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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.B., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

E058183

(Super.Ct.No. J231883)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, Dawn M. Messer, Deputy County Counsel, for Plaintiff and Respondent.

This is an appeal by G.B. (father) from the trial court's order under Welfare and Institutions Code section 366.26¹ terminating his parental rights to his teenage daughter, G. Father's only claim is that he was not present at the selection and implementation hearing, and by conducting the hearing without father the trial court committed prejudicial error because if he had been present he would have pointed out that the court had not complied with the notice provisions of the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.) We disagree with father and therefore will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The only details pertinent to our resolution of father's claim on appeal are that the San Bernardino County Department of Children and Family Services (CFS) filed a section 300 petition with respect to father's 10-year-old daughter G. in March 2010 after G. reported to her stepmother that father had been touching her over and under her clothing, and had made her touch his penis, since she was six years old. After this disclosure, G.'s stepmother left father, taking G. and the couple's two other children with her. At the detention hearing, the trial court, among other things, removed G. from father's custody, placed her in the temporary care and custody of CFS, and confirmed G. would remain "detained" with her stepmother.

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

Eventually, CFS placed G. with her maternal grandmother in Mississippi. At the 12-month review hearing, the court terminated reunification services for father. Initially the permanent plan was a permanent planned living arrangement with the maternal grandmother, but after she indicated she was willing to adopt G., CFS recommended adoption by the maternal grandmother as the permanent plan.

Father was in prison by the time of the contested permanent plan review hearing in October 2012. His attorney advised the court father would remain incarcerated “for quite some time. And he waived his appearance at anything—at any further hearings in this matter.” When the trial court indicated CFS was now recommending adoption as the permanent plan, and the court intended to set a section 366.26 hearing, father’s attorney said, “I don’t think [father] would oppose it.” The trial court set the selection and implementation hearing for February 6, 2013.

At that hearing, father’s attorney told the court that father wanted to attend the hearing. In a letter father sent to his attorney he said, “I would like to make amend and ask for forgiveness. I owe the kids the truth and to let them know why im [*sic*] not around.” Counsel for CFS pointed out G. lived out of state and would not be at the hearing. Counsel also indicated because he was in custody, father would have to waive his presence. Father’s attorney reminded the court father had “waived his presence at all future hearings. There was a waiver the first part of this proceeding. Now, whether or not this [letter] operates as a waiver or a rescinding of the waiver, I don’t know.” After

father's attorney confirmed he had not had any contact with father other than the letter and father had not indicated he intended to contest the hearing, the court included father's letter as an attachment to the social worker's report and then terminated father's parental rights to G.

DISCUSSION

As noted previously father contends that the trial court committed prejudicial error by conducting the section 366.26 hearing without father. We will not address the particulars of that claim. Even if we were to agree with his assertion that his letter operated to rescind his earlier waiver of his right to be present, father has not demonstrated error or prejudice.

Father does not claim that he intended to contest termination of his parental rights to G.² Instead he asserts that if he had been present at the hearing he could have argued that CFS had not complied with its obligation under the ICWA to give notice. Father had claimed he had Indian ancestry, and had completed the pertinent form, the ICWA-020, on which he checked the box that indicated he might have Indian ancestry. At the detention hearing, the trial court asked father directly, "[D]o you have any American-Indian ancestry in your bloodline?" Father said, "Yes." Father said he did not know what tribe, and explained he would have to ask his family. In response to the court asking who in his

² He also does not argue he was deprived of an opportunity to apologize and make amends. Apparently father recognizes such an argument would be meritless. G. did not attend the hearing, so even if father had a right to be present for the purpose of making amends, he could not have achieved that goal. Father can still make amends to his children, either in person after he is released from prison, or through another means of communication, such as a phone call or letter.

family would have the best information, father said, “My aunt.” The trial court then told father to provide the aunt’s name and phone number to the social worker. Father said, “Okay.” The record on appeal includes the notice CFS sent to various tribes indentifying father, his mother, and his grandmother as possible tribe members. The record also includes CFS’s ICWA declaration of due diligence and related certified mail receipts.

Father does not claim on appeal that he complied with the trial court’s direction to provide CFS information about his aunt. Instead, he contends CFS did not comply with its obligation of due diligence because the declaration identifies only father. That declaration of due diligence discloses which tribes CFS contacted on behalf of which CFS client. In this case father is the client, and CFS identifies him as such in the ICWA due diligence declaration. However, as previously noted, the actual notices CFS sent to the tribes identified father, his mother, and grandmother as possible tribe members. In short, father has not demonstrated that CFS failed to comply with its duty under the ICWA to give notice of an action pending with respect to a possible Indian child. In fact, the record discloses just the opposite. The actual notice CFS sent to various Indian tribes identifies not only father, but also his mother, and his grandmother as potential tribe members.

Because the facts do not support father’s claim, he has failed to demonstrate either error or resulting prejudice. His claim is meritless.

DISPOSITION

The order terminating father's parental rights is affirmed.

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McKINSTER
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.