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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

In re B.L. et al., Persons Coming Under the Juvenile
Court Law.

PLACER COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

W. L.,

Defendant and Appellant.

C071165

(Super. Ct. Nos. 53001808,
53001809)

W.L. (father) appeals from the juvenile court's orders denying his petitions to change existing orders (Welf. & Inst. Code,¹ § 388) and terminating his parental rights as to minors Blake L. (Blake) and Paige L. (Paige). (§ 366.26.) He contends that: 1) the

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

juvenile court improperly delegated discretion to the minors as to whether visitation would occur; and 2) the court failed to advise him of his constitutional rights during the jurisdictional hearing and thus violated his right to due process.

As we will explain, because father's arguments are unsupported by the record and his claims are not cognizable on appeal at this stage in the process, we shall affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

The earliest document in the clerk's transcript was filed approximately a year and a half after these proceedings began. Although we are able to glean the proceedings' prior history from social workers' subsequent reports, we only detail that small portion of the history of this case which is relevant to disposition of the issues on appeal.

Detention from Guardians Through Termination of Parents' Services

In February 2010 the Placer County Department of Health and Human Services (the Department) filed section 300 petitions to remove Blake (born in August 1999) and Paige (born in October 2004) from the custody of their legal guardian, alleging that he and his roommate had physically abused the minors. The Department further alleged in amended petitions that mother knew of the abuse and failed to protect the minors, and that father had a continuing 14-year history of methamphetamine abuse, which rendered him incapable of caring for the minors.

The juvenile court held a detention hearing on February 11, 2010, and jurisdiction hearings on March 25, 2010, April 23, 2010, and April 29, 2010.

At the March 25, 2010 hearing, father made his first court appearance, with counsel. The juvenile court advised father of his constitutional rights; father said he understood them. Counsel acknowledged receipt of the amended petition, waived its reading, stipulated that father had been advised of his rights, and entered a denial of the petition.

At the April 23, 2010 jurisdiction/disposition hearing, the court noted that the second amended section 300 petition had just been filed and verified that all parties had received it. The court terminated the minors' legal guardianship. In mother's absence, her counsel acknowledged receipt of the new petition, waived its reading, stipulated that she had been previously advised of her rights, and re-entered her original denial. Father was present with counsel; after mother's counsel was heard and re-entered her denial, father's counsel said, "All the same" and entered a denial of the new petition on father's behalf. The court continued the hearing to April 29, 2010.

At the continued jurisdiction/disposition hearing on April 29, 2010, father was present and submitted on the Department's report as to the issue of jurisdiction. The court sustained the allegations of the second amended section 300 petition and made certain findings.² As to disposition, the court ordered the minors removed from their

² California Rules of Court, rule 5.682(f) (further undesignated rule references are to the California Rules of Court), which governs jurisdiction hearings in juvenile dependency proceedings, provides:

"After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court:

"(1) Notice has been given as required by law;

"(2) The birthdate and county of residence of the child;

"(3) The parent or guardian has knowingly and intelligently waived the right to a trial on the issues by the court, the right to assert the privilege against self-incrimination, and the right to confront and to cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the parent or guardian's behalf;

"(4) The parent or guardian understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission;

"(5) The admission, plea of no contest, or submission by the parent or guardian is freely and voluntarily made;

parents' custody and that the Department provide both parents with reunification services.

Although, as described *ante*, a review of the reporter's transcript of the April 29, 2010 hearing clearly informs that the parents *submitted* to jurisdiction, the minute order of that hearing did not contain any information concerning "Admissions/Submissions." Instead, apparently in error, it failed to include *any* information relating to the parents' advisement and waiver of rights or submission on jurisdiction.

At the 12-month review hearing on July 22, 2011, the juvenile court terminated the parents' services and set a selection and implementation hearing for November 18, 2011.

Details of Father's Visitation

The November 2, 2011, selection and implementation report recommended the termination of parental rights and the minors' adoption by their current foster parents.

The report described father's visitation history with both minors in detail. Father had consistently visited the minors once a week throughout 2010, leading to the November order for unsupervised visits. Thereafter, however, he began testing positive for methamphetamine and was arrested in January and jailed on a parole violation, causing the court to change the visitation order to supervised visits only. After his release, in February 2011 he appeared for a scheduled visit but refused to test before visiting, and left the visit before it began. He was re-arrested in March 2011. The record

“(6) There is a factual basis for the parent or guardian's admission;

“(7) Those allegations of the petition as admitted are true as alleged; and

“(8) The child is described under one or more specific subdivisions of section 300.”

The juvenile court made findings (1), (2), (7), and (8) on the record, but did not expressly make findings (3) through (6).

is unclear as to how long he was in custody after the March arrest; by June 2011 he was in a treatment facility, and asked to visit the minors. The Department arranged a visit in June; by that time, due to his repeated periods of incarceration, treatment, and lapsed contact with the Department, father had not visited with his children for nearly four months.

After father's June 2011 visit with both minors, Paige indicated she did not want to visit father again. During July 2011, Blake visited father, but Paige refused. In August, Blake visited with father multiple times and Paige once. In September, both minors visited multiple times with father, although the Department received information from the foster parents that Paige was consistently experiencing night terrors immediately before her scheduled visits with father. In October, father visited multiple times with Blake in a supervised setting and twice with Paige in a therapeutic setting.

First Section 388 Petition

On November 14, 2011, father filed a section 388 petition requesting the reinstatement of services. He alleged he was now clean and sober, attended AA/NA meetings and drug counseling, regularly tested negative for drugs, had not missed any recent visits, was in a stable and loving relationship, and had a home for the minors. The Department opposed the petition. At a hearing held on November 18, the court reset both the section 388 petition and the selection and implementation hearings for February 1, 2012.

Second Section 388 Petition

On February 1, 2012, father filed a second section 388 petition, requesting that the juvenile court vacate the underlying jurisdiction and disposition orders. Relying only on minute orders filed on April 29, 2010, the date of the consolidated jurisdiction/disposition hearing, he asserted that as to the operative section 300 petitions he was not properly advised of his rights, did not waive those rights, and did not validly submit to jurisdiction. The Department opposed the petition.

Ruling on the Second Section 388 Petition

The juvenile court held consolidated section 388/section 366.26 hearings from March 14, 2012, to May 4, 2012.

The court first addressed and denied father's second section 388 petition. After reviewing the reporter's transcripts from the relevant dates, offered by the Department, and hearing the parties' arguments, the court ruled that: 1) It did not have jurisdiction to entertain the petition because the jurisdiction/disposition hearing occurred more than 23 months before and the orders made then had not changed; 2) Father had not shown that his request to vacate those orders was justified by a change of circumstance or that vacating the orders would be in the minors' best interest;³ and 3) any failure to comply strictly with rule 5.682(f) at the final jurisdictional hearing on April 29, 2010, was harmless. Father was fully advised of his constitutional rights at the first jurisdictional hearing on March 25, 2010. At the next jurisdictional hearing, on April 23, 2010, father's counsel informally but unequivocally acknowledged that father had received the second amended section 300 petition, had waived an explanation of its allegations, and had been previously advised of his constitutional rights. On April 29, 2010, father elected to submit on the second amended petition, knowing his rights and having fully discussed the matter with counsel. Finally, father could not show prejudice because the court still found the allegations of the second amended section 300 petition true and father received a year of reunification services after the jurisdiction/disposition hearing.

Ruling on the First Section 388 Petition

The juvenile court then considered father's first section 388 petition. After hearing testimony from four witnesses, including father and social worker Susan Baumeister, the court denied the petition. The court found that although father had made

³ Father failed to even *allege* these two necessary ingredients to a successful section 388 petition in his moving papers.

efforts to deal with his substance abuse problem, he had not made such significant and consistent recent progress as to prove changed circumstances. Furthermore, he had not shown that reinstating reunification services would be in the minors' best interest because the minors currently did not want even therapeutic visitation and father did not have a parental relationship with either of them.

Ruling on the Selection and Implementation Hearing

After hearing further testimony from father and Baumeister, as well as two additional witnesses, the juvenile court terminated father's parental rights and ordered a permanent plan of adoption for the minors. Construing father's assertion that the Department and court had impermissibly interfered with his parental rights by restricting visitation as an attempt by father to assert the beneficial parental relationship exception to adoption, the court found that father had failed to prove regular and consistent visitation and contact with the minors, adding that they appeared to have "lost faith in [father] and have just moved on in their lives." The court also found that father had not played a parental role as to Blake for most of his life and had never done so as to Paige. Because of this lack of parent-child relationship between father and his children, the juvenile court found that the benefit of that relationship did not outweigh the benefit the minors would gain from a permanent adoptive home and terminated father's parental rights as to both minors.

DISCUSSION

I

Visitation

Father contends: "[The] court may not delegate discretion over whether visits occur to a third person." Under this heading, father asserts that the court's visitation orders improperly gave the minors the power to decide whether he could visit them.

This argument is not consistent with the subject of father's appeal--the denial of his section 388 petitions and the order terminating his parental rights.⁴ The juvenile court did not make, change, or sustain visitation orders as part of its denial of father's section 388 petitions.

So far as father asserts that the juvenile court failed to enforce visitation orders by requiring the minors to attend visits, he fails to show that he requested any timely relief (e.g., by filing a section 388 petition seeking strengthened visitation orders or the enforcement of existing orders). That fact distinguishes this case from *In re Hunter F.* (2006) 142 Cal.App.4th 1497, on which father relies. In that case, after complaining for over two years that the juvenile court failed to enforce visitation orders against the unwilling minor, the mother filed a section 388 petition seeking to vacate a permanency planning hearing and to reinstate reunification services "to allow her to actually partake of visitation she had been granted but never received." (*In re Hunter F., supra*, 142 Cal.App.4th at pp. 1505-1506 & fn. 5.) Here, father does not cite to anything in the record showing that he objected to the orders regarding visitation about which he now complains, and neither of his section 388 petitions raised any issues as to visitation--to the contrary, his first petition alleged that he had not missed any recent visits.

Finally, father fails to show how any possible error in restricting visitation could justify reversing the orders from which he appeals. To the extent that we stretch to read his briefing to argue that the juvenile court erred in declining to find the beneficial parental relationship exception to adoption applied (presumably because the juvenile court itself caused the situation that frustrated his establishing regular visitation), father

⁴ We feel compelled to note that father's opening brief presents no clear statement of the facts or the law. The arguments are disorganized, repetitive, and at times frivolous. Both father's and the Department's filings are replete with typographical and grammatical errors, making them difficult to read.

does not (and cannot) show the benefit of his parental relationship with his children outweighed their interest in a permanent adoptive home. We see no error.

II

Jurisdictional Finding

Father contends that the juvenile court's failure to advise him of his constitutional rights before making its jurisdictional finding in April 2010 violated his right to due process. Although sporadically couched as an appeal from the denial of father's second section 388 petition, by raising this contention father improperly seeks to appeal the juvenile court's jurisdictional finding and dispositional order, which have long since become final.

In a juvenile dependency proceeding, the dispositional order is the judgment for purposes of appeal. (§ 395; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1149-1150.) The jurisdictional finding is not separately appealable, but may be reviewed on an appeal from the dispositional order. (*In re Candida S.* (1992) 7 Cal.App.4th 1240, 1249; *In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1209.) Section 395 provides in pertinent part that: "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." (§ 395, subd. (a)(1).) "A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." [Citations.]" (*In re S.B.* (2009) 46 Cal.4th 529, 532.)

In general, the time for appeal of an order made in a dependency case is 60 days from the date of the order's pronouncement in open court. (*In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1253-1254.) If no timely appeal is taken from a dependency order, the issues determined by the order are res judicata. (*In re Matthew C.* (1993) 6 Cal.4th 386, 393.) Here, father did not timely appeal from the dispositional order.

In his opening brief, father does not address timeliness, but cites section 385, which provides: “Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.” (See also *Nicholas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 111 & fn. 16.) Even if we assume without deciding that section 385 authorized father to challenge the jurisdictional and dispositional orders *in the juvenile court* long after they became final, as we have explained *ante*, section 395 bars him from challenging those orders on an appeal from later, appealable orders. (*In re S.B.*, *supra*, 46 Cal.4th at p. 532)

In his reply brief, father cites section 395, as we have *ante*, and argues that he properly may appeal the denial of his section 388 petition wherein he challenged the jurisdictional finding. But, despite father’s argument to the contrary, section 395’s language providing for the appeal of a judgment in a proceeding under section 300 “in the same manner as any final judgment” does not confer on father the ability to appeal dependency judgments and orders *in perpetuity*, long after they have become final. (See *In re S.B.*, *supra*, 46 Cal.4th at p. 532; *In re Matthew C.*, *supra*, 6 Cal.4th at p. 393.) With his challenge to the denial of his petition, he seeks to do just that. He failed to allege in the juvenile court, and cannot credibly allege on appeal, that his jurisdictional challenge below was justified by a change of circumstance or that vacating the jurisdictional orders would be in the minors’ best interests--instead he outlines the procedural errors he alleges were committed by the juvenile court during the jurisdiction/disposition proceedings and then argues only that the alleged procedural error “jeopardized father’s parental rights.” We decline to address his untimely challenge to the juvenile court’s orders at the jurisdiction/disposition hearing.

DISPOSITION

The orders of the juvenile court are affirmed.

_____DUARTE_____, J.

We concur:

_____HULL_____, Acting P. J.

_____MURRAY_____, J.