

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(San Joaquin)

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

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

C070966

(Super. Ct. No.
J03689)

Father J.M. appeals from a juvenile court order terminating his parental rights under Welfare and Institutions Code section 366.26.¹ Father contends his parental rights were terminated without due process because the juvenile court impermissibly

¹ Undesignated statutory references are to the Welfare and Institutions Code.

delegated to the minor's guardian, sole discretion over visitation, which resulted in father having limited visitation with the minor. Finding father has forfeited this claim, we affirm the orders of the juvenile court.

BACKGROUND

The juvenile court took jurisdiction over D.M. in April 2005 (when he was three years old), after finding D.M. and his half brother suffered extreme emotional and physical abuse at the hands of D.M.'s parents. Initially placed in a group home, D.M. was placed with his paternal aunt Sharon in March 2005.²

As a result of the abuse inflicted on the children, father was charged with three counts of felony child abuse. The San Joaquin County Human Services Agency (Agency) thus recommended the parents be denied services pursuant to section 361.5, subdivision (b)(6). In August 2005, the court ordered a permanent plan of guardianship for D.M., appointing Sharon as D.M.'s legal guardian. The court further ordered "visitation between mother, father and minor, as arranged and supervised by the legal guardian, Sharon"

² The Agency's report refers to Sharon as the "maternal" aunt, but in the reporter's transcript she refers to father as her brother. It is thus apparent she is actually D.M.'s "paternal" aunt, as noted in the parties' briefs.

In October 2005, the letters of guardianship were filed and the dependency action was terminated without prejudice. D.M. has since remained in the custody and care of Sharon.

In 2007, with the consent of D.M.'s therapist, Sharon allowed D.M. to visit with father, eventually including overnights and weekends. Visitation continued until June 2010, when father refused to return D.M. to Sharon, after which Sharon only permitted father to see D.M. at D.M.'s sporting events.

In May 2011, Sharon filed a section 388 petition seeking a section 366.26 hearing in order to change D.M.'s permanent plan from guardianship to adoption. The court granted Sharon's petition. Father, who was represented by counsel at the hearing, stated his objection -- he wanted visitation with D.M. The court ordered the Agency to perform an assessment and set the matter for a section 366.26 permanency hearing.

The Agency subsequently submitted its assessment to the court, recommending the permanent plan for D.M. be changed to adoption. Father objected to the recommendation and again asked for a more specific order for visitation, at least one hour a month. The court set the matter for a contested visitation hearing.

On December 1, 2011, the juvenile court heard testimony from father, father's wife, and Sharon. Following argument from counsel, the court determined there was no change of circumstances warranting a modification of the prior order granting Sharon sole discretion on the issue of visitation.

The parties appeared again before the juvenile court on March 14, 2012, for the section 366.26 hearing. The parties each submitted on the Agency's report, though father objected to the recommendation of adoption as a permanent plan for D.M. The juvenile court found by clear and convincing evidence it was likely D.M. would be adopted and it was in his best interests to terminate parental rights. Father appeals from this order, as well as the December 2011 order denying his request to modify the August 2005 visitation order, and the August 2011 order setting the section 366.26 hearing.

DISCUSSION

Father's sole claim on appeal is that the juvenile court wrongly delegated to Sharon control over visitation between D.M. and father. As a result, father contends, his parental rights were terminated "because he was unable to assert the statutory adoption exception of a meaningful parent-child bond." Father has forfeited his claim.

Although father claims he is appealing from the court's March 14, 2012, order terminating his parental rights (as well as the August 2011 and December 2011 orders), really he is claiming the juvenile court erred in August 2005 when the court gave Sharon total control over visitation between D.M. and father. The court's decision in December 2011 not to modify the August 2005 order is not a new order, but a continuation of the existing one.

Because the order giving Sharon control over visitation was issued in August 2005 as a term of the order setting guardianship as the permanent plan under section 366.26, it was an appealable order. (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 34 [any order entered after disposition is an appealable order].) A notice of appeal must be filed within 60 days after the juvenile court makes a final appealable order. (Cal. Rules of Court, rule 8.406.) There is no record father ever appealed from that order. Accordingly, he has forfeited the right to appeal that order now. (*In re Daniel K.* (1998) 61 Cal.App.4th 661, 667 [one cannot challenge prior orders for which statutory time has passed by appealing a more recent order].)

Even assuming the juvenile court's decision not to modify the August 2005 order was appealable as a new order following disposition, father cannot show how he was prejudiced by that order. (See *In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1419 [when appealing from a section 366.26 hearing, appellant must show prejudice from claimed error]; see also *In re Sarah H.* (1980) 106 Cal.App.3d 326, 330 [failure to consider appointment of minor's counsel without a showing of harm is not reversible error].) Any prejudice father suffered as a result of Sharon having discretion over visitation occurred in the nearly seven years following the August 2005 order of guardianship, not in the several weeks between the court refusing to modify the August 2005 order and the order terminating father's parental rights.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ ROBIE _____, Acting P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.