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

ANTHONY G.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Real Party in Interest.

F064423

(Super. Ct. No. JJV064893B)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte Wittig, Commissioner.

Anthony G., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, for Real Party in Interest.

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* Before Wiseman, Acting P.J., Levy, J. and Franson, J.

Anthony G. (father) in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's order setting a Welfare and Institutions Code section 366.26 hearing as to his three-year-old son, Benjamin.¹ Father has submitted two petitions for this court's consideration, neither of which comport with the procedural requirements of section 366.26, subdivision (e) and California Rules of Court, rule 8.452. Accordingly, we will dismiss this extraordinary writ proceeding.

PROCEDURAL AND FACTUAL HISTORY

Benjamin's mother has a history of substance abuse, which has placed the child at substantial risk of suffering serious physical harm or illness. In particular, mother was breastfeeding 23-month-old Benjamin in 2010 while she was a regular user of illicit substances and was abusing alcohol. Although she was aware of the effects of her drug and alcohol consumption might have on him, she continued to use drugs and alcohol. Consequently, in the summer of 2010, real party in interest Tulare County Health and Human Services Agency initiated juvenile dependency proceedings for Benjamin.

Meanwhile, in January 2010, father was apparently arrested and charged with robbery. He later pled no contest to the charge and, in June 2010, was sentenced to serve a three-year prison term. He was in custody at the North Kern State Prison Reception Center in Delano, California, and had an expected release date of August 21, 2012. Prior to father's arrest, he purportedly lived with Benjamin and his mother.

At an initial hearing, the juvenile court found father to be Benjamin's presumed father and appointed counsel to represent father. The juvenile court also directed counsel to prepare a transport order for father to attend a jurisdictional hearing in the matter.

Father's counsel promptly prepared and the court executed a transport order for father's appearance at the jurisdictional hearing. On September 22, 2010, father waived,

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

in writing, his right to attend the hearing, although he did request that counsel appear for him at the hearing.

The juvenile court conducted a combined and uncontested jurisdictional and dispositional hearing in October 2010. At the hearing, the court exercised its dependency jurisdiction over Benjamin (§ 300, subd. (b)) and removed him from mother's custody. The court also found that father did not request custody. Although the court ordered reunification services for mother, it denied services for father. It found father was a person described in section 361.5, subdivision (e)(1), in that he was incarcerated, and there was clear and convincing evidence that offering reunification services to father would be detrimental to Benjamin.²

At the request of father's counsel, and over the objection of county counsel and Benjamin's attorney, the court did order reasonable, supervised visitation between father and Benjamin consistent with the rules of any facility in which he was housed.

Father did not appeal from the juvenile court's dispositional orders.

Soon after the dispositional hearing, Benjamin was placed with his maternal grandparents. Over the following year, the maternal grandmother provided father with writing supplies and he wrote monthly to Benjamin. Benjamin also visited father, once in March 2011 and another time in July 2011.

Despite approximately 18 months of services, Benjamin's mother failed to participate regularly and make substantive progress in court-ordered treatment programs.

² "In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors." (§ 361.5, subd. (e)(1).)

In the case of a child as young as Benjamin, services could be limited to six months. (§ 361.5, subd. (a).)

Instead, her progress had been minimal. These circumstances led the court in February 2012 to terminate reunification services for her and to set a hearing pursuant to section 366.26 (setting order) to select and implement a permanent plan for Benjamin. At the February 3, 2012 hearing, the court also ordered its clerk to mail notice to father of his writ remedy at his last known address.

In a letter dated February 16, 2012, and addressed to the superior court as well as each attorney assigned to the dependency proceedings, father wrote:

“I AM THE FATHER OF THE CHILD IN THIS MATTER.

“I HAVE WROTE SEVERAL LETTERS TO ATTORNEY SIGMUND [father’s court-appointed counsel] AT THE ADDRESS ABOVE, AND HE HAS FAILED TO RESPOND IN ANY WAY, I HAVE ATTEMPTED TO CALL, AND HAVE HAD NO SUCCESS CONTACTING ATTORNEY SIGMUND.

“I HAVE NOTIFIED ALL PARTIES OF MY CHANGE OF ADDRESS SEVERAL TIMES, AND YET, MY MAIL FROM THE COURT AND COUNTY COMES 3 TO 4 WEEKS LATE DUE TO THE FORWARDING FROM ONE PRISON TO ANOTHER.

“I HAVE JUST RECEIVED A NOTICE THAT I HAD 7 DAYS FROM THE 3rd OF FEBRUARY TO FILE AN APPEAL NOTICE. I RECEIVED THE NOTICE YESTERDAY THE 15TH OF FEBRUARY.

“I HAVE NOT BEEN NOTIFIED IN TIME TO DISPUTE OR APPEAL THE MATTER OF MY SON, WHOM I LOVE, AND WANT TO BE HIS LEGAL FATHER AND PARENT WHEN I AM RELEASED FROM PRISON.

“I HAVE ALWAYS WANTED TO RETAIN MY FATHERLY RIGHTS, BUT THE ATTORNEY APPOINTED TO REPRESENT ME IN THIS MATTER HAS MADE ZERO EFFORTS TO REPRESENT ME IN ANY WAY.

“IT IS PREPOSTEROUS THAT THE PARTIES INVOLVED WOULD USE SUCH TACTICS TO CIRCUMVENT THE LAWS TO DEPRIVE ME OF MY PARENTAL RIGHTS.

“ENCLOSED YOU WILL FIND COPIES O THE FILLED OUT FORMS. PLEASE FILE THEM.”

The letter contained a return address for father at the California Correctional Institution in Tehachapi.

The clerk of the superior court filed father's notice of intent and forwarded it, a copy of father's letter, and a premature writ petition signed by father to this court.³ In his premature petition, father claimed the setting order was erroneous because of "Faulty Service, Ineffective Assistance of Counsel." His alleged factual basis was "Appointed attorney faile[d] to contact or consult with petitioner at any time." He also marked boxes asking that this court "vacate [the setting order], order that reunification services be provided, order visitation between the child and petitioner and return or grant custody of the child to petitioner."

After the record of the juvenile court proceedings was prepared and served, this court granted father 10 days, pursuant to California Rules of Court, rule 8.452(c), within which to file his petition. The day following his deadline father filed a request for a 30-day extension of time. This court denied the request and stated it would review the premature petition previously filed. Father has since submitted a petition in which he neither explains why the setting order was erroneous nor summarizes the factual basis for his petition. He asks that this court direct the juvenile court to order visitation between the child and him. He also attaches to his petition a 14-page memorandum of points and authorities, which summarizes numerous legal authorities related to juvenile dependency proceedings, appeals, and extraordinary writs. The memorandum does not explain the relevance of any of the authorities cited nor does it set forth any argument(s) pertaining to the setting order. It simply ends with the statement "[w]herefore, the petitioner respectfully requests the court to grant this Petition for an Extraordinary Writ."

³ The petition was premature in that father submitted it before the record of the dependency proceedings was filed in this court (Cal. Rules of Court, rule 8.452(c)(1)).

DISCUSSION

Inadequate Petition

The purpose of extraordinary writ proceedings such as these are to facilitate review of the juvenile court's order setting a section 366.26 hearing to select and implement a permanent plan for the child. (Cal. Rules of Court, rule 8.450(a).) The juvenile court's decision is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) This court will not independently review the record for possible error. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Instead, it is up to petitioner to raise one or more claims of reversible error or other defect and present argument and authority on each point made. Specifically, a petition for extraordinary writ must substantively address the specific issues to be challenged and support that challenge by an adequate record. (§ 366.26, subd. (l)(1)(B).) Neither of father's petitions satisfies these requirements. Accordingly, we will dismiss this writ proceeding.

In father's premature petition, he alleges the setting order was erroneous due to faulty service and ineffective assistance of counsel. However, father does not either substantively address these specific issues or support his challenge by an adequate record. To the extent he claims "faulty service," we liberally construe those words to refer to service of the writ remedy notice the juvenile court clerk sent him once the court set the section 366.26 hearing. (Cal. Rules of Court, rule 8.452(a) [petition to be liberally construed].) However, father fails to show how the service was faulty. If father means the clerk should have mailed the writ remedy notice to him at California Correctional Institution at Tehachapi, he fails to point to any evidence in the record that California Correctional Institution at Tehachapi was his last known address. In addition, he fails to establish how he was prejudiced assuming the notice should have been mailed to him at California Correctional Institution at Tehachapi. Moreover, given that this court has treated his notice of intent as timely, father is in no position to claim prejudice. As for

father's claim of ineffective assistance of counsel, he fails to point out any evidence in the record to support his allegation, let alone explain once again how he was prejudiced.

Were we to consider the accusations father set forth in his February 16th letter in conjunction with the premature petition, we would still conclude father's premature petition remains inadequate. Not only are his accusations unsubstantiated by the record, father fails to establish how the juvenile court erred by setting a permanency planning hearing once Benjamin's mother failed to reunify.

Furthermore, the second petition father recently submitted neither cures the inadequacy of his premature petition nor is it adequate standing alone. It does not substantively address the specific issues to be challenged and support that challenge by an adequate record. (§ 366.26, subd. (1)(B).)

DISPOSITION

The petition for extraordinary writ is dismissed. This opinion is immediately final as to this court.