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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MARK M.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES et al.,

Real Parties in Interest.

B279631

(Super. Ct. No. CK76202)

ORIGINAL PROCEEDING; mandate petition.

Rudolph Diaz, Judge. Petition granted.

Law Office of Pamela R. Tripp and Pamela Rae Tripp
for Petitioner.

Frederick R. Bennett for Respondent.

On September 20, 2016, petitioner Mark M., the prospective adoptive parent, filed a notice of intent to file a writ petition in the respondent court pursuant to California Rules of Court, rule 8.454.¹ Mark challenged the respondent court's September 14, 2016 order removing minor Victor S. from his home. On September 22, 2016, the respondent court issued a Notice of No Court Action on Notice of Appeal informing Mark it had received the notice of intent, but it was dated and marked "Received," rather than "Filed." The court instructed Mark to file a JV-570 request (Welf. & Inst. Code, § 827)² before the notice of intent would be filed by the court, and that no record would be prepared unless the JV-570 request was granted. Mark subsequently filed his JV-570 request.

On December 21, 2016, Mark filed a petition for writ of mandate seeking immediate relief because the record has not been prepared and transmitted to this court, Mark's counsel, and all other parties since the filing of the notice of intent in the respondent court. We issued a notice, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 (*Palma*), indicating that we believe Mark was entitled to relief and notifying the respondent court that it could avoid issuance of a preemptory writ by preparing the

¹ All further rule references are to the California Rules of Court, unless otherwise stated.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

record, without redaction, and transmitting the record to all parties, including Mark's counsel and this court. The record must include reporter's transcripts of all hearings relevant to the September 14, 2016 ruling. By letter dated January 6, 2017, the respondent court notified us through counsel that it would not comply with the *Palma* notice.

Section 366.26 provides a hearing to determine whether parental rights over a minor who has been adjudged a dependent should be terminated. Subdivision (n) provides that at or after a hearing is held under section 366.26, the juvenile court may, if specified conditions are met, designate the child's caretaker as a "prospective adoptive parent." Subdivision (n) further provides that a prospective adoptive parent must be given notice and an opportunity to object to any decision by a social services agency to remove a child from the prospective adoptive parent's home. The prospective adoptive parent may then object to removal of the child from his or her home. Upon receiving an objection from a prospective adoptive parent, the juvenile court must conduct a hearing and determine whether removal of the child from the prospective adoptive parent's home is in the best interest of the child. A prospective adoptive parent is allowed to fully participate in the removal hearing but is not considered a party to the proceeding. (§ 366.26, subd. (n)(3)(C).) The court in *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1341 explained the purpose of permitting such participation: "If, at a removal hearing, the juvenile court were permitted only to hear evidence and

argument from a social service or adoption agency, as a practical matter the juvenile court would be required to defer to the determination of the only active litigant in the courtroom.” Full participation of a prospective adoptive parent at removal hearings is the most effective means of ensuring that the juvenile court, rather than a social service or adoption agency, determines whether removal is in a child’s best interests. (*Id.* at p. 1342.)

Here, the Los Angeles County Department of Children and Family Services filed a notice of intent to remove Victor from Mark in February 2016. On February 11, 2016, Mark filed an objection to the removal with the respondent court. The matter was first heard on May 23, 2016, and then continued at a contested hearing spanning 13 days where witnesses testified, motions were heard, and closing arguments took place. The respondent court entered its oral ruling on September 14, 2016, removing Victor from Mark’s custody.

A juvenile court order removing a dependent child from the home of a prospective adoptive parent after a hearing is not appealable unless the prospective adoptive parent has first filed a petition for extraordinary writ review that substantively addressed the specific issue to be raised on appeal and the petition was summarily denied, or otherwise not decided on the merits. (§§ 366.26, subd. (n)(5), 366.28, subd. (b)(1); see rules 8.454, 8.456; see also *Wayne F. v. Superior Court*, *supra*, 145 Cal.App.4th at p. 1338 [prospective adoptive parent has standing to challenge the

court's removal order].) The purpose of requiring a petition for extraordinary writ review to be filed prior to an appeal is to prevent any undue delay that may cause a substantial detriment to the child. (Rule 8.454(b).)

Rule 8.454 governs the notice of intent to file a writ petition involving a removal order following the termination of parental rights. (See § 366.28.) Rule 8.454(c) specifically addresses who may file. It states, "The petitioner's trial counsel, or in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition" The notice must be served and filed within seven days after the date of the removal order. (Rule 8.454(e)(4).) Once the notice of intent is filed, "the superior court clerk must immediately send a copy of the notice to" including, but not limited to, the attorney of record for each party, any prospective adoptive parent, de facto parent, and legal guardian. (Rule 8.454(g)(1).) Moreover, the superior court clerk "must [i]mmediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings" and "deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;" and "[w]ithin 20 days after the notice of intent is filed, prepare a clerk's transcript" (Rule 8.454(h).) Lastly, "the superior court must immediately send" the original transcripts to the reviewing court "by the most expeditious method," and provide one copy of each transcript to each counsel of record "by any means as fast as United States Service express mail." (Rule 8.454(i).) The reviewing court

clerk must then promptly lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction over the writ proceeding. (Rule 8.454(j)(1).) The petitioner has 10 days to file the writ petition in the reviewing court. (Rule 8.454 (j)(2).)

We conclude the respondent court had a ministerial duty to file Mark's notice of intent, provide notice to all the parties, and expeditiously prepare and transmit the record. (§§ 366.26, subd. (n)(5), 366.28, subd. (b)(1); rule 8.454.) The California Rules of Court do not require a prospective adoptive parent to file a JV-570 request prior to filing a notice of intent to file a writ petition challenging a juvenile court's order removing a minor after termination of parental rights. Mark's notice of intent to file a writ petition was filed within the seven-day time limit. According to the record in *M.M. v. Superior Court*, case No. B278474,³ Mark's notice of intent was received and filed on September 20, 2016. On October 13, 2016, the respondent court gave notice to the reporter to prepare a reporter's transcript of the September 14, 2016 hearing and gave notice to the parties of the filing of the notice of intent. However, no record has been prepared and transmitted to this court, Mark's counsel, or any other party.

Let a peremptory writ of mandate issue directing the respondent court to prepare the record, without redaction,

³ In the *Palma* notice, this court took judicial notice of this record on its own motion.

and transmit the record to all parties, including Mark's counsel and this court, within seven calendar days after issuance of the remittitur. The record must include reporter's transcripts of all hearings relevant to the September 14, 2016 ruling. In the interest of justice and to prevent frustration of the relief granted, this decision shall be immediately final as to this court. (Rule 8.264(b).)

KRIEGLER, Acting P. J.

We concur:

BAKER, J.

KIN, J.*

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