

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

MATTHEW B., SR.,

Petitioner,

v.

THE SUPERIOR COURT OF DEL
NORTE COUNTY,

Respondent;

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Real Party in Interest.

A146817

(Del Norte County
Super. Ct. No. JVSQ 14-6112)

In this juvenile writ proceeding, Matthew B., Sr. (father) seeks extraordinary relief from the juvenile court order terminating reunification services with respect to his young son, Matthew B. (born August 2013), and setting a permanency planning hearing pursuant to section 366.26 of the Welfare and Institutions Code.¹ Father argues: (1) that the juvenile court committed constitutional error by refusing to place the minor with the paternal grandmother despite repeated requests by father to do so; and (2) that the juvenile court erred by refusing to transfer the case to father's county of residence in

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

order to facilitate reunification. In this abbreviated opinion,² we reject father's contentions and deny his petition.

I. BACKGROUND

Matthew B. was detained by the Del Norte County Department of Health and Human Services (Department) on August 17, 2014—when he was twelve months old—after his mother reportedly kicked him, slapped him, and placed a pillow over his face in an attempt to kill or quiet him. Mother, who has a chronic substance abuse problem, had used methamphetamine two days prior to the incident. A well child check on the day of detention revealed a large red mark on the minor's left side, bruising on his right arm and forehead, petechial bruising on his back, and severe diaper rash.³ In addition, the minor's home was found to be in poor condition, with trash, dirty diapers, cigarettes, ashtrays, and pocket knives throughout the residence. Father, who was not living with the family, has a lengthy history of drug-related criminal activity, with over 25 arrests since 1995. At the time Matthew was detained, father was incarcerated in the San Joaquin County Jail for possession of a controlled substance, possession of a concealed dagger, giving a false ID, and resisting arrest. These charges were subsequently dismissed, and father was transferred to the Ventura County Jail. Given his repeated involvement with the criminal justice system, father was unavailable to care for Matthew or protect him from his mother's conduct.

The Department filed a juvenile dependency petition on August 20, 2014, pursuant to subdivisions (a), (b), and (g) of section 300, summarizing the above allegations. Matthew was formally detained in foster care at the detention hearing the next day. Both the paternal grandmother and a maternal aunt and uncle indicated interest in caring for the minor. In fact, father argued for placement of the minor with the paternal

² Because father's petition raises no substantial issues of law or fact, we resolve this cause by abbreviated form of opinion as permitted by California Standards of Judicial Administration, section 8.1.

³ Subsequent hair follicle testing on the minor was positive for both methamphetamines and marijuana (THC).

grandmother and dismissal of the petition based on his status as the noncustodial parent. The juvenile court rejected this approach, ordering detention and instructing the paternal grandmother to work with the Department on placement. The court expressed concern, however, that the paternal grandmother's Kern County residence would be problematic if reunification services were offered, due to its distance from Del Norte County.

At the jurisdictional hearing on September 5, 2014, father again requested placement of Matthew with the paternal grandmother and dismissal of the petition. Mother, however, was requesting services in hopes of reunifying with the minor. In the end, both parents submitted the matter on the jurisdictional report and the court found that Matthew was described by subdivisions (a), (b), and (g) of section 300.

Thereafter, father—characterizing himself as a noncustodial and nonoffending parent—filed a formal motion at the September 19, 2014, dispositional hearing, again requesting that he be allowed to direct placement of the minor to the paternal grandmother's home in accordance with *In re Isayah C.* (2004) 118 Cal.App.4th 684. The Department, however, indicated in its dispositional report that it was also considering the maternal aunt and uncle as a placement and would likely place with them if they were approved because they were located close by and would be the better choice for facilitating reunification services with mother. At the dispositional hearing, the Department argued that placement with father as the noncustodial parent (and through him with the paternal grandmother) would be detrimental given father's extensive history of substance abuse and incarceration. The juvenile court denied father's motion, reasoning that father was not a reasonable custodial alternative as he was scheduled to be incarcerated for the duration of the reunification period and that placing the minor 12 hours from mother was unworkable from a reunification standpoint. Thereafter, the parents submitted the matter without further argument, the juvenile court declared Matthew to be a juvenile court dependant, the minor was formally removed from both mother and father based on a finding of detriment, and reunification services were ordered for each parent. Father did not appeal from these dispositional orders.

Because Matthew was younger than three years old at the time he was removed from parental custody, reunification services were to be provided for six months from the dispositional hearing, and, for no longer than 12 months from the date he entered foster care. (§§ 361.5, subd. (a)(1)(B), 361.49.) In advance of the March 2015 six month review, the Department filed a report recommending termination of reunification services and the setting of a hearing pursuant to section 366.26, so that a permanent plan of out-of-home placement could be developed for Matthew. Mother's whereabouts were unknown for the majority of the reunification period. Father had been transferred from county jail to state prison, but was anticipating early release immediately prior to the review hearing. He had partially complied with his reunification plan. The minor, for his part, was thriving in the care of the maternal aunt and uncle, and the adoptions specialist assigned to the case recommended that he remain in their care rather than being moved to the home of the paternal grandmother for permanent planning.

After father was released and paroled to Bakersfield, he filed a modification petition pursuant to section 388 seeking placement of the minor with the paternal grandmother and transfer of the case to Kern County so that he could more fully participate in reunification efforts. Despite father's change in circumstances, the Department continued to recommend termination of reunification services because it saw no substantial probability of return to father within the relevant timeframe if further services were provided. Father's petition was heard in conjunction with the six month review. At that time, father indicated that he would drop his request to transfer the case if reunification services were continued. The juvenile court indicated it was inclined to continue services for father. It also suggested mediation between father and the maternal aunt and uncle. After a continuance to mediate and develop an appropriate case plan, the juvenile court denied father's section 388 petition and ordered reunification services continued for both mother and father. Father did not appeal.

In its 12-month review report, the Department again recommended termination of reunification services. Although father had largely complied with his reunification plan, he had not taken advantage of all of the available opportunities to visit with his son, both

in person and via Skype. The Department was concerned about father's ability to maintain his progress once off parole, given his long history of substance abuse and criminal behavior. It also found it difficult to monitor father's behavioral changes since he lived so far away. However, upon learning that father was willing to relocate to Del Norte County once released from parole in order to pursue reunification, the Department changed its recommendation and supported further services for father, so long as he relocated and "actively and consistently" participated in services and visitation. The juvenile court adopted the revised recommendation of the Department at the 12-month hearing on September 11, 2015, terminating mother's services and continuing services for father.

Approximately one month later, however, the Department filed a modification petition under section 388 seeking to terminate father's services. Despite his promises in court, father had failed to relocate, failed to keep in contact with the social worker, and failed to be consistent with his phone visitation with Matthew. At the November 2015 hearing on the Department's section 388 petition, father testified that certain health problems requiring specialized treatment, a part-time job, and the loss of his phone kept him from relocating and making consistent reunification efforts. Father's attorney argued that things happened beyond father's control, and asked for two more weeks to determine whether relocation was still an option. The juvenile court, however, terminated reunification services and set a permanency planning hearing for the minor based on father's failure to actively engage in the services offered.

Father then filed a timely notice of his intent to file a writ petition, and the petition itself was filed on February 1, 2016. (Rules 8.450(e), 8.452.)

II. DISCUSSION

Father claims in his writ petition to be challenging "all orders not placing the child with Paternal Grandmother and not transferring the case to Kern County." It is clear, however, that father did not raise either of these issues in the juvenile court at the November 2015 hearing at which his services were terminated. Indeed, with respect to placement of the minor, his only concern at the November 2015 hearing was that, if he

waived further services, Matthew would remain with the maternal aunt and uncle. Generally, such a failure to raise an issue below forfeits a parent's right to pursue it in the appellate courts. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 & fn. 2 (*S.B.*), superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-413.) Indeed, although an appellate court has the discretion to excuse such forfeiture, it should do so "rarely and only in cases presenting an important legal issue." (*S.B.*, *supra*, 32 Cal.4th at p. 1293.) This is especially true in juvenile dependency cases, which involve the well-being of children and in which "considerations such as permanency and stability are of paramount importance." (*Ibid.*)

Moreover, in the present case, father has doubly forfeited the arguments he is now attempting to raise because, not only did he fail to bring them to the juvenile court's attention during the hearing here at issue, he also neglected to seek timely appellate review of his complaints at the appropriate point in these dependency proceedings. Generally speaking, "an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 (*Meranda P.*.) The purpose of this rule is to balance the parents' interest in the care and custody of their children with the children's interest in the expeditious resolution of their custody status. (*In re M.F.* (2008) 161 Cal.App.4th 673, 681 (*M.F.*.) It is applicable even when issues raised involve important constitutional and statutory rights. (*Meranda P.*, *supra*, 56 Cal.App.4th at p. 1151.)

Again, however, this forfeiture rule is not absolute. Rather, it must not be applied if "due process forbids it." (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208 (*Janee J.*.) Generally, the forfeiture rule does not infringe upon a parent's due process rights because of the numerous safeguards built into the dependency system. (*M.F.*, *supra*, 161 Cal.App.4th at p. 682.) Thus, application of the rule has only been found inappropriate on due process grounds when an error so "fundamentally undermined the statutory

scheme” that the parent was prevented from availing him or herself of its protections. (*Janee J., supra*, 74 Cal.App.4th at p. 208.) Moreover, “defects must go beyond mere errors that might have been held reversible had they been properly and timely reviewed.” (*Id.* at p. 209.)

Here, we question father’s characterization of himself as a nonoffending parent entitled to placement and pre-jurisdictional dismissal of the petition. Rather, jurisdiction appears to have been properly established based on serious allegations involving both parents’ neglect of the minor. Thereafter, father strongly advocated for placement with the paternal grandmother at disposition, but the juvenile court supported the Department’s inclination to place with alternate relatives, and father failed to appeal from the juvenile court’s jurisdictional findings and dispositional orders. Father again raised the placement issue at the six month hearing, along with his request to transfer the case to Kern County based on his parole to Bakersfield. Father, himself, however, agreed to drop the transfer request if his reunification services were continued. Moreover, he did not appeal from the six month review orders memorializing this compromise and maintaining Matthew in his current placement.

“Of the many private and public concerns which collide in a dependency proceeding, time is among the most important.” (*Meranda P., supra*, 56 Cal.App.4th at p. 1152, fn. omitted.) Although of questionable merit, father had the opportunity to press the issues he now raises through much earlier appeals in the dependency process. He chose not to do so, and Matthew (currently two-and-a-half years old) has thus resided with his prospective adoptive parents, the maternal aunt and uncle, for 15 months. We have not identified an important legal issue mandating review in this case. Moreover, we see nothing which prevented father from availing himself of the many protections provided to him by the Juvenile Court Law and certainly no error amounting to a denial of due process. We will therefore not now consider his stale claims.

III. DISPOSITION

The petition is denied on the merits. (See § 366.26, subd. (1)(1)(C), (4)(B).)
Because the permanency planning hearing in this matter is set for March 4, 2016, this opinion is final as to this court immediately. (Rules 8.452(i), 8.490(b)(2)(A).)

REARDON, ACTING P. J.

We concur:

RIVERA, J.

STREETER, J.