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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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.	B284667 (Super. Ct. No. CK76202)

ORIGINAL PROCEEDINGS in mandate. Rudolph A. Diaz, Judge. Petition granted.

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

No appearance for Respondent.

Mary C. Wickham, County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Children's Law Center of Los Angeles, Janna Eccleston, for Real Party in Interest I.S.

In a prior writ proceeding, petitioner Mark M. (petitioner), who was then designated as a prospective adoptive parent for dependent children V.S. and I.S., challenged a juvenile court order removing the children from petitioner's home. The juvenile court determined removal was in the children's best interest, and we upheld the court's ruling. (*Mark M. v. Superior Court* (Apr. 13, 2017, B278474) [nonpub. opn.] (*Mark M. I*).)[1] Before our remittitur issued—and without notice to petitioner—the Los Angeles County Department of Children and Family Services (the Department) asked the juvenile court to modify the findings it made when ordering removal so as to make an express finding it had not made: that petitioner sexually molested M.M., another minor who previously had been in his care. The juvenile court obliged without hearing from petitioner, who was unaware of the Department's request. Having now discovered what occurred, petitioner prays for a peremptory writ directing the juvenile court to vacate the finding it made without affording him notice or an opportunity to be heard. We issue the writ.

I. BACKGROUND

During the juvenile court proceedings at issue in *Mark M. I*, the juvenile court took testimony over several days to decide whether V.S.'s and I.S.'s best interests would be served by removing them from petitioner's home. The evidence centered on petitioner's treatment of V.S. and I.S., as well as petitioner's

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[1] On our own motion, we take judicial notice of the record on appeal filed in this court in *Mark M. I*, as well as our opinion in that case. (Evid. Code, §§ 451, subd. (a), 452, subd. (d), 459, subd. (a); see *People v. Vizcarra* (2015) 236 Cal.App.4th 422, 426, fn. 1.)

treatment of M.M., another minor who previously lived in petitioner's home as a foster child.[2]

After the presentation of evidence, the juvenile court made findings on the record to justify its decision to remove V.S. and I.S. from petitioner's home. The juvenile court believed M.M. "was a credible witness" despite inconsistencies between his testimony and prior statements, and the court stated M.M.'s "complaints of sexual allegations have to be respected and they have to be weighed with all the circumstances and all the testimony and evidence." The court also acknowledged it "[could] see how people like [petitioner]" and did not "have any problem why [*sic*] people like [petitioner]," but the court found there were "a lot of foster parents unfortunately who are just not fit to be foster parents notwithstanding their commitment and desire to do so . . . ." Ultimately relying on M.M.'s testimony and evidence of petitioner's treatment of V.S. (which included disciplining V.S. with a belt), the juvenile court concluded "it is in the best interest that both [I.S.] and [V.S.] not be returned to [petitioner's] home for care and custody." The juvenile court made no express finding that petitioner sexually molested M.M.

On writ review in this court, we declined to disturb the juvenile court's ruling. In explaining why writ relief should not issue, we observed, among other things, that "the molestation of [M.M.] rings of truth . . . ." (*Mark M. I* at p. 11.) Neither that observation nor any other portion of our opinion, however,

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[2] While testifying during the contested hearing, M.M. described being sodomized by petitioner. There was also evidence that V.S. had begun displaying sexualized behavior towards his brother I.S., and that petitioner had washed V.S.'s genitals with his hands after seeking advice from his barber.

purported to make a factual finding independent of the findings the juvenile court made.

At some point in or before May 2017 (the record does not disclose precisely when), petitioner's name was added to the Child Abuse Central Index (CACI).[3] Petitioner sought administrative review of the inclusion of his name in CACI by submitting a request for a hearing to the Department's Chief Grievance Review Officer (the Review Officer). Counsel for the Department opposed petitioner's request for a hearing. Department counsel contended the issue of whether petitioner sexually abused M.M.—the predicate for the addition of his name to CACI—was litigated in the juvenile court and determined to be true.

After considering the submissions from petitioner and the Department, and reviewing the transcripts of the contested juvenile court hearing at issue in *Mark M. I*, the Review Officer concluded petitioner was entitled to a hearing to challenge his inclusion in CACI. The Review Officer believed "it is clear that the [juvenile court] was conflicted. [The court] stated that it was [its] job to decide what was in the best interest of the children and not specifically whether [petitioner] sexually abused [M.M.]" The Review Officer found there was no basis to apply collateral-estoppel-like principles to preclude petitioner from seeking review of his CACI designation because "the allegation of abuse

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[3] CACI is a California Department of Justice (DOJ) database that serves as a repository for reports of child abuse and severe neglect; specified agencies, including the Department, are required to forward a report to DOJ in "every case [an agency] investigates of known or suspected child abuse or severe neglect that is determined to be substantiated." (Pen. Code, §§ 11169, 11170.)

was not formally adjudicated and I can find no evidence to support that the [court] stated, on the record, that [petitioner] sexually abused [M.M.]"

On June 13, 2017, i.e., after the Review Officer made his finding that petitioner was entitled to a hearing, an attorney for the Department appeared in juvenile court for ongoing proceedings involving V.S. and I.S. The Department's attorney asked the court to "clarify" the findings it previously made in removing V.S. and I.S. from petitioner's home. Specifically, the Department's attorney asked the court to enter an order with an explicit finding that petitioner had sexually inappropriate contact with M.M.[4] The juvenile court did as the Department asked, entering a minute order that states "minor [M.M.] was sexually molested by [petitioner]." The minute order documents that only counsel for the Department and minors V.S. and I.S. were present when the juvenile court agreed to modify its earlier findings.

Three days later, the Department emailed counsel for petitioner to advise counsel of the finding made by the juvenile court (the email attached a redacted copy of the June 13, 2017, minute order). The Department stated it would be forwarding the minute order to the grievance review unit and requesting the "CACI [h]earing scheduled for [petitioner] be taken off calendar." That is what the Department did, and petitioner's request for a grievance review hearing was subsequently denied as a result.

Petitioner then sought relief in this court, petitioning for a writ of mandate compelling the juvenile court to vacate its June

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[4] The Department now concedes it "sought this clarification on a minute order for use in the[ ] ongoing administrative proceedings involving [petitioner's] inclusion on the [CACI]."

13, 2017, finding that "[m]inor [M.M.] was sexually molested by [petitioner]." Counsel for I.S. and the Department filed preliminary opposition letter briefs. On September 12, 2017, we gave notice, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 (*Palma*), that petitioner appeared entitled to relief because he was not given proper notice of the June 13, 2017, hearing nor an opportunity to be heard at that hearing. We notified the juvenile court that it could avoid issuance of a preemptory writ in the first instance by vacating its June 13, 2017, finding. The juvenile court did not avail itself of the opportunity.

II. DISCUSSION

"For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' [Citations.] It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' [Citation.]" (*Fuentes v. Shevin* (1972) 407 U.S. 67, 80.) The Department and the juvenile court failed to adhere to this bedrock constitutional command.

It is undisputed petitioner had no advance notice of the Department's request that the juvenile court "clarify" its earlier order. And of course, without notice, it is also undisputed petitioner was not present at the hearing where the juvenile court acceded to the Department's request. We therefore conclude the juvenile court's June 13, 2017, modification of its prior findings was made in violation of petitioner's procedural due process rights. (*In re R.L.* (2016) 4 Cal.App.5th 125, 145

["Due process requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' (*Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314)"]; see also *In re Andrew L.* (2011) 192 Cal.App.4th 683, 688.)

The argument advanced to the contrary by the Department and counsel for I.S. is irredeemably flawed. The Department asserts (and I.S. agrees) petitioner was not entitled to notice because "at the time of the June 13, 2017, hearing, the issue of [petitioner] being a caretaker for [V.S. and I.S.] had been decided[ ] and he no longer had standing to participate in ongoing dependency proceedings." Putting aside the fact that the juvenile court's June 13, 2017, order issued before our decision in *Mark M. I* was final (see *Siry Investments, L.P. v. Saeed Farkhondehpour* (2015) 238 Cal.App.4th 725, 730), the challenged juvenile court order concerned not the *ongoing* proceedings involving the minors but past findings concerning petitioner himself that were made during heavily litigated proceedings in which he was indisputably a party.[5] Petitioner was accordingly entitled to notice and an opportunity to be heard.

Viewed in broader terms, the idea that petitioner has no standing to challenge a juvenile court order that forecloses his ability to contest his designation as a child abuser is, to say the least, unpersuasive. "Code of Civil Procedure section 1086 expresses the controlling statutory requirements for standing for mandate: 'The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of

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[5] Even the June 13, 2017, minute order itself recognizes this—it continues to list petitioner ("foster father") as a party.

law. It must be issued upon the verified petition of *the party beneficially interested*.' (Italics supplied.)" (*Brotherhood of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd.* (1987) 190 Cal.App.3d 1515, 1521.) While it is true that a writ will not issue if the petitioner would gain no direct benefit from its issuance or suffer no detriment from its denial (*League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 985), it is obvious that neither circumstance obtains here. Petitioner is beneficially interested in the outcome of this proceeding—as he was in the outcome of the June 13, 2017, juvenile court proceeding where neither he nor his attorney was present.

We express no view on whether the juvenile court may modify its earlier findings if constitutional due process requirements are observed. (See Welf. & Inst. Code, § 385.) By the same token, nothing we say here shall be understood to suggest the juvenile court must take additional evidence to modify its prior findings if it is indeed entitled to make such a modification. We hold only that the juvenile court's June 13, 2017, modification of its prior findings cannot stand because it was accomplished in a manner that offends constitutional due process principles.

DISPOSITION

Let a peremptory writ of mandate issue directing the respondent court to vacate its June 13, 2017, minute order, insofar as it finds "[M.M.] was sexually molested by [petitioner]," within seven calendar days. In the interest of justice and to prevent frustration of the relief granted, this opinion shall be

immediately final as to this court. (Cal. Rules of Court, rule 8.264(b).)

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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