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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ALYSSA J. et al., Persons Coming
Under the Juvenile Court Law.

TULARE COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIO S.,

Defendant and Appellant.

F063663

(Super. Ct. Nos. JJV065065C, JJV065065D,

JJV065065E)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Tulare County. Charlotte A. Wittig, Commissioner.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Detjen, J., and Franson, J.

Mario S. (father) appealed from a juvenile court's permanency planning hearing order terminating parental rights (Welf. & Inst. Code, § 366.26) to three of his children, who ranged from 15 months to 5 years of age.¹ After reviewing the entire record, father's court-appointed appellate counsel informed this court she had found no arguable issues to raise in this appeal. Counsel requested and this court granted leave for father to personally file a letter setting forth a good cause showing that an arguable issue of reversible error does exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.)

Father has since written this court requesting a second chance. He makes the following claims: he filed a section 388 petition, which was denied; he was not advised by his attorney "as much to help [him];" he visited his children while a social worker was "doing her best for [the] children to get adopted;" he learned a lot from the programs that were provided; and if he cannot prevail on appeal, his family should be able to adopt the children.

On review, we conclude none of father's claims amounts to a good cause showing of any arguable error by the juvenile court.

PROCEDURAL AND FACTUAL HISTORY

Father and mother's significant history of domestic violence and unresolved substance abuse problems placed the children at a substantial risk of physical harm. As a result, the children were detained and ordered removed from parental custody in the fall of 2010. The court ordered a case plan for father consisting of many reunification services including: a batterer's intervention program, an approved parenting class, substance abuse services, and random drug testing. The court also ordered twice weekly visits between father and the children.

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

Over the following six months, father did not want to take responsibility for his part in the domestic violence. While he appeared willing to participate in services, he did not follow through and attend the services in his case plan. At most, father regularly attended parenting classes. Also, despite the visitation order, father was frequently absent. As time passed, he appeared for only one visit a month.

At a June 2011 status review hearing, the juvenile court found both parents had not participated in their case plans and failed to make substantial progress in the court-ordered services. As a result, there was a substantial probability that the children might not be returned to the parents within another six months' time. Accordingly, the court terminated reunification services and set a section 366.26 hearing to select and implement permanent plans for each of the children (permanency planning hearing).

In October 2011, father filed a petition under section 388 "to stop the adoption paper work, and to get our full parental rights back." He did not identify what order he felt should be changed or what had changed after the judge's order that would change the judge's mind. He did claim the relief he requested would be better for the children because:

"We have learned how to become better persons, respect each other, stay away completely from past behaviors, to adjust our personal lives, so our children are the first priority with patience, love, the importance of family and grandparents['] values in a healthier environment. We have been in a Christian church for the last year participating on a regular services and the community food distribution in Tipton."

The children's mother filed an identical petition. Neither petition was supported by any documentary evidence. The court summarily denied each petition, stating that the parents' requests did not state new evidence or a change of circumstances, a requirement under section 388, subdivision (a), and the proposed change of order did not promote the children's best interest.

The court eventually conducted the permanency planning hearing for the children in November 2011. It was undisputed that the children were likely to be adopted. Father, as well as the children's mother, testified in opposition to adoption as the permanent plan. Upon submission, the juvenile court found the children likely to be adopted and terminated parental rights.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is up to an appellant to raise claims of reversible error or other defect and present argument and authority on each point made. If an appellant does not do so, the appeal should be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Having considered each of father's claims as discussed below, we conclude none of father's claims amounts to a good cause showing of any arguable error by the juvenile court.

I.

It is true that father filed a section 388 petition, which the juvenile court summarily denied. However, father fails to make any showing that the juvenile court erred in doing so.

II.

To the extent father claims he was not advised by his attorney "as much to help [him]," father fails to explain what he means by that or how it affected the outcome of his children's dependency.

III.

Father's statement that he visited his children while a social worker was "doing her best for [the] children to get adopted" also does not amount to an arguable claim of error by the juvenile court. The fact that a parent visits his children while a social worker

is concurrently planning for a permanent plan of adoption does not prevent a juvenile court from terminating parental rights.

At a permanency planning hearing, the court's proper focus is on the children to determine whether it was likely each of them will be adopted and if so, order termination of parental rights. Once reunification services are ordered terminated, the focus shifts to the needs of the children for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If, as in this case, the children are likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

It is the parent's burden to show that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) One of those exceptions involves the following two-part test: did the parent maintain regular visitation and contact with the child, and would the child benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)

For the beneficial relationship exception to apply,

“the parent-child relationship [must] promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: ‘balance ... the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

In this case there was no such proof. At most, father testified at the permanency planning hearing that he visited his children once a month and never missed a visit. The

children appeared happy when they saw him. During their visits, father played games and brought them little gifts. Father loved the children and felt he had a close relationship with them. He also believed it would be beneficial for their relationship to continue. There was, however, no evidence of a substantial, positive emotional attachment on the children's part towards father or that the children would be greatly harmed if the court terminated parental rights.

IV.

Father's claim that he learned a lot from the programs provided for him also does not compel reversal. He overlooks both the record and the law in this regard. First, the juvenile court previously found father failed to make substantial progress in his court-ordered case plan and consequently terminated the services. In addition, at the permanency planning hearing, a parent's interest in the care, custody, and companionship of the child is no longer paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) As previously mentioned, the court's focus shifts to the needs of the children for permanency and stability. (*In re Marilyn H., supra*, 5 Cal.4th at p. 309.)

V.

Last, father urges that if he cannot prevail on appeal, his family should be able to adopt the children. Who may adopt the children was not an issue, however, for the court to resolve at the permanency planning hearing. Instead, the question was simply whether the children were likely to be adopted. (§ 366.26, subd. (c)(1); *In re Marilyn H., supra*, 5 Cal.4th at p. 309.)

DISPOSITION

This appeal is dismissed.