

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION THREE

Adoption of J.R., a Minor.

C.M.,

Plaintiff and Respondent,

v.

G.R.,

Defendant and Appellant.

A134660

(Contra Costa County  
Super. Ct. No. MSA11-00125)

Father appeals from an order terminating his parental rights to his now 14-year-old daughter based on a finding by the trial court that he abandoned her within the meaning of Family Code section 7822.<sup>1</sup> On appeal, he does not challenge the sufficiency of the evidence in support of the court’s abandonment finding, but argues that the order must be reversed nonetheless because the trial court failed to comply with its sua sponte statutory duty to interview the daughter in chambers before terminating his parental rights. Respondent, the daughter’s stepfather and prospective adoptive father, concedes error but asserts correctly that the error was harmless. Accordingly, we shall affirm the order.

<sup>1</sup> All statutory references are to the Family Code unless otherwise noted.

Section 7822 authorizes the termination of parental rights where “[o]ne parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child’s support, or without communication from the parent, with the intent on the part of the parent to abandon the child.” (§ 7822, subd. (a)(3).)

## **Factual and Procedural Background**

On May 25, 2011, respondent filed a petition to adopt his stepdaughter, along with a petition to declare her free from the parental custody and control of appellant. At the hearing on the petition, testimony was offered establishing that appellant and the daughter's mother separated and then divorced when the child was one year old. Following the divorce, father's visitation was sporadic and by the time the minor was three years old, appellant had been convicted of a felony and sentenced to four years in prison. Although appellant made some attempts to contact mother and daughter while in custody and following his release, his attempts were relatively limited and ultimately unsuccessful.

Mother testified that respondent has acted as the daughter's father since the child was three. She testified that the daughter was excited about the pending adoption and the prospect of changing her last name to match her stepfather's last name. She also opined that the daughter would be devastated and deeply hurt if the court denied stepfather's adoption petition. The daughter's maternal grandfather confirmed the daughter's excitement over stepfather becoming her legal father. He described her as thrilled about the pending adoption.

A report prepared by the court-appointed investigator was submitted to the court pursuant to section 7851.<sup>2</sup> The investigator reported that when he spoke with the daughter regarding her feelings and thoughts concerning the pending petition, the daughter

---

<sup>2</sup> In proceedings to terminate parental rights, section 7851, subdivision (a) requires a qualified court investigator to submit to the court a written investigative report "with a recommendation of the proper disposition to be made in the proceeding in the best interest of the child." Under subdivision (b), the report must contain: "(1) A statement that the person making the report explained to the child the nature of the proceeding to end parental custody and control. [¶] (2) A statement of the child's feelings and thoughts concerning the pending proceeding. [¶] (3) A statement of the child's attitude towards the child's parent or parents and particularly whether or not the child would prefer living with his or her parent or parents. [¶] (4) A statement that the child was informed of the child's right to attend the hearing on the petition and the child's feelings concerning attending the hearing."

expressed excitement regarding the adoption and sharing respondent's last name. The daughter stated she had no interest in meeting appellant, nor could she recall ever doing so in her life. She also did not recall ever receiving any cards or letters from appellant. The daughter indicated that she did not want to attend any court proceedings. The judge acknowledged that the investigator's report was read and considered.

At the conclusion of the hearing, the court found that although father had made some attempts to contact the daughter over the years, there were still two periods of time, one of which was at least two years, and the other was no less than one and a half years, in which there were "zero efforts taken completely." The court granted the petition and, on January 30, 2012, signed a written order terminating parental rights. Appellant timely filed a notice of appeal.

### **Discussion**

Section 7802 authorizes an interested party to file a petition "for the purpose of having a minor child declared free from the custody and control of either or both parents." This statute is "intended foremost to protect the child" and is typically "invoked for the purpose of terminating the rights of one or more biological parent, so the child may be adopted into a stable home environment." (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 162.)

Under section 7891, subdivision (a), "if the child who is the subject of the petition is 10 years of age or older, the child shall be heard by the court in chambers on at least the following matters: [¶] (1) The feelings and thoughts of the child concerning the custody proceeding about to take place. [¶] (2) The feelings and thoughts of the child about the child's parent or parents. [¶] (3) The child's preference as to custody, according to Section 3042." A trial court has a sua sponte duty to comply with section 7891. (*Neumann v. Melgar, supra*, 121 Cal.App.4th at p. 170.) Where, as in this case, there is a failure to comply with a statutory procedure and there is no statutory consequence for noncompliance, an appellant must demonstrate prejudice to prevail on appeal. (*In re M.F.* (2008) 161 Cal.App.4th 673, 680.) We apply a harmless-error analysis and reverse if it is

reasonably probable that the outcome would have been different in the absence of the error. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 622, 624.)

In this case, it is not reasonably probable that appellant would have prevailed in this action had the daughter been interviewed directly by the court. As set forth above, there was ample, reliable evidence regarding the daughter's preferences with respect to the petition. Nothing in the record suggests that the daughter would have expressed a different opinion had she been interviewed by the court in chambers.

In this respect, *Neumann v. Melgar* (2004) 121 Cal.App.4th at page 170 and *Adoption of Jacob C.* (1994) 25 Cal.App.4th 617 are distinguishable. In *Neumann*, the court concluded that it could not find the failure to interview the minor harmless because “[t]he record contains no indication what the minor would have said.” (121 Cal.App.4th at p. 170.) The court noted further that the evaluator's report, which was not considered by the trial court, contained the statement that the minor “although initially hesitant, he was open to visitation with [father] if another adult was present” and that this relevant information should have been further explored by the court in chambers. (*Id.* at pp. 168-169, 170.)<sup>3</sup>

Similarly, in *Jacob C.* the court found the failure to interview the minor was prejudicial where there was evidence that the minor had previously expressed “clear opposition” to the termination of his mother's parental rights and “[h]e only changed his mind when he was assured that termination of his mother's parental rights would not result in his inability to see her.” (*Adoption of Jacob C., supra*, 25 Cal.App.4th at p. 626.) Considering that the prospective adoptive parents' promise to allow the minor to see his

---

<sup>3</sup> Citing the investigator's statement that he was “unable to make a recommendation regarding whether or not the petition should be granted,” appellant suggests that the results of the evaluation in the investigator's report in this case “were inconclusive at best” and, as in *Neumann v. Melgar, supra*, 121 Cal.App.4th 152, “this was all the more reason for the court to satisfy itself with in chambers testimony from the minor.” The investigator's inability to make a recommendation in this case, however, had nothing to do with any uncertainty regarding the daughter's wishes. Rather, as explained in the report, the investigator was “unable to make a determination whether [appellant's] actions fully rebut the presumption of abandonment for failure to communicate.”

mother is not enforceable, the court observed that the minor was entitled to an explanation of “the true consequences of his acquiescence in the granting of the petition and adoption order, and to have the court make inquiry as to his feelings and thoughts in regard to such a result.” (*Ibid.*)

Because the failure to comply with section 7891 in this case undoubtedly was harmless, the order must be affirmed.

**Disposition**

The order terminating appellant’s parental rights is affirmed.

---

Pollak, Acting P.J.

We concur:

---

Siggins, J.

---

Jenkins, J.