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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Adoption of M.M., a Minor.

VISTA DEL MAR CHILD AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.M. et al.,

Defendants and Appellants.

In re

M.M.,
on Habeas Corpus.

B287861

(Los Angeles County
Super. Ct. No. 17CCAB00030)

B288881

APPEALS from orders of the Superior Court of Los Angeles County. Margaret S. Henry, Judge. Dismissed in part and affirmed in part.

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Petition denied.

John L. Dodd & Associates, John L. Dodd; Ideal Legal Group, Evie P. Jeang and Matt Xie for Defendants, Appellants and Petitioners.

Leslie A. Barry for Plaintiff and Respondent.

* * * * *

This case concerns the adoption of M.M., a child conceived in China by Chinese nationals, but born in the United States. Newborn M.M. was relinquished by mother D.M. to Vista Del Mar Child and Family Services (the adoption agency) so he could be adopted by John and Marie Ann B. The trial court ordered that alleged biological father H.Q. was not required to receive notice of the proceedings or give consent to the adoption, after finding that his whereabouts were unknown. Mother and H.Q. moved to set aside this order, but their motion was denied. Multiple notices of appeal have been filed concerning the order terminating H.Q.'s parental rights (case No. B287861), and the order denying the parents' request for a change of court order (case No. B288756). The parents, as well as mother's ex-husband K.Y., have also petitioned for habeas relief (case No. B288881).¹

Because the parents failed to timely appeal the order denying their request for a change of court order (case No. B288756), we dismiss the appeal related to that order. Finding that H.Q. has not appealed the order terminating his parental rights, and mother lacks standing to challenge that order, we affirm that order. We summarily deny the habeas petition.

FACTS

M.M. was born in April 2017 in Newport Beach, California. On May 17, 2017, mother relinquished her parental rights to the adoption agency, identifying the adoptive parents as John and Marie Ann B. As part of the relinquishment, mother executed a declaration attesting that the child was conceived in a one night

¹ The appeals have been consolidated, and the petition ordered to be considered with the appeals.

stand with H.Q. in China, that she had no way of contacting H.Q., and that H.Q. did not know about the pregnancy. Mother had very little information about H.Q. She gave the adoption agency his name, the town where he resided in China, and his place of birth in China. According to mother, H.Q. was the only possible father of the child. Nevertheless, the child's birth certificate identified K.Y. as the father. Mother and K.Y. had divorced on May 13, 2016, and mother denied having any sexual relations with him that could have resulted in the child's conception.

On August 11, 2017, the adoption agency filed a Petition to Determine Parental Rights of Alleged Natural Father and to Determine the Necessity of Consent (Fam. Code, § 7662) with respect to H.Q. The adoption agency also filed a declaration in support of a request for an order dispensing with notice to H.Q., on the basis that his whereabouts were unknown. The declaration detailed the limited information mother had provided about H.Q. The declaration also noted that a separate action would be instituted as to K.Y. "if such a proceeding becomes necessary."² The declaration was signed by a representative of the adoption agency on August 3, 2017.

On August 22, 2017, the adoption agency filed a supplemental declaration testifying it had been contacted by counsel purporting to represent H.Q. and mother "to handle the rescission of relinquishment of [the] minor child." The declaration attested that counsel for the adoption agency informed parents' counsel that

² On November 9, 2017, the adoption agency brought an ex parte petition to determine that there was no parent-child relationship between the child and K.Y., given that his divorce from mother was finalized more than 300 days before the child's birth. No ruling on this petition appears in the record on appeal. We do not know if the petition as to K.Y. has been ruled upon.

proceedings to terminate H.Q.'s parental rights were pending. Counsel asked for H.Q.'s address so that he could be served, but as of August 22, 2017, counsel had not received any response.

On August 29, 2017, the court signed the adoption agency's proposed order dispensing with notice to H.Q.

On September 11, 2017, the court entered an order finding that the consent of H.Q. to the adoption of the child was not necessary, and terminated his parental rights.

On October 23, 2017, mother filed a notice of appeal from the court's September 11, 2017 order. She filed another notice of appeal on January 10, 2018, which failed to specify the date of the order appealed from, but attached a copy of the September 11, 2017 order. She filed a third appeal from the September 11, 2017 order on January 29, 2018. All three notices of appeal identified mother as the appellant. None of these notices of appeal identified H.Q. as an appealing party. These notices were assigned the appellate case number B287861.

On October 23, 2017, parents filed a petition under Welfare and Institutions Code section 388 requesting a change in the court's September 11, 2017 order. No evidence was appended to the petition. The court set the section 388 petition for hearing on December 13, 2017.

The agency and adoptive parents opposed the Welfare and Institutions Code section 388 petition on the ground that the order dispensing with notice to H.Q. and terminating his parental rights was final, and could not be set aside under the terms of Family Code section 7669.³

³ Family Code section 7669 provides: "(a) An order requiring or dispensing with an alleged father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court

At the December 13, 2017 hearing on the Welfare and Institutions Code section 388 petition, the trial court found it had no power to set aside its order dispensing with the need to obtain consent of an alleged father. The court declined to rule on the petition, and ordered it off calendar.

On February 20, 2018, parents filed a notice of appeal purporting to appeal from the trial court's September 11, 2017, and December 23, 2017 orders. An amended notice of appeal was filed on March 16, 2018, correcting the date of the December order to reflect December 13, 2017. These notices were assigned the appellate case No. B288756.⁴

On March 21, 2018, mother, H.Q., and K.Y. filed a petition for writ of habeas corpus, supported by declarations that were not presented to the trial court (case No. B288881).

The adoption agency filed a preliminary opposition to the habeas petition in our court, arguing that writ relief was not warranted because the parties had adequate remedies at law.

The adoption agency also moved to dismiss the appeal of the ruling on the section 388 petition, arguing that the notices of appeal were not filed within 60 days of the order.

DISCUSSION

On appeal, parents argue the trial court erred when it ruled it had no jurisdiction to consider their Welfare and Institutions Code section 388 petition. They also argue that the September 11, 2017

and is conclusive and binding upon the alleged father. [¶] (b) After making the order, the court has no power to set aside, change, or modify that order. [¶] (c) Nothing in this section limits the right to appeal from the order and judgment.”

⁴ We consolidated the appeals, and the parties filed consolidated appellate briefs under case No. B287861.

order terminating H.Q.'s parental rights was void because it was based on incomplete information, and H.Q. was entitled to notice of the proceedings.

The adoption agency has moved to dismiss the appeal from the December 13, 2017 order taking the Welfare and Institutions Code section 388 petition off calendar, arguing that the notices of appeal were not timely. The adoption agency also argues that these notices are untimely to the extent they purport to appeal from the September 11, 2017 order. We agree that parents did not timely appeal these orders with their February 20 and March 16, 2018 notices of appeal.

A notice of appeal must be filed within 60 days of rendition of judgment. (Fam. Code, § 7669, subds. (a), (c); Cal. Rules of Court, rules 8.400(2) & 8.406(a)(1).) Notice of entry of the order is not required. Instead, "an oral pronouncement in open court marks the beginning of the time to file a notice of appeal." (*Adoption of Reed H.* (2016) 3 Cal.App.5th 76, 81.) The filing of a timely notice of appeal is jurisdictional. If a notice of appeal is filed late, the court must dismiss the appeal. (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 324-325.) Here, the February 20, 2018 notice of appeal was filed 69 days after the December 13, 2017 order, and 162 days after the September 11, 2017 order.

Parents argue that they were not served with notice of entry of the December 13 order, and were not advised of their right to appeal. Oral pronouncement of the order started the clock on their time to appeal, and no notice of entry was required to be served. (*Adoption of Reed H., supra*, 3 Cal.App.5th at p. 81.) And, California Rules of Court, rule 5.590, on which parents rely, does not require an advisement of appellant rights in this case. That rule requires an advisement of appellate rights following a contested jurisdictional hearing in a dependency or delinquency

case brought under Welfare and Institutions Code section 300, 601, or 602. Those provisions do not apply to this case. (See Cal. Rules of Court, rule 8.400(2).) And, in any event, the court's remarks at the hearing made clear to parents that an appeal was the only means to seek reversal.

Parents also argue that the motion to dismiss does not seek to dismiss mother's earlier appeal from the September 11 order.⁵ However, *only mother* timely appealed the September 11 order, with her October 23, 2017 notice of appeal. H.Q. never filed a timely notice to appeal this order. And while the adoption agency does not argue that the earlier filed appeal should be dismissed, it does argue that mother lacks standing to challenge the order dispensing with notice to H.Q., finding that his consent was not necessary, and terminating his parental rights. We agree with the adoption agency.

Because mother relinquished custody of M.M., and the petition seeking to dispense with notice and consent as to H.Q. did nothing to adjudicate mother's parental rights, it cannot be said that she is aggrieved by the order terminating H.Q.'s parental rights. (See, e.g., *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-877.) It is well settled that "[a]n appellant cannot urge errors which affect only another party who does not appeal." (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261; see also *In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1193-1194.)

⁵ Parents ask that we take judicial notice of the earlier filed appeal, case No. B287861 and the exhibits to the petition for habeas corpus, arguing these filings are relevant to our resolution of the motion to dismiss. We grant the request in part, taking judicial notice of the earlier appeal, and the fact of the habeas petition, but not the exhibits thereto.

Finally, the writ petition seeks relief for the lack of notice to H.Q. and for constructive fraud in the adoption contract as to mother. Because H.Q. could have appealed the order dispensing with notice and consent, and terminating his parental rights (as he tried to do with his late-filed appeal), writ relief is not available because H.Q. had an adequate remedy at law. (See *Kawasaki Motors Corp. v. Superior Court* (2000) 85 Cal.App.4th 200, 205-206; see also *Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 952-953.) Moreover, mother may bring her arguments to the superior court in the first instance, as an action in equity seeking to set aside her relinquishment. (See *Tyler v. Children's Home Society* (1994) 29 Cal.App.4th 511, 528-529.) Lastly, as to K.Y., it appears that his parentage has not been adjudicated, and therefore he has an adequate remedy at law available to him.

DISPOSITION

The September 11, 2017 order is affirmed. The appeal from the December 13, 2017 order is dismissed. The petition for writ of habeas corpus is denied.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

GOODMAN, J.*

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