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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.D. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.D., Defendant and Appellant.	E061623 (Super.Ct.Nos. J249144, J249145) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

B.D. appeals from an order terminating parental rights to his two daughters — J.D., now aged eight, and C.D., now aged five. The issues he is raising, however, relate exclusively to an order rendered some four months earlier, denying a "changed circumstances" petition under Welfare and Institutions Code section 388 (section 388). Those issues are not cognizable in this appeal. Accordingly, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In April 2013, San Bernardino County Children and Family Services detained seven children who all had the same mother. They ranged in age from four months to nine years.

B.D. (father) was the presumed father of two of these children — C.D. and J.D. (sisters). At the time, he was in prison.

The five younger children (including C.D.) were placed in a foster care with a couple called the M.'s; the two older children (including J.D.) were placed in a different foster home.

In June 2013, at the jurisdictional/dispositional hearing, the juvenile court found jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)), failure to support (*id*., § 300, subd. (g)), and abuse of a sibling (*id*., § 300, subd. (j)). It ordered reunification services for the mother. It denied reunification services for the father, based on a finding that he was incarcerated and that reunification services would be detrimental to the sisters. (Welf. & Inst. Code, § 361.5, subd. (e).)

In January 2014, the two older children were placed with the M.'s; thus, all seven children were placed together. The M.'s indicated that they wanted to adopt them.

In March 2014, the father filed a section 388 petition.[1] He asked that the sisters be returned to his custody upon his then-upcoming release or, alternatively, that he be given reunification services. After hearing argument, the juvenile court denied the section 388 petition; it found an insufficient showing that circumstances had changed or that granting the petition would be in the best interest of the sisters. It proceeded to hold a six-month review hearing, at which it terminated reunification services and set a hearing under Welfare and Institutions Code section 366.26 (section 366.26).

The father promptly filed a notice of appeal from the order denying his section 388 petition, as well as a notice of intent to file a writ petition.[2] However, we dismissed the appeal because it had been taken from an order setting a section 366.26 hearing. Meanwhile, the father's attorney notified us that he had found no issues and thus he would not be filing a writ petition.

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[1] Between December 2013 and January 2014, the father wrote three letters to the juvenile court, discussing the progress he was making in various treatment programs in prison. When the parties filed their briefs in this appeal, they both assumed that the juvenile court treated these letters as a section 388 petition. Meanwhile, however, the record was augmented with the father's actual section 388 petition, which cast doubt on this assumption. In light of our resolution of the appeal, we may assume, without deciding, that the father's letters were part of the section 388 petition.

[2] The records in the previous appeal as well as in the previous writ proceeding have already been incorporated into the record in this appeal. (See Cal. Rules of Court, rule 8.147(b).)

In May 2014, the father was released from prison. In July 2014, he filed a second section 388 petition. In it, he asked that the sisters be transitioned back into his custody. After hearing argument, the juvenile court denied this section 388 petition. It found that granting the petition would not be in the sisters' best interest. It proceeded to hold a section 366.26 hearing, at which it found that the sisters were adoptable and terminated parental rights.

The father filed a notice of appeal from the order denying his second section 388 petition.

II

THE FATHER'S FIRST SECTION 388 PETITION

The father contends that the juvenile court erred by summarily denying his first section 388 petition.

This contention, however, is not cognizable in this appeal. Previously, the father filed an appeal and a notice of intent to file a writ petition; both arose out of the order denying the first section 388 petition. We dismissed the appeal, because the order denying the first section 388 petition had been made as part of an order setting a section 366.26 hearing. (Welf. & Inst. Code, § 366.26, subd. (*l*); *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1022-1024.) And ultimately the father failed to file a timely writ petition.

This failure to file a timely writ petition bars any further challenge to the order. (Welf. & Inst. Code, § 366.26, subd. (*l*).)

III

THE FATHER'S SECOND SECTION 388 PETITION

The father does not appear to contend that the juvenile court erred by summarily denying his second section 388 petition. Quite the contrary — he asserts, "[T]he focus of this appeal is on [the father]'s first petition." The caption of his argument explicitly specifies that he is attacking the order denying the first petition. (See Cal. Rules of Court, rule 8.204(a)(1)(B).) Accordingly, he has forfeited any challenge to the denial of his second petition.

Any such contention would lack merit in any event, because the father's counsel conceded below that granting the petition would not be in the best interest of the children. Thus, even assuming the juvenile court did err by denying the petition on this ground, the error was invited. (See generally *In re G.P.* (2014) 227 Cal.App.4th 1180, 1193, 1196.)

IV

DISPOSITION

The order appealed from is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.