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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re MICHAEL R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL R.,

Defendant and Appellant.

F062401

(Super. Ct. No. 09CEJ601482-1A)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. David A. Gottlieb, Judge.

Kapetan Brothers Law Firm, Marc N. Kapetan and Peter N. Kapetan, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Janet E. Neeley, Deputy Attorneys General, for Plaintiff and Respondent.

In a juvenile wardship petition, minor Michael R. was charged with a registrable sex offense crime. The minor filed a motion demanding a jury trial, and the juvenile court denied the motion. He appeals this court order.

We dismiss the appeal because the order is not appealable. The minor asks, in the alternative, that we construe his appeal as a writ petition. We will grant his request but deny the petition.

FACTUAL AND PROCEDURAL HISTORIES

On December 9, 2010, the Fresno County District Attorney filed a single-count juvenile wardship petition against Michael R.. (Welf. & Inst. Code, § 602, subd. (a).)¹ It was alleged that, on January 31, 2010, the minor committed a lewd and lascivious act upon the body of Jane Doe, a child under the age of 14 years, by use of force in violation of Penal Code section 288, subdivision (b)(1).

On January 21, 2011, the minor filed a motion seeking an order granting him the right to a jury trial. He argued that the lifetime residency restriction imposed on registered sex offenders amounts to punishment. Therefore, he was entitled to a jury trial on the criminal charge, conviction of which would require him to register as a sex offender. He relied on *People v. Mosley* (2010) 188 Cal.App.4th 1090, review granted January 26, 2011, S187965 (because residency restriction imposed on registered sex offenders is punitive, facts supporting imposition of discretionary sex offender registration must be found by jury), and *In re J.L.* (2011) 190 Cal.App.4th 1394, review granted March 2, 2011, S189721 (due process and equal protection require jury trial before state may impose residency restrictions on juvenile).

The People responded that the issue of jury trial was not ripe for consideration. Further, the People argued, even if the residency restriction imposed on registered sex

¹Subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

offenders amounts to punishment, the appropriate remedy would be to enjoin enforcement of the residency restriction with respect to persons convicted as minors—not to provide jury trials to minors in all cases where a residency restriction is a possible consequence.

On March 4, 2011, the juvenile court denied the minor’s motion for a jury trial. The court observed there was no longer any citable case authority for the minor’s position because, since his motion was filed, the California Supreme Court had granted review of both *People v. Mosley, supra*, 188 Cal.App.4th 1090 and *In re J.L., supra*, 190 Cal.App.4th 1394. The court also believed the request was premature because the minor was “three steps removed from facing the consequences of registration pursuant to Penal Code section 290.008.” The court explained, “[1] There has not been an adjudication finding the allegations true. [2] There has not been a disposition committing the minor[] to the Department of Juvenile Justice and [3] there has not been an order requiring registration for life.”

At a hearing on April 6, 2011, counsel for the minor discussed having an evidentiary hearing on the residency restriction. Counsel suggested presenting evidence from the Fresno Unified School District and the Planning Department of the City of Fresno in order to show the restrictions on where a registered sex offender could live in the city. The court declined to hold the hearing. In doing so, it clarified its previous ruling: “This Court still is of the mind that the right to jury trial in this minor’s particular case can’t really be recognized until after there has been a true finding and after the registration requirements have been actually imposed, which would also require a commitment to the Department of Juvenile Justice. Because [the minor has not] crossed those two thresholds yet, the Court feels it’s premature to have a hearing as to whether or not the registration requirements are either overwhelming[ly] punitive in nature or not. However, the Court also is of the mind that either the requirements are overwhelmingly punitive in a statewide manner or they are not.” The court concluded, “So even were we

at the stage that the minor had been—or the petition had been found true and a commitment was being made to DJJ, the Court wouldn't feel that it would be appropriate or necessary to have the type of hearing contemplated by counsel.”

On April 28, 2011, the minor filed a notice of appeal, appealing the denial of his “Demand for Jury Trial.”

DISCUSSION

On appeal, the minor argues he is entitled to a jury trial because (1) the consequences of finding the allegations of the petition true include lifetime burdens unrelated to the rehabilitative goals of juvenile law, and (2) denying him a jury trial would violate equal protection. Before reaching these arguments, however, we must determine whether the juvenile court's order denying his demand for a jury trial is appealable.

“It is well settled that the right to appeal is wholly statutory and that a judgment or order is simply not appealable unless expressly made so by statute. [Citations.] ‘The orders, judgments and decrees of a juvenile court which are appealable are restricted to those enumerated in section 800’ [Citations.]” (*Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 788-789.) Section 800, subdivision (a), provides in relevant part, “A judgment in a proceeding under Section 601 or 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment.”

“In general, a ‘judgment’ is ‘the final determination of the rights of the parties in an action or proceeding.’ (Code Civ. Proc., § 577.) More specifically, the ‘judgment’ in a juvenile court proceeding is the order made after the trial court has found facts establishing juvenile court jurisdiction and has conducted a hearing into the proper disposition to be made. (Welf. & Inst. Code, §§ 725 [‘After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as

follows’], 706 [contemplating that, after jurisdictional finding, court shall consider relevant evidence and render ‘judgment and order of disposition’]; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196 [dispositional order is ‘the “judgment”’ under statute governing appeals in dependency proceedings]; *In re Melvin S.* (1976) 59 Cal.App.3d 898, 900.)” (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307-1308.)

The minor acknowledges that his appeal is not from a final judgment, but he “believes that his right to demand a jury trial attaches at the filing of a petition against him that alleges an offense ... that carries with it the possibility of lifetime registration as a sex offender ... and lifetime residency restrictions pursuant to such registration.” His belief, however, does not address the issue of appealability. Assuming for the sake of argument that the right to demand a jury trial arises at the time a petition alleging a registrable offense is filed, it does not follow that the alleged denial of that right is immediately appealable. As we have discussed, a court order is not appealable unless made so by statute.

The minor also cites Penal Code section 1259, which provides that, “Upon an appeal taken by the defendant, the appellate court may review ... any question of law involved in any ruling, order, instruction, or thing whatsoever said or done at the trial” This statute does not help the minor because it defines the scope of review of matters that are properly before the appellate court; it does not purport to confer appellate jurisdiction to nonappealable issues. Obviously, Penal Code section 1259 cannot be read to allow immediate appeal of “any question of law involved in any ruling,” or the requirement of a “judgment” in section 800 would be meaningless.

No other authority is offered for the minor’s position that the juvenile court’s order denying his demand for a jury trial is appealable. Without statutory authorization for appeal from an order denying a demand for a jury trial, we lack jurisdiction to consider the appeal. (*See In re Mario C., supra*, 124 Cal.App.4th at p. 1309 [absent

statutory authorization to appeal, appellate court lacks jurisdiction to entertain appeal from order deferring judgment].)

In the alternative, the minor requests review of the court's order by writ petition.² "An extraordinary writ will issue only when we 'find that it is ... "necessary to protect a substantial right and [then] only when it is shown that some substantial damage will be suffered by petitioner if said writ is denied." [Citation.]' [Citations.]" (*In re Mario C.*, *supra*, 124 Cal.App.4th at p. 1312.) The minor does not explain how denial of a writ at this point in the proceedings will cause him to suffer substantial damages. If the juvenile court finds the allegations of the petition to be true, and if, as a consequence, the minor is required to register as a sex offender, he may file an appeal or habeas petition and raise the same arguments he offers now. We do not see how requiring the minor to wait until he has an appealable judgment or a cognizable harm would cause him to suffer substantial damages.

Further, there is no citable authority supporting the minor's position that he has a right to a jury trial because the lifetime residency restriction of Penal Code section 3004, subdivision (b), constitutes punishment. Whether the facts supporting an order requiring a defendant to register as a sex offender must be decided by a jury is an issue currently pending before the California Supreme Court. (*People v. Mosley*, *supra*, 188 Cal.App.4th 1090, review granted Jan. 26, 2011, S187965.) We see no compelling reason to take the extraordinary step of intervening in an ongoing juvenile delinquency proceeding in order to decide an unresolved legal issue that soon will be addressed by our Supreme Court. For these reasons, we deny the writ petition.

²The minor cites California Rules of Court, rules 8.450, 8.452, and 8.456. These rules, however, specifically apply to writ petitions to review orders under sections 366.26 or 366.28, which deal with termination of parental rights in juvenile dependency proceedings. The rules do not apply to the minor's case, which is a juvenile delinquency proceeding.

DISPOSITION

The appeal is dismissed. The alternative petition for writ relief is denied.

Wiseman, Acting P.J.

WE CONCUR:

Cornell, J.

Franson, J.