Filed 4/4/18 M.G. v. Superior Court CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

M.G.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY,

Respondent;

SAN LUIS OBISPO COUNTY DEPT. OF SOCIAL SERVICES,

Real Party in Interest.

2d Juv. No. B286878
(Super. Ct. No. 17JD-00111)
(San Luis Obispo County)

Petitioner M.G. is the presumed father of three children, ages two, five and six. He seeks extraordinary relief from an order setting a hearing to select a permanent plan. (Welf. & Inst.

Code, § 366.26, subd. (*l*).)[1] We deny the petition, which contains no factual summary, no argument, and no citations to the record or to statutory and case authority. (Cal. Rules of Ct., Rule 8.452(b)(3).) Absent this information, there is no basis for granting relief.

FACTS AND PROCEDURAL HISTORY

The San Luis Obispo County Department of Social Services (DSS) took M.G.'s children into protective custody in May 2017; they were unwashed, unfed, and unsupervised. The children's mother abuses drugs and alcohol. M.G. could not take custody because he was incarcerated for domestic violence.

Detained in foster care, the children began receiving care for untreated health issues. At an uncontested hearing on June 22, 2017, a dependency petition was sustained against both parents. Though incarcerated, M.G. was allowed to have supervised visits with the children.

M.G. felt no responsibility for the dependency proceeding. Instead, he blamed the children's mother, and had little insight into how his behaviors affected his ability to care for and protect his children. During visits, the children displayed fear and resistance to engaging with M.G. In August 2017, DSS asked the juvenile court to terminate M.G.'s reunification services because he was recently sentenced for domestic battery and not expected to be released until May 2018.

M.G. attended a court hearing on September 21, 2017, and objected to the termination of services and reduction of his visits. DSS argued that there is no substantial probability that M.G. can reunify with his children within statutory time frames. Further,

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[1] Unlabeled statutory references in this opinion are to the Welfare and Institutions Code.

the children did not want to see him: one wet her pants and bed after a visit with M.G., and another screamed, cried and refused to attend a visit with M.G. M.G. stated that his children love him and want to see him. The court granted DSS's petition, ending reunification services for M.G. owing to the length of his prison commitment and detriment to the children. He was allowed to see the children once every three months.

DSS reported that the siblings live together with a foster family and are happy and thriving. The CASA volunteer reported that the children's development and well-being improved after removal from the parental home, where they were severely neglected; initially, they were timid, anxious, fearful, watchful, and had issues with food, which they would stuff into their mouths as fast as possible. Now, they are comfortable in the foster home and interact well with others. On December 7, 2017, the juvenile court ended all services and set a permanent plan hearing.

DISCUSSION

When it granted DSS's request for a modification and terminated M.G.'s reunification services on September 21, 2017, the juvenile court warned him that he had 60 days to appeal. M.G. did not appeal. Instead, on December 12, 2017, he filed a notice of intent to bring the writ petition that is presently before this court. The notice lists only the order setting a permanent plan hearing.

M.G.'s petition must be denied for several reasons:

First, the petition is an untimely challenge to the juvenile court's unappealed order of September 21, 2017, terminating M.G.'s reunification services.

DSS sought a modification to terminate M.G.'s services, after disposition. (§§ 361.5, subd. (a)(2), 388.) The changed circumstance was M.G.'s recent sentencing for domestic battery, which will keep him incarcerated beyond the short window for reunification with a sibling group that includes a child under the age of three at the time of removal from parental custody. (§ 361.5, subds. (a)(1)(B)-(C), (e)(1).)

The September 2017 order granting DSS's petition for a modification aggrieved M.G.'s interest in the parent-child relationship and was directly appealable. (§ 395, subd. (a)(1).) The appeal had to be filed within 60 days after the order was pronounced in open court. (Cal. Rules of Ct., Rule 8.406(a)(1); *In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1253-1254.) The timely filing of a notice of appeal is a jurisdictional requirement. (*Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 953.)

M.G. did not timely appeal the order terminating services. Nevertheless, his petition states "he was not given an opportunity to reunify with his children, whom he loves very much," owing to his incarceration. When, as here, an order is directly appealable, a parent may not generally attack its validity after the statutory time for filing an appeal has passed. (*In re T.G.* (2010) 188 Cal.App.4th 687, 692.)

Second, M.G.'s petition is substantively inadequate.

After the statutory time for M.G.'s appeal expired, the juvenile court terminated the mother's reunification services and set a selection and implementation hearing. Five days later, M.G. filed notice of his intent to bring this writ. An order setting a hearing to select a permanent plan must be challenged by extraordinary writ. The petition must "substantively address[ ] the specific issues to be challenged and support[ ] that challenge

by an adequate record." (§ 366.26, subd. (*l*)(1)(B); Cal. Rules of Ct., Rule 8.452.)

M.G. reacted in a timely manner after the juvenile court set the hearing to select a permanent plan. However, his petition lacks a memorandum containing citations to the record. Nor does it cite statutes or case authority. There is no factual summary. It is not verified. In short, it does not meet the requirements of a memorandum that "must provide a summary of the significant facts," "support each point by argument and citation of authority," and "explain the significance of any cited portion of the record and note any disputed aspects of the record." (Cal. Rules of Ct., Rule 8.452(a)-(b).)

At a minimum, a petitioner must inform the court of the issues, point to factual support in the record, and offer argument and authorities that will assist the court in resolving the issues. (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583.) Merely "filling out the [Judicial Council] form will not satisfy the requirements for a petition for writ of mandate." (*Rayna R. v. Superior Court* (1993) 20 Cal.App.4th 1398, 1406.)

Here, M.G.'s counsel did no more than fill out the Judicial Council form. It recounts no salient facts that might justify reunification services, visitation, moving the children to a new placement, or setting aside the permanent plan hearing. "Litigants seriously seeking relief by extraordinary writ must present a comprehensive statement of the facts and procedures and points and authorities." (*Rayna R. v. Superior Court*, *supra*, 20 Cal.App.4th at p. 1407.) M.G. did not meet the requirements for writ relief. (*Ibid*.) Accordingly, we deny his petition. (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1506.)

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Theresa G. Klein for Petitioner.

No appearance for Respondent.

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