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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.M. et al.,

Defendants and Appellants.

E056104

(Super.Ct.Nos. J240105 & J240106)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant J.F.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant M.M.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

This is an appeal by J.F. (hereafter father) and M.M. (hereafter mother) from the juvenile court's order under Welfare and Institutions Code section 366.26,¹ terminating their parental rights to their then-two-year-old daughter, A. Father claims the juvenile court erred in denying him reunification services at the combined jurisdiction and disposition hearing, and setting the selection and implementation hearing, based on its finding that father was the biological but not the presumed father of A. Mother joins the issue father raises and does not assert any issues or arguments of her own. Father concedes although he was advised of the need to file a petition for writ of mandate to challenge the findings the juvenile court made at the combined jurisdiction and disposition hearing, he did not file that writ. Father urges various reasons why this court should excuse his oversight. The record on appeal does not support father's assertion that he was precluded from filing a writ petition. Because he failed to raise the issues in a petition for writ of mandate, father has forfeited his right to raise the presumed father claim in this appeal. Mother also did not file a writ petition to challenge the order setting the selection and implementation hearing. For that reason and because she does not raise any issues or arguments of her own, but instead relies entirely on the claims father asserts, we will also conclude her appeal is meritless.

¹ All further statutory references are to the Welfare and Institutions Code unless indicated otherwise.

FACTUAL AND PROCEDURAL BACKGROUND

We only briefly recount the pertinent factual and procedural details of the juvenile court proceeding in order to provide a context for this appeal. We take most of those details from the parties' respective briefs.

San Bernardino County Department of Children and Family Services (CFS) filed a section 300 petition with respect to A. and her older sister F. (who is not a subject of this appeal) after mother (who is addicted to narcotics) left the children with a friend whom the petition alleged was an "inappropriate" caretaker. A police officer arrived at the friend's home around 10:00 a.m., apparently in response to an anonymous phone call, and arrested the friend for possession of narcotics. According to a social worker, both girls looked as if they had not had a bath for two to three weeks. A. was strapped in her car seat where she apparently had been since the evening of the previous day. The police officer arrested mother for child endangerment and on two outstanding warrants. At the time of her arrest, mother admitted she had consumed about a pint and a half of vodka. She acknowledged that she had been homeless for some time and had been going from house to house with the two children.² Father, who apparently is only the father of A., was in jail awaiting trial on pending felony charges at the time this dependency proceeding was initiated. CFS placed both A. and F. with a maternal aunt.

² Mother had six other children, all of whom had been removed from her care through previous section 300 proceedings. Mother's parental rights to five of the children had been terminated and they all had been adopted; the sixth child was placed in a legal guardianship with the maternal grandmother. Mother's seventh child died from unknown causes at the age of three months while in mother's care and while mother allegedly was under the influence of methamphetamine.

At the August 3, 2011, detention hearing, father was still in custody. The juvenile court found a prima facie case for detaining the children out of the home, and removed both girls from the custody of mother and father. The court ordered paternity testing of father.

At the date originally set for the combined jurisdiction and disposition hearing, father and mother were both present although still incarcerated. As a result of the paternity test, father was determined to be A.'s biological parent. The social worker recommended reunification services be denied to both parents and that the juvenile court set the section 366.26 hearing. Because he claimed to be bonded with A., father asked that the disposition hearing be set as contested.

Mother waived her right to be present at that hearing and also waived her right to be represented by an attorney. By the time of the hearing, mother had been sentenced to serve two concurrent terms of two years in state prison on her pending felony charges. Father, in turn, had rejected an offer in his pending felony case. Father testified at the hearing, among other things, that he had been living with mother when she became pregnant with A., although he was not present at the child's birth because he was incarcerated. Father was released from custody five months after A.'s birth. He went to live with mother. After about four months, father was returned to custody for six months. Father was out of custody for about two and half months before he was again arrested. During those two months he, mother, and A. lived in a motel, and father paid for food, rent and "stuff like that." Father admitted that he had spent less than half of A.'s life with the child.

At the conclusion of the contested disposition hearing, the juvenile court, among other things, denied reunification services to both father and mother and set the section 366.26 hearing. The juvenile court advised father of the need to file an extraordinary writ if he wanted to challenge the juvenile court's order, that the necessary form was available from the clerk's office, and that the notice of intent to file a writ petition had to be filed within seven days of the date of the hearing. Father did not file a writ petition.

Father was present at the selection and implementation hearing, although still in custody and he did not know when he would be released. The juvenile court terminated the parental rights of both mother and father and ordered adoption as the permanent plan.

DISCUSSION

Father challenges the finding at the combined jurisdiction and disposition hearing that he was a biological but not a presumed father of A. We will not address that issue because father has not preserved it for review on appeal.

Section 366.26, subdivision (1)(2) prohibits review on appeal from an order terminating parental rights of any issue that was not first raised in a petition for extraordinary writ review. Father contends he was denied his right to seek writ review because after the November 7, 2011, combined jurisdiction and disposition hearing, he contacted the court and asked for the necessary form but did not receive a response.

The clerk's transcript includes a handwritten letter from father date stamped "received" by the juvenile court on November 15, 2011, in which he asks for the court minutes from the November 7, 2011, and "the form to fill out for appealing actions of the court." The record does not contain any evidence that indicates whether the clerk's office

responded to father's letter. Father claims his request was ignored, as evidenced by the fact that the record includes a copy of the form the court sent to mother but does not include any indication that the court sent father the requested form.

Mother was not present at the hearing at which the juvenile court set the section 366.26 hearing. Therefore, the court was required to notify her by mail of her right to file a petition for writ of extraordinary review. (§ 366.26, subd. (1)(3)(A).) Father was present in court and advised of his obligation to seek writ review by filing a notice of intent within seven days of the date of the hearing. Therefore, the absence of evidence in the record to show the court responded to father's request does not necessarily mean the clerk's office did not respond. Moreover, father was also present at the selection and implementation hearing at which the juvenile court terminated his parental rights to A., yet he did not complain that he had been precluded from filing a writ petition either by the clerk's failure to respond to his letter or by his attorney's failure to comply with his directions.³ The record on appeal does not support father's claim that he was somehow prevented from filing a writ petition to challenge the juvenile court's order setting the selection and implementation hearing.

Father was advised that the only way to challenge the order setting the selection and implementation hearing, and thereby preserve any appellate issues, was to file a petition for extraordinary writ within seven days of the combined jurisdiction and

³ Father does not expressly claim that he asked his trial attorney to file a writ petition. Instead, he states that his attorney "failed to file a writ petition," and that failure "should not be held against father."

disposition hearing. Father failed to file that writ, and therefore he has forfeited his right to challenge any order or ruling made at that hearing, including the purportedly erroneous paternity finding.

As previously noted, mother does not raise any issues of her own, and instead simply joins in father's claims. Father's issues do not apply to mother, and in any event we conclude he has not preserved them for review on appeal. Therefore, we must also reject mother's appeal.

DISPOSITION

The order terminating the parental rights of mother and father is affirmed.

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MCKINSTER
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.