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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

CONTRA COSTA COUNTY CHILDREN
& FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

M.H., et al.,

Defendants and Appellants.

A142066

(Contra Costa County
Super. Ct. No. J1201619)

Mario H. (father) and Laura W. (mother) appeal from the Contra Costa County juvenile court’s June 4, 2014 order terminating their parental rights regarding M.W., now six years old, and setting adoption as her permanent plan pursuant to Welfare and Institutions Code section 366.26.¹ They argue the juvenile court’s order must be reversed regarding both of them because the juvenile court repeatedly violated father’s due process rights as a presumed father by denying him in-person visitations with M.W. throughout the proceedings without finding that such visitations would be detrimental to her. This harmed his position as a presumed father and made it difficult for his counsel to argue in favor of guardianship as the permanent plan at the section 366.26 hearing.

¹ All of our statutory references herein are to the Welfare and Institutions Code.

The dependency proceedings began in December 2012 pursuant to a section 300 petition filed by respondent Contra Costa County Children & Family Services Bureau (Bureau). M.W. was then four years old and living with her maternal grandparents in Antioch, California. Father and mother were neither married nor in a romantic relationship with each other. Neither could properly care for M.W. Father was incarcerated in another part of the state, in Kern Valley State Prison in Delano, California. He had been in prison since before M.W.'s birth, had not seen her for over two years and did not have a significant relationship with her. His mother had regular visits with M.W. before the proceedings began.

The juvenile court, after the Bureau recommended that father's visitations be by written correspondence only because of M.W.'s emotional fragility, limited his visitations to written correspondence in its July 8, 2013 dispositional order. The court restated this visitations order twice during the proceedings. The record does not indicate that father, represented by counsel throughout, ever sought in-person visits for himself, objected to these orders or filed an appeal or writ petition regarding them. Instead, he only sought visits for his mother when his reunification services were terminated, which the court allowed at the Bureau's discretion. The court terminated family reunification services for both father and mother upon finding that they had not satisfactorily participated in services. It then conducted a permanent plan hearing pursuant to section 366.26, after which it issued its June 4, 2014 order.

The Bureau argues, among other things, that father's appeal is based on claims that are untimely, as well as forfeited because of his failure to first raise them below. We agree. Father's appeal, while fashioned as taken from the court's June 4, 2014 order, actually challenges the court's prior visitations orders, from which he should have appealed or challenged by writ petition, and did not. Also, we see no reason to excuse him from his failure to first raise his claims below. Therefore, we affirm the juvenile court's June 4, 2014 order in its entirety.

BACKGROUND

The Bureau's Section 300 Petition

On December 5, 2012, the Bureau filed its section 300 petition regarding then four-year-old M.W. The Bureau alleged pursuant to section 300, subdivision (b) that M.W. was at risk of serious physical harm or illness because mother had a substance abuse problem that impaired her ability to provide safe and adequate care, support and supervision for M.W., as well as a mental health disorder that, when untreated, further impaired her ability to care for her daughter. The Bureau alleged pursuant to section 300, subdivision (g) that father could not properly care for M.W., putting her in substantial risk of harm, because he had been incarcerated since her birth for felony second degree burglary and would not be released before 2014.

The Juvenile Court's Detention Of M.W.

The Bureau's initial detention/jurisdiction report reported the context in which it filed this petition. In October 2012, M.W. was living with her temporary guardians, her maternal grandparents, in Antioch, California, while her mother attended out-patient treatment for substance abuse and worked to “ ‘get her life together.’ ” M.W. also visited her paternal grandmother and the grandmother's friend, “Eddy,” three days a week. M.W. said that “Grandpa,” an apparent reference to Eddy, had touched her inappropriately and was then referred to therapy after engaging in sexualized behaviors that caused her maternal grandfather concern. As discussed in a later disposition report, the Bureau concluded in December 2012 that the allegation of sexual abuse was unfounded.

Nonetheless, the relationship between the maternal grandparents and paternal grandmother was acrimonious and they accused each other of improperly caring for M.W. This caused the probate court to withdraw the maternal grandparents' legal guardianship of M.W., return M.W. to the custody of her mother (although M.W. continued to live with her maternal grandparents) and refer the matter to the juvenile court. The Bureau then filed its section 300 petition.

In its detention/jurisdiction report, the Bureau reported that mother's efforts to address a lengthy history of substance abuse were "thus far . . . quite minimal," although she was unquestionably concerned about M.W.'s well-being. Father acknowledged mother and he had used methamphetamine together. He was imprisoned at Kern Valley State Prison in Delano and wanted his mother to have custody of M.W. The Bureau requested that M.W. be detained and allowed to continue living with her maternal grandparents. The juvenile court accepted this recommendation.

The Juvenile Court's January 30, 2013 Jurisdiction Order

On January 30, 2013, the juvenile court held a jurisdiction hearing at which mother and her counsel were present, but father was not. Mother pled no contest to the petition allegations regarding her. The court ruled that M.W. was a dependent child of the court pursuant to section 300, subdivision (b) and reserved ruling on the allegations regarding father.

The Juvenile Court's March 6, 2013 Disposition Order

In a disposition report filed on March 6, 2013, the Bureau reported that M.W. had lived with her maternal grandparents for most of her young life. She had previously been declared a dependent of the court shortly after her birth in December 2008. At that time, mother pled no contest to allegations that she had a substance abuse problem that placed M.W. at risk of physical harm and a mental health problem that interfered with her ability to provide adequate care and supervision for M.W. In October 2009, the court ordered this dependency vacated, the petition dismissed and that mother have sole legal and physical custody of M.W.

The Bureau reported that father had a criminal history from 1994 through 2008, some of it drug-related. Mother also said he had longstanding substance abuse issues. He was most recently incarcerated for second degree burglary some months prior to M.W.'s birth and was not present for her birth.

In its March 2013 disposition report, the Bureau reported that M.W. was "a vibrant[,] outgoing and energetic" four year old who was doing well living with her maternal grandparents. It recommended that the court adjudge M.W. to be a dependent

of the court, order that she continue to live with her maternal grandparents and order family reunification services for mother, but not father. The Bureau advised that mother should focus on her substance abuse and mental health issues, and find stable and adequate housing.

At the March 6, 2013 dispositional hearing, mother and her counsel were present, but father was not. The juvenile court ruled consistent with the Bureau's recommendations. It ordered that father would not receive reunification services because providing them would not benefit M.W.

The Juvenile Court's Dispositional Order Regarding Father

From April to July 2013, the juvenile court held hearings on the petition allegations about father and on his paternity status. Father and his counsel, who was appointed at the April 30, 2013 hearing, attended these hearings.

In a brief submitted to the court, father, through counsel, argued he was entitled to presumed father status. He asserted that mother and M.W. visited him 10 to 15 times in 2009 and another 10 times in 2010, before he was moved to a prison that was too far away for mother to visit. After that time, he communicated with M.W. by telephone and letters. He also submitted documents in which he acknowledged his paternity of M.W., stated that he and his mother loved M.W. very much, and said he wanted to care for M.W. when he was released from prison.

The Bureau filed a memorandum with the court on July 8, 2013. It reported that father's prison release date was September 29, 2015, and that he had services available to him at prison, such as parenting and anger management classes and Alcoholics Anonymous and Narcotics Anonymous programs, but he was not utilizing any of them. M.W. did not have a relationship with him. She was struggling with nightmares and became very anxious when there were changes to her environment or schedule. To "ease her trauma responses," the Bureau requested that contact between her and father be limited to written correspondence through the Bureau. It recommended that the court order reunification services for father.

The record does not contain reporter's transcripts for the hearings held from April to June 2003. The minute orders indicate that in the course of these proceedings, the juvenile court sustained the Bureau's petition allegations against father and, while the court considered father's parental status, denied him phone contact with M.W. In its July 8, 2013 dispositional order, it ruled that father had presumed father status and ordered that reunification services be provided to him. It further ordered, consistent with the Bureau's recommendation in the memorandum it filed that same day, that father have visitations with M.W. "through written correspondence."

Six-Month Review

The juvenile court held a six-month review hearing on August 21, 2013, for which there also is no reporter's transcript in the record. The Bureau indicated in its report for this hearing that M.W. was doing well at maternal grandparents' home. Father was slated for release from prison in September 2015, had recently sent M.W. two cards, and had services available to him. He did not support M.W.'s placement with maternal grandparents and wanted her placed with paternal grandmother instead. Mother had visited with M.W. as scheduled, but was consistently late, and had engaged in services.

The Bureau recommended that the court order the continuation of reunification services for both parents. At the hearing, mother and her counsel, and father's counsel, were present. The court continued reunification services for both parents. Once more, it ordered that "visitation w[ith] father will be in writing only."

Twelve-Month Review

In December 2013, the Bureau submitted a report for the juvenile court's twelve-month review of M.W.'s dependency. It reported that M.W. continued to do well and to live with her maternal grandparents. Father had recently sent her three cards that included colorful drawings, but he had yet to meet her, had no relationship with her and was not going to be released until about September 2015. Both parents had "done very little to no progress on their case plans." The Bureau recommended that the court terminate reunification services to both parents and set a hearing pursuant to

section 366.26 to determine the most appropriate permanent plan for M.W. Maternal grandparents were willing to adopt her.

Mother requested a contested twelve-month review hearing. It began on January 15, 2014 and was conducted over several other dates, concluding on February 7, 2014. Mother, father and their attorneys were present throughout the presentation of evidence and argument.

The court found that since September 2013, mother had missed seven drug tests, submitted flawed samples four times, and had not submitted a urine test on the last day of the hearing. These testing problems indicated that she continued to struggle with her longstanding substance abuse issues. Also, in December 2013, during a police investigation into a possible stolen vehicle, she was arrested with a shaved key in her purse and in the company of a man who possessed methamphetamine. A social worker had observed on another occasion that mother appeared possibly assaulted or battered. Based on this evidence, the court concluded that mother's life remained out of control.

The court found that father had engaged in services. The court continued, "That being said, he's not going to be released until 2015. He's never met this child face-to-face. And from the child's perspective, is it in the child's best interest to extend these services? I don't think so, because we would be well beyond the 24, even 30-month mark, to get to a point where [father] might be released from custody." The court noted that father had a 20-year criminal history that included crimes related to substance abuse. It concluded, "[a]lthough he certainly has engaged in some services, he has not demonstrated the capacity and ability to complete the objectives of the substance abuse program and provide for [M.W.'s] safety, protection, physical and emotional well-being. So I don't find an exceptional reason to extend services when looking at this from the perspective of [father]."

The court terminated reunification services for the parents and set the matter for a section 366.26 hearing. It accepted the Bureau's recommendation to reduce mother's visits with M.W. to one hour a month. It ordered that father continue to have visitations by written correspondence without objection or comment from the parents.

Near the end of the hearing, father, through his counsel, raised with the court whether paternal grandmother would be allowed to visit M.W. The court set a hearing date for March 6, 2014 to consider the issue.

At the conclusion of the hearing, the court informed the parties of their right to seek relief by writ petition from its order setting a section 366.26 hearing.

Paternal Grandmother's Visitation Rights

The Bureau submitted a memorandum to the court for the March 6, 2014 hearing in which it opposed giving paternal grandmother visitation rights because M.W. had "very strong feelings and memories" regarding her, and the paternal grandmother continued "to act inappropriately toward" maternal grandfather.

At the March 6, 2014 hearing, father and his counsel were present. Father, through his counsel, argued in favor of paternal grandmother's visitation rights. He asked the court to give the Bureau the authority to allow supervised visits between M.W. and paternal grandmother at the Bureau, which could be stopped if need be to protect M.W.

The court stated it was not aware of a "no contact" order that prohibited paternal grandmother from visiting with M.W., although one could have been issued orally and not recorded; there was an order that no such visitation would occur at maternal grandparents' home. The court ordered that paternal grandmother could have supervised visits with M.W. at the Bureau, at the Bureau's discretion.

Subsequently, the Bureau reported that a case worker twice raised with M.W. that she could visit with paternal grandmother. M.W. reacted negatively each time. The Bureau did not arrange any such visits because of M.W.'s reaction.

The Section 366.26 Hearing

For the section 366.26 hearing, held on June 4, 2014, the Bureau reported that M.W. was "a generally adoptable child" who was "developmentally on-target, socially and cognitively very sharp, and [was] positively enchanting." She was happy with her placement with her maternal grandparents, who wanted to adopt her. She did not have "a current or past significant relationship" with father. Mother had brought M.W. to visit

him in prison 20 to 25 times in 2009 and 2010. Since April 2013, he had been allowed contact with her via letters and had sent four colorful and appropriate letters to her. The Bureau opined that terminating father's parental rights and establishing adoption as a permanent plan was "of the utmost importance and [would] not interfere in an established or existing parent/child bond with [father]."

The Bureau wrote that mother had a chronic substance abuse problem and mental health issues that impeded her ability to provide consistent and ongoing care for M.W. She had "never been able to stabilize herself well enough to provide [M.W.] with safe and secure parenting." Her contact with M.W. had become more and more inconsistent recently, her recent behavior had been problematic and her whereabouts were unknown to the Bureau.

According to the Bureau, M.W., while recognizing mother as her mother, saw her maternal grandparents as her primary parental figures and relied on them for all of her daily emotional, medical and educational needs. They cared well for her and "more than adequately" met all of her needs. The Board concluded that "[t]erminating parental rights so that [M.W.] may be adopted will secure [M.W.]'s future security and stability, which far outweighs the current level of relationship which she shares with [mother]." Also, "[d]elaying the termination of parental rights simply leaves [M.W.] in limbo and allows for on-going battles between family members."

Father and mother, and their attorneys, were present for the section 366.26 hearing. Father, through counsel, stated his release from prison had been advanced to June 2015. He said he had done all he could to establish a relationship with M.W., but had not been allowed visits; he had communicated by mail and had engaged in services at the prison. He desperately wanted a relationship with M.W., but circumstances had prevented that from happening. He was disappointed M.W. had not visited with his mother and his counsel questioned whether M.W. had "been conditioned" to say she did not want to do so. He opposed adoption and sought establishment of a legal guardianship so that he could reestablish his parental relationship with M.W. after his release from

prison. He feared that the maternal grandparents would prevent him from having any contact with M.W. if they adopted her.

Mother, through her counsel, also opposed adoption as a permanent plan and sought establishment of a guardianship. She asserted that she had visited M.W. on a monthly basis via a professional agency, not the Bureau, which visits were unrecorded.

M.W.'s counsel submitted on the matter. She commented only that she had visited M.W. at the maternal grandparents' home recently and found her well taken care of by them.

The juvenile court found that father had never established a relationship with M.W. and since 1994 for the most part had been incarcerated in state prison. The court did not think it appropriate to establish a legal guardianship "in hopes that . . . [father] . . . might decide at some point to lead a law-abiding life," when it was "very unlikely he would be able to step into the role of being a safe custodial parent," given his history and lack of a relationship with M.W. Further, M.W. was "incredibly bonded" with her maternal grandparents, felt safe with them, looked to them for care and comfort, and "deserve[d] to have a permanent and safe placement." The court ruled that "[u]nless there's an exception to adoption, the [c]ourt is to consider adoption first. And given [M.W.'s] relationship with maternal grandparents and given the fact they've been highly appropriate in their care of [her]," it adopted the Bureau's recommendation.²

Father and mother filed notices of appeal from the court's June 4, 2014 order, on June 6, 2014, and June 16, 2014, respectively.

² At the conclusion of the hearing, paternal grandmother created a disturbance and was escorted out of the courthouse. The court, based on its observations during the proceedings, ordered no contact between her and M.W. because such contact would be detrimental to M.W.

DISCUSSION

Father³ argues we must reverse the juvenile court's June 4, 2014 order terminating his parental rights. He contends the court repeatedly violated his constitutional due process rights by denying him visitations with M.W. throughout the proceedings without determining whether they were detrimental to M.W. This harmed his position as a presumed father and made it difficult for his counsel to argue in favor of guardianship as the permanent plan at the section 366.26 hearing. We conclude father's arguments are not a basis for reversal because, as the Bureau argues, they are untimely due to his failure to appeal from two of the orders and to seek a writ from the third, and they were forfeited due to his failure to first raise them below.

I. *Father's Arguments*

Father appeals from the juvenile court's June 4, 2014 order, but does not directly challenge any aspect of that order. Instead, he argues the court wrongly denied him visits with M.W. "[t]hroughout the pendency of the instant dependency case" without making the requisite detriment findings.

The court issued three orders that father's visitations with M.W. be limited to written correspondence. After designating father a "presumed father" eligible for reunification services,⁴ the court issued three orders regarding father's visitation rights with M.W. In its July 8, 2013 dispositional order, when it designated father a presumed father eligible for reunification services, the court first ordered that his "visitations" with

³ Mother joins in father's argument and contends that if we reverse the juvenile court's order terminating his parental rights we should grant her the same relief. We refer throughout to "father's" arguments and contentions, but our analysis applies to the appeals of both parents.

⁴ Father also refers to the court's order, issued prior to its determination that he was a presumed father and entitled to reunification services, that he not be allowed phone contact with M.W. He does not provide any legal argument for why this ruling was improper, nor argue that he was entitled to telephone contact after the court's determination of his presumed father status. Therefore, we do not further address this aspect of the court's rulings. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 [court may treat an appellate claim as waived when it is not supported by legal argument].)

M.W. would be by written correspondence only. Then, at the conclusions of the six-month review and the contested twelve-month review hearings, on August 21, 2013, and February 7, 2014, respectively, the court ordered this same visitations arrangement.

Father does not clearly distinguish between the juvenile court's three different visitations orders. He rightly points out he possessed a fundamental liberty interest in the care, custody and companionship of M.W. without undue government intervention. (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 117; see *In re Silvia R.* (2008) 159 Cal.App.4th 337, 344.) Further, his visitation rights arise from the very fact of parenthood and implicate his constitutionally protected parental rights. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49-50.)⁵

That said, father's more specific arguments are actually claims his due process rights were violated because the juvenile court did not follow the statutory requirements of our dependency law in issuing its orders regarding his visitations rights.

First, father cites section 362.1, subdivision (a). It states in relevant part that any order of reunification services shall provide for visitation "as frequent[ly] as possible, consistent with the well-being of the child." (§ 362.1.) Although father does not so indicate, it appears, then, that section 362.1, subdivision (a) is relevant to the two orders in which the court ordered reunification services be provided to him: its July 8, 2013 dispositional order, when it first ordered reunification services for him, and its August 21, 2013 six-month review order, when it ordered that these services continue to be provided.

Second, father argues that constitutional due process requires that the juvenile court have found that his visitations with M.H. were "detrimental" before "eliminating"

⁵ However, "a parent's liberty interest in the care, custody and companionship of children cannot be maintained at the expense of their well-being. [Citation.] While visitation is a key element of reunification, the court must focus on the best interests of the children 'and on the elimination of conditions which led to the juvenile court's finding that the child has suffered, or is at risk of suffering, harm specified in section 300.' [Citation.] This includes the 'possibility of adverse psychological consequences of an unwanted visit between [parent] and child.'" (*In re Julie M., supra*, 69 Cal.App.4th at p. 50.)

them, citing *In re Manolito L.* (2001) 90 Cal.App.4th 753, 762 (*Manolito L.*). His citation does not stand for quite that proposition. Rather, father cites a discussion about the standard of proof constitutionally required when a court finds visitations are detrimental to a child pursuant to sections 366.22, subdivision (a) and 366.21, subdivision (h), both discussed further below, which the court concluded was preponderance of the evidence. (*Id.* at pp. 761-762.)

Nonetheless, the *Manolito L.* court also discussed section 361.5, subdivision (e)(1). The court noted that that provision requires that reunification services, including visitation, be provided to an incarcerated parent unless the court determines by clear and convincing evidence that those services would be detrimental to the child. (*Manolito L., supra*, 90 Cal.App.4th at p. 761; § 361.5, subd. (e)(1).) This provision is relevant to the juvenile court's July 8, 2013 and August 21, 2013 orders, when the court ordered that reunification services be provided to father.

Third, father, in discussing the court's February 7, 2014 order terminating his reunification services and setting a section 366.26 hearing, cites sections 366.21, subdivision (h) and 366.22, subdivision (a). Father does not explain how each statute applies to the present case. They direct that, under different circumstances, when a parent's reunification services are terminated and a section 366.26 hearing ordered, the court shall "continue to permit" the parent or legal guardian to visit the child pending the hearing "unless it finds that visitation would be detrimental to the child." (§ 366.21, subd. (h); § 366.22, subd. (a).) Thus, these provisions are relevant to the court's February 7, 2014 order.

II. Father's Attempts To Challenge The Trial Court's Rulings By Appeal From The June 4, 2014 Order Are Untimely.

Having sorted out what arguments apply to what rulings, we conclude all of father's claims are untimely.

“ ‘[T]he scope of a party's right to appeal is completely a creature of statute.’ [Citation.] . . . To govern appeals in dependency proceedings, the Legislature has enacted Welfare and Institutions Code section 395, which provides: ‘A judgment in a

proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment’ A dispositional order constitutes an appealable judgment. [Citations.] Thus, pursuant to section 395, the juvenile court’s dispositional and following orders are directly appealable, with the exception of an order setting a selection and implementation hearing under section 366.26, which is reviewable only by petition for extraordinary writ.” (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1152-1153; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1704 [“[A]n order at the conclusion of the dispositional hearing . . . is a final judgment. [Citations.] [A]ny subsequent order is appealable as an order after judgment”].) “ ‘An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed.’ ” (*Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1396 (*Wanda B.*.)

This and other case law makes clear that father has raised untimely issues regarding the court’s July 8, 2013 and August 21, 2013 visitations orders. In *Wanda B.*, mother filed a writ petition from an order that a section 366.26 hearing be held, in which she challenged the juvenile court’s previous dispositional order denying her reunification services. The court found her petition was untimely. (*Wanda B., supra*, 41 Cal.App.4th at pp. 1395-1396.) Similarly, in *In re Jonathon S.* (2005) 129 Cal.App.4th 334, the appellate court found untimely a mother’s argument, made in her appeal from an order terminating her parental rights, that it should reverse earlier orders of the juvenile court for that court’s failure to give notice in accordance with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) throughout the proceedings. (*Id.* at pp. 339-342.)

Here, father and mother filed their notices of appeal from the court’s June 4, 2014 order terminating their parental rights within two weeks of that order. However, their notices were filed eleven months after the juvenile court’s July 8, 2013 dispositional order and ten months after the juvenile court’s August 21, 2013 six-month review order. These time periods were far beyond the 60 days normally allowed to appeal from such orders. (Cal. Rules of Ct., rule 8.406(a)(1).) Neither the record nor father’s briefs

disclose that any exception to that rule applies here. Therefore, father's arguments that the court's visitation rulings in its July 8, 2013 and August 21, 2013 orders were improper are untimely.

The Bureau also argues that father's claim regarding the visitation order contained in the juvenile court's February 7, 2014 order, in which the court also set a section 366.26 hearing, is untimely. The Bureau contends it was father's obligation to challenge it through traditional writ relief and, having not done so, that he has waived his ability to challenge it in an appeal from a section 366.26 order. Although the Bureau neglects to cite any legal authority for this proposition, we conclude it is correct.

An order terminating reunification services and setting a section 366.26 hearing is "not appealable at any time" unless "[a] petition for extraordinary writ review was filed in a timely manner" addressing "the specific issues to be challenged and supported that challenge by an adequate record," and "was summarily denied or otherwise not decided on the merits." (§ 366.26, subd. (I)(1)(A, (B), & (C); *In re X.Z.* (2013) 221 Cal.App.4th 1243, 1248-1249.) Section 366.26, subdivision (I) supports " "[t]he state's interest in expedition and finality" ' and the child's interest in "securing a stable, 'normal,' home," ' which goals would be compromised if the validity of issues addressed in the order terminating reunification services and setting the section 366.26 hearing remained undecided until after the court's adoption of a permanent plan." (*In re X.Z.*, *supra*, 221 Cal.App.4th at p. 1249; see Cal. Rules of Ct., rule 8.450 [setting out the various time limits for those seeking writ review].) "This rule applies to all orders . . . made contemporaneously with the setting of the hearing." (*Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 671, citing *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1023 [concluding that section 366.26, subdivision (I) applied to "all orders issued at a hearing at which a setting order is entered," including "contemporaneous, collateral orders"].)

Here, father did not seek writ review from the visitation order contained in the court's February 7, 2014 order. Therefore, any appellate claim regarding this order is also untimely.

Father does not directly address the Bureau's "untimeliness" arguments. Instead, he argues that we should excuse any forfeiture by him for failing to first raise his appellate claims below because his due process rights have been violated. Even putting aside our concerns about the untimeliness of his claims, we agree with the Bureau that we should reject this argument as well.

III. Father's Arguments Are Forfeited Because He Did Not Raise Them First Below.

As father acknowledges, in litigation, including dependency litigation, "[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court." (*In re Dakota H.* (2006) 132 Cal.App.4th 212, 221.) This rule "is intended to prevent a party from standing by silently until the conclusion of the proceedings" (*ibid.*) and instead to bring any errors to the attention of the trial court so it may correct them. (*People v. Saunders* (1993) 5 Cal.4th 580, 590.)

"[A]pplication of the forfeiture rule is not automatic. [Citations.] But the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue. [Citations.] Although an appellate court's discretion to consider forfeited claims extends to dependency cases [citations], the discretion must be exercised with special care in such matters. . . . Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance. (§ 366.26.)" (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Father argues that we should excuse any forfeiture because the juvenile court has violated his due process rights by denying him in-person visitations with M.W. without making the requisite detriment findings. He cites cases in which appellate courts, in reviewing appeals from section 366.26 hearings, have considered rulings that occurred earlier in the proceedings when a parent's due process rights were implicated: *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212 (*G.S.R.*); *In re Frank R.* (2011) 192 Cal.App.4th 532, 539 (*Frank R.*); *In re Gladys L.*, (2006) 141 Cal.App.4th 845, 849 (*Gladys L.*); and *In re P.A.* (2007) 155 Cal.App.4th 1197, 1210 (*P.A.*).

None of the cases father cites assists him. In *P.A.*, the appellate court found father had forfeited his appellate claim and did not consider it for that reason. (*P.A.*, *supra*, 155 Cal.App.4th at p. 1210.) In *Gladys L. and G.S.R.*, the appellate courts reversed orders terminating parental rights based on due process principles, ruling that the fathers' parental rights could not be terminated in the absence of petition allegations and judicial findings that the fathers were unfit parents. (*Gladys L.*, *supra*, 141 Cal.App.4th at pp. 847-849; *G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1210-1216.) Similarly, in *Frank R.*, the appellate court ruled that a father's parental rights could not be terminated when the juvenile court had deemed him to be a nonoffending father and lacked a valid basis for finding him to be an unfit parent. (*Frank R.*, *supra*, 192 Cal.App.4th at pp. 537-539.)

As indicated in these cases, “[p]arents have a fundamental interest in the care, companionship and custody of their children” and “have certain due process protections in juvenile dependency proceedings.” (*G.S.R.*, *supra*, 159 Cal.App.4th at p. 1210, citing *Santosky v. Kramer* (1982) 455 U.S. 745, 758.) Thus, due process requires that the state may sever a parents ties to his “natural child” only if the state’s allegations of unfitness are supported by clear and convincing evidence. (*Id.*; accord, *Gladys L.*, *supra*, 159 Cal.App.4th at p. 848 [California comports with *Santosky*’s constitutional due process requirements “because, by the time parental rights are terminated at a section 366.26 hearing, the juvenile court *must* have made prior findings that the parent was unfit”].)

However, this constitutional due process interest in proper allegations and judicial findings of “unfitness” prior to a section 366.26 hearing is not implicated here because father does not challenge those aspects of the proceedings below. Also, although he argues his lack of in-person visitations with M.W. impaired his counsel’s ability to effectively argue that M.W.’s permanent plan should be a guardianship, he does not contend the absence of any ruling that was a necessary predicate to the termination of his parental rights. Further, the Bureau did bring petition allegations against father pursuant

to section 300, subdivision (g) that were sustained by the juvenile court,⁶ which later found him to have unsatisfactorily participated in reunification services, none of which father challenges.

Also, neither the juvenile court nor the Bureau took any steps that might have lulled father to forgo pursuing in-person visitations, and we see no reason why he would not have done so if he desired to have them. This too is unlike the circumstances in the cases he cites. For example, in *G.S.R.*, the appellate court rejected the argument that the father had forfeited his appellate claim by not timely raising it first in the court below. It concluded father had no reason to do so given that the juvenile court had stricken the petition allegations against him, among other things. (*G.S.R.*, *supra*, 159 Cal.App.4th at p. 1213, fn. 6.) The *Gladys L.* court rejected a similar forfeiture argument. It found reversal was the only way to safeguard the father's rights in the absence of petition allegations and judicial findings that he was an unfit parent. (*Gladys L.*, *supra*, 141 Cal.App.4th at p. 849.) The *Frank R.* court concluded that the father did not forfeit his appellate claim because the juvenile court did not advise him of his writ rights when it set a section 366.26 hearing, having never ordered reunification services for him. (*Frank R.*, *supra*, 192 Cal.App.4th at p. 539.)

The circumstances here are more akin to those in *P.A.* There, the appellate court affirmed an order terminating a father's parental rights even though it concluded that the juvenile court had erred so that "the dependency proceedings were defective as to [the father] from the outset for want of proper notice." (*P.A.*, *supra*, 155 Cal.App.4th at p. 1208, 1213.) Nonetheless, the father failed to raise his appellate claim first in the juvenile court and submitted to that court's jurisdiction without objection, appearing repeatedly during the proceedings with counsel. (*Id.* at pp. 1208-1209.) He also never took steps to obtain custody of the child involved. (*Id.* at p. 1209.) The appellate court

⁶ Specifically, at its May 2, 2013 hearing, the juvenile court sustained the Bureau's petition allegations against father, including that "[a]s a result of the father's incarceration, he is unable to provide care, supervision or support for the child, [M.W.], thereby placing the child at substantial risk of harm."

rejected father's argument that his forfeiture should be excused because his due process rights had been violated. (*Id.* at p. 1210.) It concluded that, "[b]ecause defective notice and the consequences flowing from it may easily be corrected if promptly raised in the juvenile court, [the father] has forfeited the right to raise these issues on appeal." (*Id.* at p. 1209.)

Here, the record indicates that father had not seen M.W. for two years and did not have a significant relationship with M.W. when the dependency proceedings began. Although he professed that he wanted to take responsibility for M.W., the record does not indicate that he took steps to develop a significant relationship with her during the proceedings—such as by requesting in-person visitations or telephone contact after he was found to be a presumed father—beyond the several pieces of written correspondence he sent to her over the course of about a year. As part of its dispositional order, the court ordered that father's visitations with M.W. would be by written correspondence. This was consistent with the Bureau's recommendation, which was based on M.W.'s emotional fragility.⁷ Father and his counsel were present for these proceedings, but nothing in the record indicates father sought in-person visitations or objected to the court's order, nor does the record indicate that he did so regarding the court's subsequent two orders that continued this visitation arrangement. Instead, father requested only that his mother be allowed visits with M.W. upon the termination of his reunification services.

Further, M.W. is now a six-year-old girl who has lived for most of her life with her maternal grandparents, with whom she feels safe and happy and who have well cared for her. These grandparents now seek to adopt her. M.W. has been in the middle of a contentious relationship between families and the subject of dependency litigation that has now extended into its third year and a guardianship battle before that. In these circumstances, M.W.'s need for permanence and stability would be best served by ending this litigation now and allowing the maternal grandparents to adopt her. (*In re S.B.*,

⁷ For this reason, we find no fault with father's counsel's apparent decision not to object to the court's order, which was supported by the only evidence contained in the record, the Bureau's memorandum.

supra, 32 Cal.4th at p.1289 [considerations such as permanency and stability are of paramount importance].)

In short, we find no important legal or other issues involved in father’s claim and, therefore, decline to excuse his forfeitures. Given our rejection of father’s appeal, we also reject mother’s appeal, which depended on father’s appellate claim of reversible error entirely.⁸

We also are not persuaded that the juvenile court erred here. For example, the record does not contain reporter’s transcripts of the July 8, 2013 dispositional hearing, at which the court first issued its “visitations by written correspondence” order, or the August 21, 2013 six-month review hearing, at which the court ordered that this visitations arrangement continue. We presume trial court orders are correct unless the record shows otherwise. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141 [rulings presumed to be correct “ ‘ ‘ ‘on matters as to which the record is silent, and error must be affirmatively shown” ’ ’ ’]; *Statz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039 [“in the absence of a required reporter’s transcript and other documents, we presume the judgment is correct”].) Where an appellant provides no reporter’s transcript, we may presume the absence of error would be reflected by the transcript unless the error is otherwise apparent on the face of the record. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶¶ 4:51 to 4:52, pp. 4-13 to 4-14 [discussing Cal. Rules of Ct, rule 8.163].)

We also are not persuaded that the juvenile court violated sections 366.21, subdivision (h) and 366.22, subdivision (a) in issuing its February 7, 2014 visitation order when it set the section 366.26 hearing. As we have discussed, those provisions call for the court to “continue to permit” a parent to visit the child pending the hearing “unless it finds that visitation would be detrimental to the child.” (§ 366.21, subd. (h); § 366.22, subd. (a).) The court did not negatively alter father’s existing visitations arrangement in

⁸ Given this conclusion, we need not address the Bureau’s argument that mother lacks standing to raise these issues.

its February 7, 2014 order, but instead continued it. Nonetheless, given our conclusions, we do not further address, and we do not determine, the merits of the other arguments made by the parties.

DISPOSITION

The court's June 4, 2014 order is affirmed in its entirety.

STEWART, J.

We concur.

Richman, Acting P.J.

Miller, J.