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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JEREMIAH F. et al., Persons Coming
Under the Juvenile Court Law.

JONATHAN F.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

No. B238239

(Los Angeles County
Super. Ct. No. CK52873)

PETITION for extraordinary relief from orders of the Los Angeles County
Superior Court, Marilyn Mordetzky, Referee. Writ denied.

Jonathan F., in pro. per. for Petitioner.

No appearance by Respondent.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Aileen Wong, Deputy County Counsel, for Real Party in Interest.

Father Jonathan F. seeks extraordinary relief from juvenile court orders terminating reunification services and setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.¹ He also appears to challenge the factual basis for the jurisdictional findings. He asks that we vacate the order setting the section 366.26 hearing, order additional reunification services, and return custody of the children to him. Pursuant to father's request, we issued a temporary stay of the section 366.26 hearing pending resolution of this petition.

We find no basis for extraordinary relief on this record. We shall deny the writ petition and dissolve the stay.

FACTUAL AND PROCEDURAL SUMMARY

Three children are the subject of this dependency proceeding: Jeremiah F. (born October 2001), Angel F. (born July 2003), and Blake F. (born September 2008). Father was found to be the presumed father of Jeremiah and Angel, but Elijah H. was found to be the alleged father of Blake. Mother is not a party to this writ petition.

Jeremiah and Angel were the subjects of a previous dependency case. A permanency planning hearing was in progress, with a plan that the foster parents would adopt the children, when mother filed a section 388 petition to reinstate her reunification services. After the hearing on the petition, mother was given custody of the children and the resulting family maintenance case was successfully closed in May 2007.

A general neglect referral was received by the Los Angeles County Department of Children and Family Services (the Department) on August 3, 2009. It was alleged that maternal grandmother had called paramedics because Blake was in respiratory distress and had to be taken to a hospital. Although mother had custody of the children, she was absent due to her substance abuse. Blake was discovered to have a Fentanyl patch on his body, a pain medication used for adults but not children. The Department attempted to

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

arrange a team decision-making meeting but had difficulty locating father. On August 5, 2009, the Department detained Jeremiah and Angel at large because their whereabouts were unknown. Blake was on a hospital hold.

On August 7, 2009, the Department filed a section 300 petition alleging that mother abused Angel, that she engaged in a violent altercation with maternal grandfather, that she made an inappropriate plan for the children, that she had a history of drug abuse, that father had a history of drug abuse, and that father failed to provide the children with the necessities of life. It also was alleged that Blake's father, Elijah, failed to provide him with the necessities of life. The children were detained, and placed in a foster home. The matter was set for a pretrial resolution conference. Father spoke with the social worker in August but failed to appear for a scheduled interview or to respond to a request to contact the worker.

According to mother, father saw the children every other week, and had been released from prison in May or June 2009. Maternal grandparents would not let him into their home to visit the children. Mother recounted a long history of drug abuse and domestic violence with father. Father became more abusive after Angel was born, and father was incarcerated. Mother separated from father and moved in with maternal grandparents. Blake's father, Elijah, told the social worker that father was a "skin head" who had been in and out of jail. Mother had told him that she and father used drugs in the home and that father sold drugs from the home. Both parents had been arrested, which explained mother's current probationary status.

Jeremiah said he had seen his father a month before detention, the only visit since father was released from jail. He said he and Angel sometimes visited father overnight for a couple of days. Angel and maternal grandmother reported that father had threatened to spank the children until their butts bled. Father was reportedly unemployed and moving from house to house.

In September 2009, a Multi-Disciplinary Assessment Team report stated that father had been uncooperative and refused to return the assessor's call. Father appeared for the first time in juvenile court on September 15, 2009. In an October 26, 2009 report

for the adjudication hearing, the social worker said she had made many unsuccessful attempts to contact father, who had not visited the children since September 22, 2009. At the adjudication hearing on October 26, 2009, the court sustained the petition. It sustained allegations that father had a history of drug use which rendered him incapable of providing care for the children and that Jeremiah and Angel had been prior dependents because of father's substance abuse. (§ 300, subd. (b)(6).) The court also sustained an allegation that father had failed to provide the children with the necessities of life, which endangered the children's physical and emotional health and safety. Reunification services were provided for father, including drug rehabilitation with random drug testing and parent education. He was granted monitored visits.

In April 2010, the social worker reported that father had violated his probation by leaving the state to go to New Mexico. Father was incarcerated in New Mexico and was awaiting trial there. At the 12-month review hearing in October 25, 2010, father was still incarcerated in New Mexico. Telephone contact between him and the children continued to be problematic. Father had been sentenced to a four-year prison term and planned on participating in services while incarcerated. The juvenile court found father was not in compliance with the case plan and terminated his reunification services. A section 366.26 permanency planning hearing was set.

Father remained incarcerated in April 2011 but had been moved to a drug-free pod and was starting a drug-free program. An Interstate Compact on the Placement of Children (ICPC) was initiated to evaluate the paternal grandfather's home in New Mexico for possible placement of the children. The section 366.26 hearing was taken off calendar while that evaluation was pending. The ICPC evaluation for paternal grandfather eventually resulted in denial because of grandfather's inability to care for the children alone.

The children were moved into a new foster home in June 29, 2011. The children were thriving in that home and the foster parents were interested in adopting them.

In a status review report for October 24, 2011, the social worker reported that father remained incarcerated in New Mexico with an expected release date of March 12,

2012. He had maintained contact with the Department and with the children through telephone calls, letters, cards, and art. He had completed his GED with honors and was also enrolled in Moral Recognition Therapy, a cognitive behavioral program to help father be a productive individual in society. Father was participating in addiction services and actively participating in a group program, Alcoholics Anonymous/Narcotics Anonymous, and outpatient substance abuse programs. He also was enrolled in a parenting curriculum and an online college program. Father had expressed his intention to file a petition under section 388 upon his release to reinstate reunification services. When told the foster parents wanted to adopt the children, father responded that he believed they needed a permanent home for stability and that if he could not get custody, adoption would be best for the children.

At a hearing on October 24, 2011, for review of the permanent plan, counsel for father objected to setting the matter for a section 366.26 hearing for February 2012 when father was scheduled for release in March. Father had demonstrated that he was doing extensive rehabilitation in an effort to parent his children and had been a model inmate. He also argued that the ICPC was denied based on a misunderstanding that grandfather insisted that father live in the home with the children as well. Counsel represented that the plan was to have the children live with grandfather while father was living in a sober living home or other transitional housing. The hope was that father would get reunification services reinstated and work his way back to gaining custody.

Counsel for mother asked the court to set the section 366.26 hearing and questioned the quality of the relationship between father and the children. The juvenile court set the matter for a section 366.26 hearing on February 17, 2012. Father filed a timely notice of intent to file a writ petition. He filed a petition for extraordinary writ under California Rules of Court, rule 8.452.

DISCUSSION

I

The Department asserts that father has no standing to challenge the juvenile court's orders with respect to Blake because he is not a party to that minor's dependency case. At the detention hearing, father was found to be the presumed father of Jeremiah and Angel, but another man, Elijah, was found to be Blake's alleged father. No finding of any parental status for father was made as to Blake.

Only a person named as a party to the proceedings, or one who takes appropriate steps to become a party of record may appeal. (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715 [alleged biological father had no standing to appeal order terminating parental rights because he never became a party of record in the dependency proceeding].) Father took no steps to achieve any recognized status as to Blake. We conclude that, on this record, he has no standing with respect to the orders made in Blake's case.

II

The Department asks that we dismiss this writ petition as facially inadequate, arguing that father failed to comply with the technical requirements of California Rules of Court, rule 8.452 (Rule 8.452).

Rule 8.452, subdivision (a) provides that the petition must be liberally construed. The petition must include the identities of the parties, the date on which the superior court made the order setting the hearing and the date on which it is scheduled, a summary of the grounds of the petition, the relief requested, and an accompanying memorandum. (Rule 8.452, subd. (a).) The memorandum must include a statement of significant facts based on the record, argument and citation of authority, and citations to the record. (Rule 8.452, subd. (b).) In light of the critical rights at stake and the fact that father was incarcerated when the petition was filed in propria person, we liberally construe the petition as required by California Rules of Court, rule 8.452, subdivision (a) and review it on the merits.

III

We agree with the Department that father may not challenge the jurisdictional findings in this writ proceeding. Father appears to challenge the sustained allegation that he and mother engaged in domestic violence, the facts regarding his drug abuse, and the finding regarding an injury to Blake.

The petition in this matter was sustained on October 26, 2009. In part, the jurisdictional findings were based on the fact that Jeremiah and Angel were prior dependents due to father's substance abuse. The jurisdictional findings in the prior case were made at some point between January 2004 and May 2007. Appellate review of jurisdictional findings is by appeal from the dispositional order. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490, fn. 4.) An appeal from a dependency order must be filed 60 days after the making of the order, or in the case of an order made by a referee, 60 days after that order becomes final under rule 5.540(c).² (Cal. Rules of Court, rule 8.406 (a).) We may not review dependency orders for which the statutory time for filing an appeal has passed. (See *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208-209.) We therefore decline to review any issue regarding the jurisdictional findings.

IV

The Department argues the trial court properly set the matter for a section 366.26 hearing.

The Department contends that we may not review the termination of reunification services on October 25, 2010, because father did not immediately seek review of that order by petition for extraordinary writ. Instead, he seeks review in this writ petition, filed after the October 24, 2011 continued hearing at which the court set the section

² California Rules of Court, rule 5.540(c) provides: "An order of a referee becomes final 10 calendar days after service of a copy of the order and findings under rule 5.538, if an application for rehearing has not been made within that time or if the judge of the juvenile court has not within the 10 days ordered a rehearing on the judge's own motion under rule 5.542."

366.26 hearing. An order terminating reunification services is typically reviewed with an order setting a section 366.26 hearing in a petition for extraordinary relief brought under California Rules of Court, rule 8.452. (See *In re T.W.* (2011) 197 Cal.App.4th 723, 730-731.) Here, the court served a notice of intent to file writ petition on parents at the conclusion of the October 25, 2010 hearing. Father did not seek review of this order until more than a year later after the court had finally set a section 366.26 hearing. We conclude that review of the termination of reunification services would be untimely.

Father also challenges the order setting the section 366.26 hearing, which is properly before us in this writ proceeding. (Cal. Rules of Court, rule 8.452.) A hearing pursuant to section 366.26 may not be set unless there is clear and convincing evidence that reasonable services have been offered or provided. (§ 366.21, subd. (g)(1), (g)(2).) “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] ‘If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.’ [Citations.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361–1362.) In this case, the evidence establishes that father did not begin to avail himself of services in compliance with his case plan until after his reunification services had been terminated. Contrary to father’s contention, the social worker reported on his progress, which was admirable, after that date. On this record, we find no basis for relief from the order setting the section 366.26 hearing.

We note that father’s remedy on release from incarceration is to file a petition under section 388 presenting any relevant new evidence of changed circumstances. (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

DISPOSITION

The petition for extraordinary writ is denied. The stay is dissolved.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.