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

RICARDO D.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Real Party in Interest.

F064961

(Super. Ct. No. JJV066115B)

OPINION

THE COURT*

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

Ricardo D., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Jason Chu, Deputy County Counsel, for Real Party in Interest.

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

Ricardo D., the alleged father of two-year-old Nicholas, 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 hearing¹ as to Nicholas. Ricardo requests that this court direct the juvenile court to place Nicholas in his custody. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In March 2012, then 20-month-old Nicholas (born July 2010), and his then two-year-old half-brother Samuel, were removed from the physical custody of their temporary guardian (hereafter "the guardian") by the Tulare County Health and Human Services Agency (agency). The guardian assumed custody of the children when their mother was incarcerated, however, soon became overwhelmed by their aggressive behavior and could no longer care for them.

The mother told a social worker from the agency that U.A. was Nicholas's father. U.A. told the social worker that he cared for Nicholas until he was incarcerated in 2011. He was uncertain if he was Nicholas's father and requested paternity testing. The guardian provided the agency Nicholas's birth certificate and the space provided to designate the father's name was blank.

The agency filed a dependency petition on behalf of Nicholas and Samuel, naming U.A. as Nicholas's father, without indicating his specific paternity status.

In April 2012, the juvenile court conducted the detention hearing. Mother did not appear. U.A. appeared and was appointed counsel. He submitted a Statement of Paternity Form (JV-505) in which he declared that he believed he was Nicholas's father and requested that the juvenile court enter a judgment of parentage. U.A. further declared in the JV-505 that he signed a voluntary declaration of paternity in July 2010, that Nicholas lived with him from birth until the age of six months and that he told various family members that Nicholas was his child. The juvenile court advised U.A.

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

that if it entered a paternity judgment, U.A. would be considered Nicholas's presumed father and that he would be rescinding his request for paternity testing. After U.A. confirmed his understanding and assented, the juvenile court found him to be Nicholas's presumed father.

The guardian also appeared at the detention hearing and informed the juvenile court that she was not contesting the detention and that her guardianship would expire the next day. The juvenile court ordered the children detained from the guardian and the mother and set the jurisdictional hearing for April 25, 2012.

On April 10, 2012, Ricardo told an agency social worker that he may be Nicholas's father and requested paternity testing. He said that he met the mother in October or November of 2009 and saw her every day for approximately three months. Mother told Ricardo that she was pregnant and that the child was his. They remained in a relationship on and off until Nicholas's birth. After mother gave birth to Nicholas, she told Ricardo that Nicholas was not his child and she was also in a relationship with U.A. They severed ties when Nicholas was approximately two to three weeks old. Ricardo only saw Nicholas one time after that when he encountered mother and Nicholas in a store. He said he and his wife wanted custody of Nicholas if he was the father.

On April 17, 2012, a social worker interviewed the mother who said she was married for 18 years and her divorce was finalized in August 2011. She said she had been separated from her husband for six years and was married when Nicholas was conceived and born. She said she met Ricardo while she was still in a relationship with U.A. She did not believe that Ricardo was Nicholas's father but said there was a very small chance that he was.

On April 25, 2012, Ricardo appeared at the jurisdictional hearing and completed a JV-505 in which he stated he did not know if he was Nicholas's father and requested paternity testing. The juvenile court advised Ricardo that, based on the financial information he provided, it did not appear that he qualified for court-appointed counsel.

The juvenile court set aside its paternity judgment as to U.A. given evidence that the mother was married to another man when Nicholas was born and U.A.'s failure to produce a voluntary declaration of paternity. The juvenile court invited briefing on the paternity issue and set a hearing on May 17, 2012, to adjudicate paternity and jurisdiction (combined hearing). The juvenile court advised Ricardo that it could not appoint counsel for him but strongly suggested that he retain counsel.

On May 17, 2012, the juvenile court convened the combined hearing and deemed U.A. and Ricardo Nicholas's alleged fathers and ordered paternity testing for them. Ricardo appeared unrepresented and waived his trial rights. The juvenile court advised him that the agency was not recommending reunification services for the mother and that, as Nicholas's alleged father, he was not entitled to them. The juvenile court further advised Ricardo that if it denied mother services, it would set a hearing to select a permanent plan for Nicholas and that the permanent plan options were adoption, legal guardianship or a planned permanent living arrangement. In the meantime, if the paternity test results did not exclude Ricardo as Nicholas's biological father, the juvenile court explained to Ricardo that it would not automatically take action on the results. Instead, Ricardo would have to bring a motion before the juvenile court to modify any of its orders based on new information concerning his paternity.

At the conclusion of the combined hearing, the juvenile court adjudged the children dependents of the court and set the dispositional hearing for later in the month, as mother had not been served a copy of the agency's report. The juvenile court told Ricardo he could, but was not required to, appear at the hearing. Finally, the juvenile court set a section 366.26 hearing for September 2012 and advised Ricardo of his right to file a writ petition.

In an addendum report for the dispositional hearing, the agency advised the juvenile court that, a week before, it completed and processed a genetic testing referral for Ricardo. On May 31, 2012, at the dispositional hearing, the juvenile court denied

mother reunification services and asked the agency to expedite the paternity testing. This petition ensued.

DISCUSSION

Ricardo appears on this writ petition in propria persona and it is unclear from the petition on what grounds he argues the juvenile court erred.² He asserts that neither the juvenile court nor the agency was aware that he could be Nicholas's biological father and he informs this court that, at the time he filed the writ petition, he was waiting to undergo paternity testing. To the extent that Ricardo argues that the juvenile court and/or the agency should have identified him as a potential father sooner or delayed him in elevating his paternity status, he fails to show that on this record, as we now explain.

Section 316.2, subdivision (a) requires the juvenile court to inquire of the mother and any other appropriate person at the detention hearing, or as soon as practicable thereafter, as to the identity and address of all possible presumed or alleged fathers. A presumed father is one who has neither legally married nor attempted to marry the mother of his child, but who physically received the child into his home and openly held the child out as his natural child. (Fam. Code, § 7611, subd. (d).) An alleged father is one "who may be the father of a child, but whose biological paternity has not been established" (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.) Until the alleged father establishes his paternity, he has no legal interest in the child (*In re O.S.* (2002) 102 Cal.App.4th 1402, 1406 (*O.S.*)) and is not entitled to reunification services. (§ 361.5, subd. (a).) Due process requires only that he be given notice and an opportunity to appear, assert a position, and attempt to change his paternity status. (*In re Paul H.* (2003) 111 Cal.App.4th 753, 760.) It is the alleged father's responsibility to obtain paternity testing. (*O.S., supra*, 102 Cal.App.4th at p. 1410.)

² Real party in interest asks this court to dismiss Ricardo's petition as facially inadequate because it does not strictly conform to the content requirements of California Rules of Court, rule 8.452 (a) and (b). We decline to do so in this case.

In this case, mother was not present at the detention hearing for the juvenile court to inquire of her as to the identity of all possible fathers for Nicholas. However, the agency previously conducted such an inquiry of mother and she did not identify Ricardo as a possible father. Consequently, the court's paternity inquiry at the detention hearing was limited to the information provided by mother.

Further, as soon as Ricardo made it known that he could be Nicholas's father, the agency questioned mother about her relationship with him. In addition, the juvenile court vacated its paternity judgment as to U.A. and ordered paternity testing for Ricardo. The court also advised Ricardo how the case would proceed, notified him of the hearing dates, and recommended that he retain an attorney. The court also informed Ricardo that it was his responsibility to take legal action if the paternity test results established his biological paternity by probability.

We find no error in the juvenile court's exercise of its duty to identify Ricardo as a possible father and give him the opportunity to elevate his paternity status. To the extent, Ricardo believes that his biological paternity could have been ascertained sooner, nothing prevented him from pursuing paternity testing on his own.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.