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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.M., a Person Coming
Under the Juvenile Court Law.

B278587
(Los Angeles County
Super. Ct. No. CK47476)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

JEREMIAH W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Emma Castro, Commissioner. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant Jeremiah W. (Father) challenges the juvenile court's order terminating his parental rights to his young daughter N.M. (Daughter). In particular, Father argues that, prior to termination of his parental rights, the Los Angeles County Department of Children and Family Services (Department) failed to comply with the juvenile court's visitation plan for Father. As a result, Father claims he was unable to establish an exception to the termination of parental rights based on regular visitation. He claims his due process rights were violated. As discussed below, however, we conclude Father has waived his arguments on appeal. Therefore, we affirm.

BACKGROUND

This is Father's second appeal from the dependency case concerning Daughter, who is now approximately three years old. As noted in our previous opinion in this case, Daughter came to the attention of the Department the day after she was born because her mother (Mother) tested positive for methamphetamine, amphetamines, and marijuana when she was admitted to the hospital to give birth to Daughter. When Daughter was born, she had a cleft lip and palate, suffered from meconium aspiration (fecal matter inhaled into the lungs),

hypoxia (deficiency in oxygenation), cardiomyopathy (heart weakness), tested positive for amphetamines and marijuana, and was suffering from withdrawal symptoms. She also possibly had a genetic chromosomal abnormality that affected her fine motor movements in one hand. The hospital placed her in the neonatal intensive care unit. (*In re N.M.* (Apr. 26, 2016, B263294, p. 2) [nonpub opn.].) At the time of Daughter’s birth and for the duration of proceedings below, Father was serving a six-year sentence for felony “transport/etc a controlled substance.”

In May 2014, just weeks after Daughter’s birth, the Department filed a petition under Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ on behalf of Daughter. As to Father, the petition alleged counts concerning his domestic violence toward Daughter’s mother and his history of illicit drug use.² The juvenile court sustained the petition and, despite Father’s incarceration, Daughter’s fragile state and the Department’s recommendation to the contrary, ordered family reunification services for Father, including visitation. (*In re N.M.*, *supra*, B263294, pp. 2–3.) Although the juvenile court found Father to be the alleged and biological father of Daughter, the court never found Father to be Daughter’s presumed father.

Since June 2014, Daughter has been placed with a foster mother who is willing and able to adopt Daughter.

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

² The petition also alleged numerous counts as to Mother. However, because Mother is not a party to this appeal, we do not discuss the counts as to her.

1. Father's First Appeal

In March 2015, Father appealed the juvenile court's jurisdictional findings and dispositional orders. In April 2016, we issued our opinion in that appeal affirming both the juvenile court's order sustaining the domestic violence and substance abuse allegations against Father as well as the court's dispositional orders, which included visitation for Father. (*In re N.M.*, *supra*, B263294, pp. 5–7.)

2. August 10, 2015 Review Hearing and Report

While Father's first appeal was pending, the dependency case proceeded below. On August 10, 2015, the juvenile court held a review hearing, prior to which the Department submitted a report for the court. In its report, the Department indicated a Department social worker had mailed photographs of Daughter to Father and had inquired as to any programs Father might have been taking or attending. Although Father had previously been incarcerated at the men's central jail in Los Angeles and at Wasco State Prison in Wasco, the Department reported Father was then incarcerated at Fire Camp, Sierra Conservation Center in Jamestown. Father was unable to participate in services at Fire Camp.

3. October 26, 2015 Review Hearing

On October 26, 2015, the juvenile court held a contested review hearing. At that hearing, the juvenile court found the Department had made reasonable efforts to enable Daughter's safe return home and reasonable services had been provided to meet the needs of the minor. However, the court found both Father and Mother were not in compliance with the case plan and that there was no substantial probability that Daughter

could be returned home within six months. The juvenile court terminated family reunification services.

At the October 26 hearing, the juvenile court set the section 366.26 permanency planning hearing for February 22, 2016. The court ordered the clerk to provide writ procedures to both parents, which the clerk did.

Father did not file a writ petition challenging either the juvenile court's setting of a permanency planning hearing or other orders and findings made at the October 26 hearing.

4. February 22, 2016 and June 20, 2016 Hearings

Although the permanency planning hearing was scheduled for February 22, 2016, the juvenile court found notice was not proper on that date and, therefore, continued the hearing to June 20, 2016. In its February 22, 2016 section 366.26 report to the court, the Department noted Father remained incarcerated at Fire Camp and had not had any visitation with Daughter. The Department reported Father's earliest release date was July 2017.

At the scheduled June hearing, notice to Father still was not proper. Thus, the juvenile court again continued the permanency planning hearing so that proper notice could be made to Father, who remained incarcerated at Fire Camp.

5. Father's August 5, 2016 Waiver of Right to Be Present at Permanency Planning Hearing

Eventually, Father received proper notice of the permanency planning hearing. On August 5, 2016, Father completed and signed a form entitled "prisoner's statement regarding appearance at hearing affecting parental rights." He waived his right to be present at the permanency planning hearing by checking the box on the form stating, "I do not want to

be physically present at the court and I give up that right.” It appears that at that time Father was incarcerated in Lancaster.

6. Father’s September 16, 2016 Request to Change Order

On September 16, 2016, almost a year after the juvenile court terminated Father’s reunification services and just days before the continued permanency planning hearing, Father asked the juvenile court to change its October 26, 2015 order terminating his reunification services. Father did not argue the juvenile court’s October 26 order was incorrect; rather, he claimed his circumstances had since changed such that a new and different order was warranted. Specifically, Father explained he would be released from prison on September 24, 2016, and he wanted to participate in reunification services. He stated he had “been in custody since the petition filing date [i.e., Daughter’s entire life]. He reported he will be released on 9-24-16. Father is willing to participate in services but was unable due to his incarceration.” He asked the juvenile court to take the September 19, 2016 permanency planning hearing off calendar and to reinstate family reunification services. Father believed that would allow him to reunify with Daughter.

The juvenile court addressed Father’s request at the permanency planning hearing a few days later.

7. September 19, 2016 Permanency Planning Hearing and Appeal

The section 366.26 permanency planning hearing was held on September 19, 2016. At the hearing, counsel for Father explained Father said he would be released from custody just a few days later, on September 24, 2016. Counsel requested the hearing be continued to after September 24. Finding no good

cause, the juvenile court denied Father's request for a continuance. The juvenile court also denied Father's request to change the court's October 26 order. The court found the requested relief was not in the child's best interest and the petition did not show a change of circumstances.

The juvenile court found Daughter was adoptable, it would be detrimental for Daughter to be returned to her parents, and no exceptions to adoption existed. The juvenile court terminated the parental rights of both Father and Mother and designated Daughter's foster mother as her prospective adoptive parent. Father's counsel made a blanket objection, stating, "Your honor, my client objects to the court's termination of parental rights."

On October 20, 2016, Father filed a notice of appeal.

DISCUSSION

Father argues the Department failed to comply with the court-ordered visitation plan and, as a result, Father's substantive due process rights were violated. According to Father, he has a fundamental liberty interest in parenting Daughter and if the Department had complied with the visitation plan he "might" have been able to establish the section 366.26, subdivision (c)(1)(B)(i) exception to termination of his parental rights. Under that subdivision, the juvenile court is not required to terminate parental rights if there is a "compelling reason" for the court to determine termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) In essence, Father argues because the Department improperly deprived him of visitation or other contact with Daughter and, consequently, his ability to establish

the visitation exception to termination of parental rights, the juvenile court violated his substantive due process rights when it terminated his parental rights.

The Department claims, among other things, Father waived his arguments on appeal because he did not raise them below and did not file a writ petition from the court's October 26 order. Father did not file a reply brief on appeal and, therefore, did not respond to either of these claims.

We agree with the Department and conclude Father has waived his arguments on appeal. First, Father failed to file a writ petition challenging the juvenile court's October 26, 2015 order, which included the court's finding that the Department had provided reasonable services. Second, Father did not raise his argument as to his lack of visitation and consequent due process violations at the September 19, 2016 permanency planning hearing. Moreover, because Father is not a presumed father, he does not have a fundamental and constitutionally protected liberty interest in parenting Daughter, which he also claims for the first time on appeal.

1. Father did not file a writ petition from, or otherwise object to, the court's October 26, 2015 order setting a permanency planning hearing.

If a party seeks to challenge a juvenile court's order setting a section 366.26 permanency planning hearing, or any findings included in that order, the party must file a writ petition. "An order scheduling a permanency planning hearing is nonappealable but may be subject to immediate writ review. (Welf. & Inst. Code, § 366.26, [former] subd. (k)[, see now subd. (l)].)' [Citation.] In addition, '[a]ll court orders, regardless of their nature, made at a hearing in which a section 366.26

permanency planning hearing is set must be challenged by a petition for extraordinary writ.’ ” (*In re Suhey G.* (2013) 221 Cal.App.4th 732, 742.) “Given the state’s strong interest in the expeditiousness and finality of juvenile dependency proceedings [citation], the statutory scheme generally does not permit the critical findings and orders made prior to the final setting of the 366.26 hearing to be reopened and relitigated in an appeal from the order terminating parental rights. Nor can the order setting the hearing itself, or any findings subsumed therein, be appealed unless earlier writ review of any substantive claim was first sought and denied. (§ 366.26, subd. (d).)” (*In re Zeth S.* (2003) 31 Cal.4th 396, 412–413.)

Here, Father did not file a writ petition challenging the juvenile court’s October 26 order setting the permanency planning hearing. In that order, the juvenile court set the permanency planning hearing, terminated family reunification services, found the Department had made reasonable efforts to enable Daughter’s safe return home, found reasonable services had been provided, and found Father and Mother were not in compliance with the case plan. If, as he now argues on appeal, Father believed the Department had not made reasonable efforts and had not provided reasonable services such as visitation, he was required to file a writ petition from the October 26 order. However, there is no indication in the record or briefing on appeal that, either at the October 26 hearing itself or by way of writ petition, Father objected to or challenged the juvenile court’s October 26 order and findings.

Indeed, Father appeared to agree with the juvenile court’s October 26 order and findings. In addition to not challenging that order, almost a year later, in September 2016, Father also

filed a request to change the court's October 26 order based on new information and circumstances. Importantly, in his request, Father did not argue the trial court's October 26 order was improper. Rather, Father claimed the court should enter a new and different order reinstating family reunification services for him because he would soon be released from prison. He stated he previously had been "unable" to participate in services "due to his incarceration" and that "services are not available at fire camp," where he had been incarcerated. Father explained he would soon be released and wanted to participate in family reunification services. Thus, Father's request to change the October 26 order implies his agreement that, under the circumstances in October 2015, the order was proper.

Because Father did not file a writ petition from the October 26 order, Father has waived his argument that the Department did not provide reasonable services, including visitation. (*In re Zeth S.*, *supra*, 31 Cal.4th at pp. 412–413.)

2. Father cannot raise new arguments on appeal.

“‘An appellate court will ordinarily not consider procedural defects or erroneous rulings in connection with relief sought or defenses asserted, where an objection could have been, but was not, presented to the lower court by some appropriate method.’” (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98.) “In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal.” (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; see *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 685 [due process challenge forfeited because visitation issue not raised before juvenile court].) Moreover, any objection below

must be specific enough so that the juvenile court can correct any error. “General objections are insufficient to preserve issues for review. [Citation.] The objection must state the ground or grounds upon which the objection is based.” (*In re E.A.* (2012) 209 Cal.App.4th 787, 790.) “[W]ithout a reason or reasons stated, i.e. without *grounds* for the objection, an ‘objection’ is an exercise in futility.” (*Ibid.*)

Here, for the first time on appeal, Father argues the Department was required to continue providing visitation with Daughter after the October 26, 2015 order and until the September 19, 2016 permanency planning hearing. Father claims, if the Department had provided him with visitation during that almost one-year period, he “might” have been able to establish the section 366.26, subdivision (c)(1)(B)(i) exception to the termination of his parental rights. Although at the permanency planning hearing, Father’s counsel made a generic objection to the termination of parental rights,³ that objection clearly was insufficient to preserve the specific challenge Father now makes on appeal. (*In re E.A.*, *supra*, 209 Cal.App.4th at pp. 790–791.) Accordingly, we conclude Father has waived his argument.

Father also argues for the first time on appeal that he has a fundamental, constitutionally protected liberty interest in parenting Daughter, which interest was violated by the juvenile court’s order terminating his parental rights. Again, however, Father did not raise this argument below and we conclude it has been waived. In any event, because Father was Daughter’s

³ At the permanency planning hearing, counsel for Father stated simply: “Your honor, my client objects to the court’s termination of parental rights.”

biological and alleged father, but not her presumed father, he did not have a fundamental liberty interest in parenting Daughter. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 160; *In re J.H.* (2011) 198 Cal.App.4th 635, 644.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P.J.

JOHNSON, J.