mother's section 388 petition.

Sainten, and social worker Morris. The court found no reason to continue the section 388 hearing further.[6]

Mother argues she was denied the right to cross-examine witnesses. Specifically, she argues she should have been allowed to call social workers Franzle and Morris, who worked on the case in the past and on whose reports social worker Rivera relied. Mother identifies no questions for social worker Franzle relevant to her section 388 petition. The only questions identified in the opening brief have to do with El.H., as to whom appellants' parental rights had been terminated. Similarly, mother identifies no questions for social worker Morris. Nor does she explain the relevance of social workers who no longer work on the case to her burden of proving changed circumstances and best interest of the child for purposes of her section 388 petition. A conclusory claim of error not supported by meaningful legal analysis and citations to facts and authority must fail. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

In reply, appellants argue generally that the court violated their Sixth Amendment right to confront witnesses against them, citing criminal cases, such as *Delaware v. Van Arsdall* (1986) 475 U.S. 673. However, the Sixth Amendment right to confrontation does not apply to dependency proceedings. (*In re April C.* (2005) 131 Cal.App.4th 599, 611.)

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[6] The court ordered DCFS to have social workers Franzle, Sainten, and Marshall on call for A.H.'s section 366.26 hearing, and to make A.H. available for that hearing. The court explained that appellants needed to subpoena social worker Morris, who no longer worked at DCFS.

In conclusory fashion, appellants argue that the court violated their right to stay married, and that divorce is against their strongly held religious beliefs. However, they point to no act of the court that denied them that right. The only evidence they offer is DCFS's opposition to reinstatement of reunification services for mother as long as she remains married to father, or continues to have a relationship with father and continues to be influenced by him. As described in case No. B261543, the idea of divorcing father was first floated by mother, after she admitted having been a victim of domestic abuse. In any event, the court's expressed concern at the hearing was not about the formal state of appellants' relationship, but about the children's safety and mother's ability to protect them from father.

The right to marital privacy, while fundamental, is not limitless. In domestic violence cases it may yield to "the state's compelling interest in protecting victims of domestic violence." (*People v. Jungers* (2005) 127 Cal.App.4th 698, 705.) Similarly, in dependency cases, "the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) An offending parent may be required to leave the family home. (§ 361, subd. (c)(1)(A); *In re Silvia R.* (2008) 159 Cal.App.4th 337, 351.) Thus, the suggestion that no restriction may be placed on appellants' relationship because it would violate their right to marriage is flawed.

C. July 10, 2017 Orders

On July 10, 2017, the court terminated jurisdiction over El.H., whose adoption had been finalized. Father filed a petition "to reinstate parental rights, terminate guardianship, and resume family reunification services," which the court

deemed a section 388 petition and continued to July 25, 2017. Father argues the court erred in summarily denying his petition. We decline to consider this argument since he did not include the July 25, 2017 order in the notice of appeal.

At the July 10, 2017 hearing, when appellants complained that the court clerk would not file stamp subpoenas, the court indicated it would help them resolve that issue. We find no order of the court that has prevented appellants from serving subpoenas.

D. August 7, 2017 Orders

On August 7, 2017, the court granted Ms. T.'s request to change S.H.'s name, and temporarily changed the parents' visitation with S.H. Mother was to have monitored visits at DCFS's office and father in a therapeutic setting by a DCFS-approved monitor.

Appellants suggest they were intentionally locked out of the courtroom during this hearing because the court knew father objected to the change of S.H.'s name. The record indicates appellants' absence from the hearing, but does not support their additional contentions. The proceedings in juvenile court are presumptively closed to the public by statute in order to protect the confidentiality of the minors. (§ 346; *In re A.L.* (2014) 224 Cal.App.4th 354, 368; *In re Steinberg* (1983) 148 Cal.App.3d 14, 20–21.) Thus, the fact that hearings may be conducted behind locked doors does not carry the sinister conspiratorial connotations appellants attribute to it.

The record shows appellants were personally served with the guardian's motion at the May 15, 2017 hearing and were aware that the hearing was continued first to July 10, 2017 and then to August 7, 2017. Nothing in the record indicates

appellants were present on time for the hearing and were intentionally locked out of the courtroom. Nor does the record show they brought their claimed exclusion from the hearing to the attention of the juvenile court.

III

Appellants claim the court improperly delegated authority over visits to social workers, a therapist, and the children. They do not cite to specific orders, and the orders at issue in this appeal do not support their claim.

"The court has the sole power to determine whether visitation will occur. [Citations.] Once visitation is ordered, the court may delegate responsibility for managing details such as the time, place and manner of visits, none of which affect a parent's defined right to see his or her child. [Citations.] However, the visitation order must give some indication of how often visitation should occur. [Citations.] A court may not abdicate its discretion to determine whether visitation will occur to a third party." (*In re E.T.* (2013) 217 Cal.App.4th 426, 439.)

Father argues that DCFS has denied him visitation since July 2016, a period preceding the orders at issue in this case. When father complained about the lack of visits at the June 13, 2017 hearing, the court ordered DCFS to provide an update on the subject. At the same hearing, the court ordered DCFS to provide weekly unmonitored visits between mother and A.H., and ordered it further to provide the court with A.H.'s school schedule in order to determine the details. The court ordered that father have no contact with A.H. during those visits. It did not leave it up to A.H. whether to visit with appellants. At the July 10, 2017 hearing, the court stated that conjoint therapy

between mother and A.H. needed to start; it did not leave that decision to the therapist. At the August 7, 2017 hearing as to S.H., the court made temporary orders for mother to have monitored visits at DCFS's office and for father to have conjoint therapy with the child, with a DCFS-approved monitor.

Most of the visitation orders made on the dates at issue in this appeal were interim, rather than final, orders. None gave the children, DCFS, or a therapist unfettered discretion as to whether visits would occur; nor did appellants object to them on the grounds they press now.

IV

Appellants contend that all of Judge McBeth's orders are void because she consented to her disqualification by not ruling on their verified statement of disqualification on August 10, 2016. (Code Civ. Proc., § 170.3, subd. (c)(4).) "A party who seeks to declare a judgment void on the ground the judge was disqualified must allege and prove facts which clearly show that such disqualification existed. [Citation.]" (*Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 424.) Appellants have the burden to show error on appeal on an adequate record. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

No attempt to disqualify Judge McBeth occurred on the dates of the hearings at issue in this appeal. The referenced August 10, 2016 statement of disqualification is not included in the appellate record, and we cannot determine whether the challenge for cause was properly served on the judge, in order to trigger the requirement of action on her part. (See *Urias v. Harris Farms, Inc., supra,* 234 Cal.App.3d at p. 421 [judge need

not consider statement until served].) Hence, we cannot conclude that Judge McBeth must be deemed disqualified.

Alternatively, appellants argue that the judge was disqualified on July 25, 2017 because the minute order on that day reads in part: "An affidavit of prejudice under Code of Civil Procedure section 170.6 has been filed by QUE (name of party and/or attorney). The Court finds it in proper order and timely filed. Pursuant to the order of the Supervising Judge the case is being transferred to Department forthwith." DCFS responds that this entry into the order must have been a result of clerical error, as no statement of disqualification was mentioned on the record that day.

The record on appeal is inadequate to determine whether this entry into the minute order affects the validity of any subsequent order by Judge McBeth. The entry does not refer to a statement of disqualification under Code of Civil Procedure section 170.3. It does not name appellants and Judge McBeth. Nor does it identify the department to which the case is ordered transferred. Neither the referenced affidavit of prejudice, nor the referenced order by the supervising judge are in the record. Under the circumstances, it would be speculative to conclude that the formulaic entry into the minute order requires that the case be reassigned, and we decline to find that it should have been.

DISPOSITION

The orders are affirmed.

MICON, J.*

We concur:

MANELLA, P. J.

WILLHITE, J.

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