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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.B.

on Habeas Corpus.

E055592

(Super.Ct.No. J236864)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Barbara A. Buchholz, Judge. Petition denied.

Mitchell Keiter, under appointment by the Court of Appeal, for Petitioner.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel, for Respondent.

T.B., the biological father of T.R., who was declared a dependent child (Welf. & Inst. Code, § 300) shortly after his birth, seeks relief by way of habeas corpus from an order terminating his parental rights to T.R. He asserts that his Fourteenth Amendment right to due process was violated by the delay of the San Bernardino Children and Family Services (CFS) in disclosing the results of his paternity tests. We deny the petition.

BACKGROUND

Father's petition for writ of habeas corpus¹ alleges that T.R. was born to two parents who were confined in state institutions. Although father was not available for immediate placement,² he requested that T.R. be placed with his sister.³ The court informed father it would reserve the issue of assessment of relatives, if it determined that he was the father. Although paternity testing was authorized by the court on February 16, 2011, CFS did not conduct the testing until seven months later, and when it received the results, which indicated father was the biological father of T.R., it did not notify father.

On the date of the section 366.26 hearing, father's trial counsel was advised that father was the biological parent of T.R.⁴ At the section 366.26 hearing, father's parental rights were terminated, freeing T.R. for adoption by his nonrelative caretakers.

¹ Father also filed an appeal from the judgment terminating his parental rights in case No. E054925. We rely on the appellate record in that appeal where the allegations of the petition are not specific or are overbroad.

² Actually, as an alleged father, he did not have a right to placement; only a presumed father is entitled to custody. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451; see also *In re J.H.* (2011) 198 Cal.App.4th 635, 644.)

³ He made this request at the hearing for the selection and implementation of a permanent plan, at which his parental rights were terminated. Previously, he had made general statements that he had relatives who could provide care for the child.

⁴ The declaration of father's trial counsel indicated that there were discussions of the paternity test results at the section 366.26 hearing, but the reporter's transcript of that hearing contains no mention of the paternity test results.

DISCUSSION

Father asserts his Fourteenth Amendment right to due process was violated by CFS's failure to disclose material evidence, specifically the test results showing his biological paternity. He argues that the court had indicated a willingness to consider his sister for placement if he was found to be T.R.'s father. However, the reporter's transcript shows the juvenile court actually reserved on the issue of assessing relatives until after the test results were available. He asserts that CFS's failure to timely provide him with the results of the paternity test deprived him of material evidence, in violation of his due process rights, citing *Brady v. Maryland* (1963) 373 U.S. 83, 87 [83 S.Ct. 1194, 10 L.Ed.2d 215]. We disagree.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. (*Brady v. Maryland, supra*, 373 U.S. at p. 87.) However, in criminal prosecutions, the Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense. (*Kyles v. Whitley* (1995) 514 U.S. 419, 436-437 [115 S.Ct. 1555, 131 L.Ed.2d 490], citing *United States v. Bagley* (1985) 473 U.S. 667, 673 [105 S.Ct. 3375, 87 L.Ed.2d 481].)

Even in criminal prosecutions, there is no general constitutional right to discovery. (*Schaffer v. Superior Court* (2010) 185 Cal.App.4th 1235, 1243.) In dependency cases, discovery is governed by civil law principles. Father was provided with copies of the

social worker's reports which formed the basis for the court's findings at the jurisdictional and dispositional phase. He has not shown how the paternity results would have aided in the defense of the dependency petition.

Further, father has cited no authority which applies *Brady* principles to juvenile dependency proceedings. Juvenile dependency proceedings are not criminal proceedings. (*In re M.C.* (2011) 199 Cal.App.4th 784, 812, citing *In re Malinda S.* (1990) 51 Cal.3d 368, 381, superseded by statute on another ground in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1240-1242.) They are special proceedings of a civil nature, governed by their own rules and statutes. (*In re A.Z.* (2010) 190 Cal.App.4th 1177, 1180-1181, citing *In re R.R.* (2010) 187 Cal.App.4th 1264, 1275.) In the absence of a dispositive provision in the Welfare and Institutions Code, we look to the Code of Civil Procedure for guidance. (*In re R.R., supra.*) We conclude that *Brady* principles do not apply to dependency proceedings.

We acknowledge that a parent in a dependency proceeding is entitled to discovery and that there is an affirmative duty to disclose favorable evidence. (*Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042.) We also acknowledge that an alleged father in a dependency proceeding has a due process right to a meaningful opportunity to qualify as a presumed father. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 601.) However, father has never challenged the jurisdictional basis for the dependency or the order removing T.R. from his custody, and he made no request to postpone the section 366.26 hearing upon receipt of the test results in order to seek a modification of his

paternal status.

Father's real complaint is that the late delivery of the paternity test results deprived him of his right to have T.R. placed with his sister. He employed the vehicle of the habeas petition in order to present the documentary evidence that was not presented in the trial court at the hearing where his parental rights were terminated. The paternity test results were not mentioned at that hearing and did not relate to the issue of adoptability which is the primary purpose of a section 366.26 hearing.

Further, father has cited no authority which stands for the principle that a parent has a due process right to have a child placed with a relative, and Welfare and Institutions Code section 361.3 indicates there is no such right. That section only requires a juvenile court to give preferential consideration to a request by a relative for custody of a child when a child is removed from the parents' custody. (§ 361.3, subd. (a).) The section goes on to state that the court's duty to inquire about relatives is not to be construed as a guarantee that the child will be placed with any person so identified. (§ 361.3, subd. (a)(8).) Thus, there is no "right" to relative placement.

Father's due process right to discovery under the Fourteenth Amendment was not violated by CFS's failure to provide him with the results of the paternity testing in a timely manner.

DISPOSITION

The petition for writ of habeas corpus is denied.

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RAMIREZ

P.J.

We concur:

RICHLI

J.

KING

J.