Filed 12/5/18 In re Baby Boy M. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re BABY BOY M., A Person Coming Under the Juvenile Court Law.	B291196 (Los Angeles County Super. Ct. No. DK19686)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.M., Defendant and Appellant.	

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

Brian Bitker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Mother S.M. appeals the juvenile court's order terminating her parental rights, though she makes no legal challenge to that order. Instead, mother challenges the court's order at the Welfare and Institutions Code section 366.21[1] status review hearing, terminating her reunification services and setting the section 366.26 hearing, reasoning that she did not receive adequate notice of the hearing. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Baby Boy M. came to the attention of the Los Angeles County Department of Children and Family Services (Department) in September 2016, after he was born prematurely. He remained at the hospital for months, due to numerous health complications stemming from his premature birth. The reporting party informed the Department that mother and father A.P. were homeless, and planned to continue living on the streets with Baby Boy M. once he was discharged from the hospital.

Mother has a history of substance abuse and was diagnosed with schizoaffective disorder, although she denied any present mental illness. Mother refused referrals for temporary shelter assistance and social work services from the hospital social worker.

Baby Boy M. was detained, and the Department was ordered to give mother referrals for housing, mental health services, and homeless family services. However, mother remained homeless and failed to pursue housing assistance. As of the Department's December 15, 2016 jurisdiction/disposition

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

report, Baby Boy M. remained hospitalized. He was placed with a foster family after he was discharged from the hospital.

At the April 25, 2017 jurisdictional hearing, the juvenile court sustained allegations that mother had an unresolved history of mental health problems. Mother remained homeless, and had not followed through with obtaining necessary documentation to obtain housing.[2]

The dispositional hearing was held on July 13, 2017. Mother was present at the hearing. Mother had still not obtained housing, and had discontinued therapy. The court took the matter under submission, and made its ruling on July 18, 2017, removing Baby Boy M. from mother, ordering reunification services for mother, and setting a contested review hearing for January 17, 2018. The court set the status review hearing for a contest at the request of minor's counsel, made on the record in open court.

Mother appealed, and we affirmed the juvenile court's jurisdictional and dispositional orders. (*In re Baby Boy M.* (Sept. 5, 2018, B285808) [nonpub. opn.].)

Following the dispositional hearing, mother failed to obtain housing, and continued to be homeless. The Department's status review report recommended continued reunification services for mother.

On January 3, 2018, mother was personally served with notice of the January 17, 2018, 8:30 a.m. status review hearing. The notice of hearing stated that the Department recommended that mother receive continued reunification services. It also

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[2] The court denied father reunification services pursuant to section 361.5, subdivision (e)(1).

stated that mother had a "right to be present at the hearing, to present evidence, and to be represented by an attorney." The notice reiterated that the Department would prepare a report making recommendations to the court, and that the court would proceed with the hearing whether or not mother was present. The notice also recited that the court "will consider the recommendation of the social worker and make an order concerning" Baby Boy M.

Mother did not appear at the January 17, 2018 status review hearing. The court called the matter for hearing at 3:40 p.m., noting that mother had not made any contact with the court that entire day. The court denied mother's counsel's perfunctory request for a continuance, finding there was not good cause. At no time did counsel tell the court that mother was not prepared for a contested hearing, either because the Department had recommended further services or for any other reason.

Minor's counsel argued against the recommendation that mother continue to receive reunification services, based on her poor compliance with the services which had already been offered. The court terminated family reunification services, and set a section 366.26 hearing to select and implement a permanent plan.

The court's proof of service of the January 17, 2018 order indicates that the order, and notice of intent to file writ and petition for extraordinary writ forms, were deposited in the mail addressed to mother at "Homeless."

Mother appeared at the May 17, 2018 section 366.26 hearing. When asked how she wished to proceed, mother merely stated that an appeal was pending, and that she objected to the termination of parental rights.

The court, finding the child likely to be adopted and that no exceptions to adoption applied, terminated parental rights.

At no time did mother ever contend in the trial court that she had not received adequate notice of the January 17, 2018 status review hearing.

Mother filed a timely notice appeal from the order terminating her parental rights.

DISCUSSION

Mother's notice of appeal indicates she is appealing the May 2018 order terminating her parental rights. However, in her opening brief, mother admits there are no "arguably meritorious issues" concerning this order. Instead, mother challenges the January 17, 2018 order setting the section 366.26 hearing and terminating her reunification services.

Normally, an order setting a section 366.26 hearing, and any ancillary orders made at that time, may not be reviewed on appeal unless there has been a timely petition for extraordinary writ. (§ 366.26, subd. (*l*)(1)(A); *In re Michelle M.* (1992) 4 Cal.App.4th 1024, 1031.) The court must advise the parent of the writ requirement. Where a parent is not present in court when the order setting a section 366.26 hearing is made, advisement must be within 24 hours, by first class mail, to the parent's last known address. (§ 366.26, subd. (*l*)(3)(A)(ii); Cal. Rules of Court, rule 5.590(b); see also rules 8.450, 8.452.)

Here, mother was not properly served with a writ advisement, as the proof of service reflects that the notice was deposited in the mail with only mother's name and the word "homeless." Failure to advise a parent of the writ advisement excuses the failure to timely file a writ petition. (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 450; *In re Cathina W.* (1998)

68 Cal.App.4th 716, 718.) We thus find that mother may raise her substantive contentions in this appeal.

As noted above, mother concedes there is no meritorious basis to assert error in the termination of her parental rights. Mother contends her due process rights were violated because the notice of the January 17, 2018 status review hearing, which was personally served on her two weeks before the hearing, indicated the Department recommended continuing her reunification services, and did not give notice the court might not rule in conformance with that recommendation. She says the court had set the matter for a contest but mother's counsel was not prepared for a contest because the Department recommended further services. Mother reasons the notice induced her to make "the calculated choice to not attend the hearing precisely because she agreed with the Department's recommendation."

Mother relies on *In re Wilford J.* (2005) 131 Cal.App.4th 742, 747 (*Wilford*). In that case, the court conducted an entirely different hearing than what the parties had been given notice would be the nature of the hearing. The court found that "Converting a noticed [pretrial resolution conference] into an unscheduled jurisdictional hearing . . . deprives parents of vitally important procedural protections that are essential to ensure the fairness of dependency proceedings." (*Ibid.*) Nevertheless, the court found that the failure to address the error in subsequent proceedings forfeited the error on appeal. (*Id.* at p. 754.)

Like *Wilford*, mother never raised the notice issue in the court, notwithstanding her presence at the permanency planning hearing. Therefore, the issue has been forfeited. (*Wilford*, *supra*, 131 Cal.App.4th at p. 754.)

And, in any event, mother received proper notice of the proceedings. She was personally served with a notice which complied with the requirements of section 293 for status review hearings. (*Id*., subd. (d).) The notice apprised mother of her right to be present at the hearing, and that the court would "*consider*" the recommendation of the Department. There is no rule, statute or case authority for the proposition that courts have to give advance notice they may rule inconsistently with a Department recommendation. Since the court set the matter for a contest six months earlier at the request of minor's counsel, it was mother's burden to be prepared to provide evidence if she had any to offer. The court was free to grant or deny any recommendation of the Department so long as the court did not abuse its discretion.

DISPOSITION

The order is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.