

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

In re J.J., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.J.,

Defendant and Appellant.

B285524

(Los Angeles County  
Super. Ct. No. DK01968)

APPEAL from an order of the Superior Court of Los Angeles County, Debra Losnick, Commissioner. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Julia Roberson and David Miller, Deputy County Counsel, for Plaintiff and Respondent.

---

G.J. (mother) appeals from a June 29, 2017 order terminating her parental rights to Jazmine J. (born in December 2011). Jazmine's father is not a party to this appeal. We find no error, and thus we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In October 2013, 22-month-old Jazmine was living with mother, mother's boyfriend Roderick B. (Roderick Sr.), and her half siblings, R.B. and C.B. The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) when mother gave birth to a fourth child, J.B., whom mother said she did not want to care for.<sup>1</sup>

DCFS filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b), alleging that mother had a history of psychiatric problems, including a diagnosis of depression, that rendered her unable to care for Jazmine and her half siblings. DCFS left the children in the care of mother and Roderick Sr., but directed mother to submit to a psychiatric evaluation and to complete a parenting program and individual counseling.

The juvenile court sustained the juvenile dependency petition on February 26, 2014. The court ordered family maintenance services, and further ordered mother to participate in mental health counseling, take prescribed psychiatric medication, and complete a parenting class. No family reunification services were ordered for father.

In August 2014, DCFS removed all four children from mother. Jazmine's half siblings were placed with Roderick Sr.,

---

<sup>1</sup> Jazmine's half siblings (R.B., C.B., and J.B.) are not subjects of this appeal.

and Jazmine was placed in foster care. DCFS subsequently filed a supplemental dependency petition, which alleged that mother had medically neglected Jazmine (b-1), and had failed to participate in court-ordered mental health counseling or take prescribed psychotropic medication (b-2).

The court sustained the allegations of the supplemental petition and granted mother reunification services.<sup>2</sup> In October 2015, the court terminated those services after finding mother in only partial compliance with her case plan.<sup>3</sup>

In December 2015, mother told DCFS that her maternal uncle and aunt, Lloyd and Janice H., had expressed interest in adopting Jazmine. Jazmine began visiting the H.'s in March 2016. In September 2016, the H.'s were approved for an adoptive placement, and in November 2016, Jazmine was placed in their home.

In June 2017, the H.'s adoption home study was approved, and DCFS recommended that parental rights to Jazmine be terminated. Mother did not appear at the June 29, 2017 termination hearing, but her attorney stated that mother "would be submitting on the recommendation." The juvenile court responded that it could not "guarantee" adoptive placement with the H.'s, but "there is every likelihood that that's where the child would stay." The court then found by clear and convincing

---

<sup>2</sup> In June 2015, the court awarded Roderick Sr. full physical custody of Jazmine's half siblings and terminated its jurisdiction as to them.

<sup>3</sup> Mother appears not to have filed a petition for writ of mandate seeking review of the order terminating her reunification services.

evidence that Jazmine was adoptable and likely to be adopted, and it thus terminated parental rights. Mother appealed.<sup>4</sup>

### **ISSUES ON APPEAL**

Mother contends (1) her notice of appeal was timely, and (2) the termination order must be reversed because mother was never advised of her right under Family Code section 8700 to voluntarily relinquish Jazmine for adoption. As we now discuss, mother's appeal is timely, but it fails on the merits.

### **DISCUSSION**

#### **I.**

#### **Mother's Appeal Is Timely**

Mother contends her appeal from the June 29, 2017 termination order was timely. We agree. California Rules of Court, rule 8.406 provides that in a matter such as this one, which is heard by "a referee not acting as a temporary judge," a notice of appeal must be filed within 60 days after the referee's order becomes final.<sup>5</sup> Pursuant to rule 5.540(c), an order of a

---

<sup>4</sup> DCFS filed a motion for judicial notice of an October 26, 2017 minute order referring to the H.'s as Jazmine's "prospective adoptive parents." The motion is granted.

<sup>5</sup> Government Code section 71622 provides that each trial court may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties. Pursuant to that authority, the presiding judge of the Los Angeles Superior Court has cross-assigned all commissioners (subordinate judicial officers) to act as referees in juvenile dependency matters. (*In re Angelina E.* (2015) 233 Cal.App.4th 583, 587.)

Welfare and Institutions Code section 248 provides that a referee shall hear those cases that are assigned to him or her by

referee becomes final 10 calendar days after service of a copy of the order and findings.

Here, mother was served with a copy of the order terminating parental rights on July 6, 2017. The order became final 10 days later, on July 16, 2017, and thus mother had until September 14, 2017 to file a notice of appeal. Her notice of appeal, filed September 5, 2017, therefore was timely.

## **II.**

### **Mother's Substantive Claim Is Without Merit**

Mother contends that the June 29, 2017 order terminating her parental rights must be reversed because she was never advised of her right under Family Code section 8700 to voluntarily relinquish Jazmine "to ensure Jazmine's adoption" by the H.'s. For the reasons that follow, mother's claim is without merit.

---

the presiding judge of the juvenile court. If the parties so stipulate, a referee may sit as a temporary judge (Cal. Const., art. VI, § 21), in which case his or her orders become final in the same manner as orders made by a judge; in the absence of a stipulation, a parent or minor may apply to the juvenile court for a rehearing, and thus the referee's orders do not become final until after the time to apply for a rehearing has passed (Welf. & Inst. Code, §§ 250, 252).

The proceedings in this case were conducted by Commissioner Debra Losnick. DCFS does not argue, and there is nothing in the record to support, any claim that Commissioner Losnick was acting as a temporary judge in this case.

A. *Even If Mother Had Voluntarily Relinquished Her Parental Rights to Jazmine Under Family Code Section 8700, She Could Not Have “Ensured” Jazmine’s Adoption by the H.’s*

Family Code section 8700 provides that a birth parent may voluntarily relinquish a child to the State Department of Social Services, a county adoption agency, or a licensed adoption agency for adoption. (Fam. Code, § 8700, subd. (a).) The relinquishing parent may name the person with whom he or she wishes the child to be placed, and if the child is not placed with that person, the parent may rescind the relinquishment. (*Id.*, § 8700, subds. (f), (h).)

The parents of dependent children retain the right to voluntarily relinquish their children for adoption (Fam. Code, § 8700, subd. (i)), and the report prepared by DCFS in connection with a Welfare and Institutions Code section 358 disposition hearing shall advise the court whether, among other things, “the parent has been advised of his or her option to . . . voluntarily relinquish the child for adoption” (Welf. & Inst. Code, § 358.1, subd. (g)). A parent who voluntarily relinquishes the child for adoption is not provided reunification services. (*Id.*, § 361.5, subd. (a).)

Mother contends that she had the right under Family Code section 8700 to “ensure that Jazmine remains placed [with] and adopted by” the H.’s, and that because DCFS failed to advise her of this asserted right, this court should “reverse the order terminating mother’s parental rights at the section 366.26 hearing, and remand the matter for a new proceeding prior to which mother would be allowed to relinquish her daughter to be adopted by . . . the Uncle and Aunt.” Family Code section 8700

did not give mother an absolute right to relinquish Jazmine or to direct her adoptive placement, however. To the contrary, a parent of a dependent child may voluntarily relinquish the child to a public or private agency *only* if the “agency is willing to accept the relinquishment” (Welf. & Inst. Code, § 361, subd. (b)(1)); and if the proposed relinquishment is to a private adoption agency, “the relinquishment shall have no effect and will be not be filed with, or acknowledged by, the department, unless the [juvenile] court approves the relinquishment” (Fam. Code, § 8700, subd. (i)). Thus, even had mother attempted to voluntarily relinquish Jazmine, the relinquishment could have been blocked by DCFS (if mother attempted to voluntarily relinquish Jazmine to DCFS) or by the court (if mother attempted to voluntarily relinquish Jazmine to a private agency).

Moreover, even if a parent voluntarily relinquishes a child under Family Code section 8700, the parent does not have the unfettered right to place a child with the adoptive parents of her choice. Once a parent relinquishes a child for adoption, it is the agency to whom the child is relinquished, *not* the parent, who “is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted.” (Fam. Code, § 8704, subd. (a).) In exercising that custody and control in placement decisions, the agency is not required to carry out the parent’s wishes, but instead is charged with acting “in the child’s best interests.” (*Id.*, subd. (b), § 8710, subd. (a).) Thus, “a designated relinquishment will not always result in the child’s being placed for adoption in the home of the designated adoptive parent, or eventual adoption by said individual.” (*In re B.C.* (2011) 192 Cal.App.4th 129, 146.)

Finally, although the Family Code permits a parent to rescind a voluntary relinquishment if the child “is not placed in the home of the named person . . . or the child is removed from the home prior to the granting of the adoption” (Fam. Code, § 8700, subds. (g) & (h); see *In re B.C.*, *supra*, 192 Cal.App.4th at pp. 146–147), rescinding the voluntary relinquishment of a dependent child is of limited effect. As mother concedes, when the parent of a dependent child attempts to voluntarily relinquish parental rights, the juvenile court may vacate upcoming hearings, but it does not terminate dependency proceedings. (*In re B.C.*, *supra*, 192 Cal.App.4th at p. 147, fn. 19.) Thus, “[i]f the child is not placed with the individuals designated in the relinquishment, and the parent chooses to rescind the relinquishment, *the Welfare and Institutions Code section 366.26 hearing should proceed.*” (*Ibid.*, italics added.)

Accordingly, even if mother had elected to voluntarily relinquish her parental rights under Family Code section 8700, she could not have “ensure[d] Jazmine’s adoption by” the H.’s, as she suggests. Instead, under any potential scenario, the right to make decisions about Jazmine’s placement would have remained with DCFS and the juvenile court.

*B. In Any Event, DCFS’s Failure to Advise Mother of Her Right to Relinquish Under Family Code Section 8700 Is Not a Proper Basis for Setting Aside the Order Terminating Parental Rights*

Mother contends that because DCFS failed to advise her of her right to voluntarily relinquish her parental rights, this court should “reverse the order terminating mother’s parental rights at the section 366.26 hearing, and remand the matter for a new proceeding prior to which mother would be allowed to relinquish



her daughter to be adopted by . . . the Uncle and Aunt.” The claim is without merit.

Mother cites Welfare and Institutions Code section 358.1 for the proposition that DCFS had a mandatory duty to advise her of her right to voluntarily relinquish Jazmine for adoption. Section 358.1 describes the subjects DCFS should include in a report to be received by the court at the disposition hearing, including “[w]hether the parent has been advised of his or her option . . . to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.” (Welf. & Inst. Code, § 358.1, subd. (g).) Assuming without deciding that failing to include one such subject in the disposition report is reversible error, such error would be cognizable, if at all, in an appeal from the disposition order—*not* in an appeal from a subsequent termination of parental rights. (*Id.*, § 395, subd. (a)(1) [“A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment”]; see also *In re A.K.* (2017) 12 Cal.App.5th 492, 500–501 [section 395 makes the dispositional order the appealable “judgment,” and thus it and all subsequent orders are directly appealable, except for orders setting a section 366.26 hearing, challenged by a timely writ petition].) Therefore, if mother believed the social worker had not complied with the statutory requirements governing the disposition report, she could have raised the matter in an appeal *from the disposition order*, which was issued in September 2014. Her failure to do so forfeited the objection in this appeal from termination of her parental rights. (See *In re A.K.*, at p. 501, *italics added* [“If father believed the social worker had not complied with statutory requirements [governing relative

placement preferences], he could have raised the issue in the juvenile court and, thereafter, on appeals from the disposition order, the 12-month review order, or other appealable orders. He did not do so. *He therefore forfeited his objection.*”].)

In any event, even were mother able to show error, she would not be entitled to a reversal of the termination order because she has not demonstrated any prejudice. (E.g., *People v. Mena* (2012) 54 Cal.4th 146, 163 [to succeed on appellate claim, appellant must establish both error and prejudice].) Mother urges that had she been timely advised of her right to voluntarily relinquish her parental rights, she would have done so and would further have designated the H.’s as the adoptive parents. But notwithstanding DCFS’s asserted failure, Jazmine *has* been placed with the H.’s, and the court *has* designated them as her adoptive parents. Thus, mother has obtained precisely the result she seeks on appeal.

### **DISPOSITION**

The order terminating parental rights is affirmed. DCFS's motion to take judicial notice of postjudgment evidence is granted.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.