Filed 5/24/12 In re A.A. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A. A., a Person Coming Under the Juvenile Court Law.	B235639
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LUIS A., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK42458)

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn Mordetzky, Juvenile Court Referee. Dismissed.

Lee Gulliver, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Luis A. appeals from the order of the juvenile court that set the hearing under Welfare and Institutions Code section 366.26.[1] He contends that the court erred in denying him the status of presumed father of A. A. and, on that ground, denying him reunification services. He seeks reversal of the setting order to allow him reunification services. Luis's contentions are not cognizable because he was required to file a petition for extraordinary writ review, not an appeal. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.450 et seq.) Accordingly, we dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2011, the Department of Children and Family Services (the Department) took one-year-old A. into custody after her mother[2] was arrested and did not know where Luis was.

The juvenile court sustained a petition alleging mother's and Luis's history of domestic violence including Luis's arrest for battery to mother involving the child, (§ 300, subd. (a) & (b)), Luis's failure to provide the child with the necessities of life, and that Luis's whereabouts were unknown. (§ 300, subd. (g).) The court denied Luis reunification services because he was an alleged father, was a noncustodial parent not seeking custody of his child, and his whereabouts remained unknown. The court granted Luis monitored visits with the child after he contacted the Department or the court.

Luis eventually contacted the Department to state his desire to take custody of the child. However, he did not return the Department's telephone call to discuss case issues or appear at any hearing, until four months later, in May 2011. The court appointed him counsel.

The parties contested Luis's paternity at the six month review hearing (§ 366.21, subd. (e)) in August 2011. Luis's attorney appeared, and Luis testified at the hearing. At the close of the hearing, on August 22, 2011, the court found Luis was not the child's

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Mother is not a party to this appeal.

presumed father, and that it would not be in the child's best interest to offer Luis reunification services. The court terminated mother's reunification services and set the hearing under section 366.26 for the statutory period of 120 days later, i.e., November 21, 2011.

Immediately thereafter, the court gave the statutorily required advisory (§ 366.26, subd. (*l*)(3)(A)) that to challenge the court's findings made at the hearing setting the section 366.26 hearing, mother and Luis must seek extraordinary writ review by filing a notice of intent to file a writ petition. The minute order from that date reflects that "P26 notice, consisting of an advisement of rights pursuant to 366.26 WIC, *a copy of the notice of intent to file writ petition* and request for record to review order setting a hearing under Welfare and Institutions Code section 366.26 and *a copy of the petition for extraordinary writ*, as well as a notification of rights *are served on* [*Luis*] *in open court*." (Italics added.)

Luis filed this appeal.

CONTENTIONS

Luis contends that the juvenile court erred in denying him presumed father status and in denying him reunification services.

DISCUSSION

"[S]ection 366.26, subdivision (*l*) bars direct appeals from orders setting a section 366.26 hearing." (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 248.) "An order setting a section 366.26 hearing 'is not appealable; direct appellate consideration of the propriety of the setting order may be had only by petition for extraordinary writ review of the order. [Citations.]' [Citation.]" (*Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th

254, 259, citing § 366.26, subd. (*l*).[3]) This bar applies to "*all* orders issued at a hearing at which a setting order is entered." (*In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1023.) By adopting "subdivision (*l*) of section 366.26, the Legislature has unequivocally expressed its intent that referral orders be challenged by writ before the section 366.26 hearing." (*Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 156.)

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[3] Section 366.26, subdivision (*l*) reads in relevant part, "(1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21, 366.22, and 366.25 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits."

Subdivision (*l*) of section 366.26 "is in keeping with recent legislative efforts to expedite finality in dependency proceedings and to achieve permanency for children in the system. [Citation.]" (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 248.) " 'Of the many private and public concerns which collide in a dependency proceeding, time is among the most important. [Citation.] The action " 'must be concluded as rapidly as is consistent with fairness . . . .' " [Citations.] The state's interest in expedition and finality is "strong." [Citation.] The child's interest in securing a stable, "normal," home "support[s] the state's particular interest in finality." [Citation].' [Citation.] Because section 366.26, subdivision (*l*) promotes these paramount interests by expediting ' "finality in dependency proceedings" ' [citation], we cannot ascribe to the Legislature any intention other than to subject to the bar of section 366.26, subdivision (*l*) [to] *all* orders issued at a hearing at which a setting order is entered. The goals of expedition and finality would be compromised if the validity of these types of contemporaneous, collateral orders were permitted to be raised by appeal from the order itself or from a later permanent planning order and therefore allowed to remain undecided until well after the permanent plan was decided upon. The desired expedition and finality obviously would be most threatened when the permanent plan was adoption and termination of parental rights, the preferred plan which *must* be ordered if the child is found to be adoptable and the juvenile court cannot make any of the findings set out in section 366.26, subdivision (c)(1) . . . [Citation.]" (*In re Anthony B.*, *supra*, 72 Cal.App.4th at pp. 1022-1023.)

Here, as he acknowledges, Luis did not petition for extraordinary writ review. When the juvenile court set the section 366.26 hearing, not only did it provide Luis with the required oral advisement, but it also served Luis with a copy of documents he needed to file his writ petition: (1) the notice of intent to file writ petition and request for record to review order setting a hearing under section 366.26, and (2) a copy of the petition for extraordinary writ. Luis's attorney was present in court the day the section 366.26 hearing was set. Nonetheless, on his own, Luis filed an appeal. All of his challenges to the juvenile court's rulings made on August 22, 2011 are subject to section 366.26, subdivision (*l*) and so his appeal must be dismissed.

Luis argues that his notice of appeal, filed within the statutory period for a timely notice of intent to file a writ petition (Cal. Rules of Court, rule 8.450(e)(4)(A) [within seven days of the date of setting order]) put "all parties" on notice that he intended to challenge the juvenile court's orders. Citing the rule that notices of intent are to be liberally construed in favor of their sufficiency (*Suzanne J. v. Superior Court* (1996) 46 Cal.App.4th 785, 787-788), Luis argues "the notice [of appeal] could have and should have been processed by the appellate clerk's office of the juvenile court as a timely notice of intent." His contentions are unpersuasive. Luis's appeal was also filed within the timeframe for filing notices of appeal. (Cal. Rules of Court, rule 8.406(a).) By filing a notice of appeal, Luis put "all parties" as well as the court clerks on notice of nothing other than that he was *appealing* from the juvenile court's ruling leading the clerks to process this proceeding as an appeal. As a result, preparation of the record and the briefing was not expedited as required under the section 366.26, subdivision (*l*) extraordinary writ proceeding, and this appeal would necessarily be heard some six months *after* November 21, 2011, the statutory 120 day period for permanency planning hearings. "Because the trial court must conduct the section 366.26 hearing *promptly*, the traditional rule of appealability is ineffective in providing the parties meaningful review before the trial court has selected a permanent plan." (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 447, italics added.)

Luis insists that we should nonetheless review the juvenile court's ruling denying him presumed father status as an appeal because reversal on that issue would not negate the order setting the section 366.26 hearing. Luis is wrong. He challenges the order denying him reunification services and specifically asks us to *vacate the section 366.26 hearing*. Therefore, as his appeal purposely seeks to overturn the order setting the section 366.26 hearing, it was subject to the procedures of section 366.26, subdivision (*l*).

Luis is precluded from challenging all of the court's rulings made at the hearing setting the section 366.26 hearing (§ 366.26, subd. (*l*)(2)), and so this appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.