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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re Ali.B. et al, Persons Coming
Under the Juvenile Court Law.

2d Juv. No. B289984
(Super. Ct. No. 18JD-00057)
(San Luis Obispo County)

J.B.,

Petitioner,

v.

SUPERIOR COURT OF THE
COUNTY OF SAN LUIS OBISPO,

Respondent;

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Real Party in Interest and
Respondent.

J.B. (father) seeks extraordinary writ relief from the
juvenile court's order bypassing family reunification services for

his minor children Ali.B. and Ale.B. and setting the matter for a permanency planning hearing. (Welf. & Inst. Code,¹ §§ 361.5, subd. (b)(13), 366.26; Cal. Rules of Court, rules 8.452, 8.456.) Father contends that the court's jurisdictional and dispositional findings were fatally undermined by its consideration of prejudicial inadmissible evidence. We deny the petition.

FACTS AND PROCEDURAL HISTORY

Father and T.B. (mother)² are the parents of Ali.B., born in April 2015, and Ale.B., born in June 2016. In September 2015, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition alleging that mother and father were using methamphetamine and engaging in domestic violence in Ali.B.'s presence. The parents were provided substance abuse and domestic violence services and successfully reunified with both children in September 2017.

In February 2018, DSS filed another dependency petition as to both children based on new allegations of domestic violence between the parents. In its detention report, DSS stated it had received a total of seven referrals regarding the children since the prior dependency case had been closed. On December 22, 2017, both parents had signed a safety plan indicating that they would not engage in physical or verbal violence in front of the kids." Five days later, mother was arrested after she hit father with a pipe. On February 12, 2018, father was arrested for punching mother in the arm. Two days later, both parents signed a safety plan agreeing that father would leave the family home until a

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Mother is not a party to this writ petition.

team decision making (TDM) was conducted. Father nevertheless remained in the home. On February 23, 2018, father provided DSS with audio recordings of domestic violence incidents involving him and mother that occurred on December 21, 2017, and January 2, 2018. DSS offered a copy of the recording as an attachment to its detention report. On February 26, 2018, father tested positive for methamphetamine.

The children were detained and both parents were provided supervised visitation. Both parents agreed to immediately complete a drug and alcohol assessment, submit to random drug testing, and enroll in parenting programs.

In its report for the combined jurisdiction and disposition hearing, DSS asserted that jurisdiction was proper under section 300, subdivision (b)(1), due to the numerous and ongoing incidents of domestic violence between the parents. As an attachment to the report, DSS included transcripts of the two audio recordings father had given to DSS. As to disposition, DSS recommended that reunification services be bypassed as to both parents due to their histories of drug use and resistance to prior court-ordered drug treatment. (§ 361.5, subd. (b)(13).)

At the combined jurisdiction and disposition hearing, mother moved to exclude the audio recordings and the transcripts of those recordings on the ground they were confidential communications as provided in Penal Code section 632, subdivision (d). Father's counsel joined in the objection and added that "it's cumulative, highly prejudicial, and I think under [Evidence Code section] 352 it should be excluded."

Counsel for DSS countered that the recordings did not qualify as confidential communications and were thus admissible. After further argument, the court stated, "I understand the

objections, I just don't have a context fully of it and I think by listening to [the recordings] it will give me a context, and then I can rule on whether or not it's prohibited by [section] 632 of the Penal Code." After listening to the recordings, the court excluded the evidence under Penal Code section 632. On the issue of jurisdiction, the court found "[t]he evidence is plainly sufficient just based on the 2017 and '18 allegations alone, and excluding the audio recording[s] the evidence is sufficient." On the issue of disposition, the court found by clear and convincing evidence that the bypass provision of section 361.5, subdivision (b)(13) applied and set the matter for a section 366.26 hearing.

DISCUSSION

Father contends he is entitled to extraordinary writ relief from the court's jurisdictional and dispositional orders because the court was "prejudiced against" him after listening to the recordings that were ultimately excluded under Penal Code section 632. He adds that "[a] lot of attention was brought to those recordings during the hearing and because of this I believe this affected the judge's judgment in my case."

DSS responds that father's petition should be summarily denied because it is procedurally and substantively deficient. DSS alternatively asserts that the petition should be denied because "[s]ubstantial evidence supports the court's denial of services to [father] based on his well-documented issues with substance abuse and his resistance to prior treatment pursuant to section 361.5, subdivision (b)(13)."

We decline to summarily deny the petition. DSS complains that father cites no evidence to refute the dispositional findings upon which a bypass of reunification services was based. Father, however, was not required to directly challenge those findings in

order to obtain relief. “[W]hen services are denied to both parents at the dispositional hearing, all challenges to the dispositional judgment and underlying jurisdictional findings must be brought by writ because all such challenges, with one possible exception [not relevant here], are designed to overturn the referral order. Because all orders denying services require jurisdiction and out-of-home placement, any successful attack on jurisdiction or the finding of detriment to return the child to his or her home would result in reversal of the denial of services, which, in turn, would result in the reversal of the order setting the section 366.26 hearing. Here, for example, Father’s . . . challenge to jurisdiction over [the minors], if successful, would require us to reverse the dispositional judgment and either return [the minors] to the custody of [their parents] or remand for a new jurisdictional hearing Either action requires reversal of the referral order.” (*Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 156.)

Father’s petition for writ relief must be liberally construed. (*Anthony D. v. Superior Court, supra*, 63 Cal.App.4th at p. 157.) In support of his petition, he has provided us with a record of the proceedings and has referred us to the portions of the transcript that purportedly support his claim. Although he offers no separate points and authorities, resolving his claim of prejudice does not impose the sort of “intolerable burden” that a summary denial is intended to avoid. (*Id.* at p. 157-158.)

On the merits, however, father’s claim fails. We do not dispute the prejudicial nature of the audio recordings, or that the court listened to the recordings before deciding to exclude them. But a court’s role as trier of fact is different from that of a jury. To prevail on his claim, father would have to show that the

recordings were of such a prejudicial nature that even a judge would not be impervious to their negative influence. (See *People v. Smylie* (1963) 217 Cal.App.2d 118, 122.) Father does not, and cannot, make such a showing here. Moreover, he did not claim judicial prejudice below, so the claim is forfeited. (See *People v. Klaess* (1982) 129 Cal.App.3d 820, 824.)

DISPOSITION

The petition for extraordinary writ relief is denied.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Charles S. Crandall, Judge
Superior Court County of San Luis Obispo

J.B., in pro. per., for Petitioner.

No appearance for Respondent.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy
County Counsel, for Real Party in Interest and Respondent.