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

DAVID H.

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F065196

(Super. Ct. No. 515548)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

David H., in pro. per., for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County
Counsel, for Real Party in Interest.

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

David H. 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 his four-year-old daughter, D.H. He contends the juvenile court's jurisdictional findings and dispositional and placement orders are erroneous. He also contends the juvenile court erred in setting the section 366.26 hearing without his personal appearance. We conclude that David forfeited all but the latter contention which we conclude has no merit and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In July 2009, then one-year-old D.H. and her four-year-old half brother, C.W., were taken into protective custody by the Stanislaus County Community Services Agency (agency) after their mother failed to enter drug treatment arranged by the agency. At the time, David was incarcerated in connection with the shooting of a 22-month-old child and had felony convictions for domestic violence and child cruelty. He also had a child welfare history in another county which resulted in the loss of two of his older children.

The juvenile court exercised its dependency jurisdiction over the children, ordered reunification services for their mother and denied David reunification services (§ 361.5, subds. (b)(10), (11) & (e)(1)), which he did not challenge on appeal. The children were placed with David's father and stepmother, but were removed in October of 2009 because David's father and stepmother did not comply with the placement requirements. As there were no other relatives qualified for foster placement, the children were placed in nonrelative foster care. In February 2010, the mother gave birth to a daughter, J.P.

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

In July 2010, at the 12-month review hearing, the juvenile court returned D.H. and C.W. to their mother under family maintenance and the following September dismissed dependency jurisdiction.

In March 2011, the agency took all three children into protective custody because the mother was abusing prescription medication and not taking medication for her mental disorder and had, in essence, relinquished J.P. to the care of a grandparent. In a petition filed under section 300, the agency alleged these facts as to the mother, as well as an allegation that David was incarcerated on charges stemming from the drive-by shooting of the 22-month-old child who the agency alleged was killed as a result of the shooting. In fact, the child survived. The agency also alleged that, in 2006, David's two older children were removed from his custody in San Joaquin County, in part because he physically abused them.

In May 2011, the juvenile court sustained the allegations and ordered reunification services for the mother but denied them for David. (§ 361.5, subd. (b)(10) & (11).) The juvenile court also ordered the agency to arrange in-person visitation or telephone contact for David depending on whether he was in local custody. David did not appeal from the dispositional order denying him reunification services.

Over the course of the ensuing year, the mother was afforded reunification services and the agency arranged monthly in-person visits between David and D.H. at the Public Safety Center in January through March 2012. D.H., however, did not enjoy the visits. She did not acknowledge or answer David when he appeared on the other side of the glass partition and refused to pick up the telephone to speak to him. Instead, she sat with her arms folded looking down and left when David asked her if she wanted to leave. Outside of his presence, she resumed her talkative nature.

In January 2012, David was sentenced to 62 years to life in prison after a jury convicted him of attempted murder, committing a drive-by shooting and two counts of

assault with a deadly weapon and being a felon in possession of a firearm. According to a news release, the child victim of the shooting still carried a bullet in his liver from the incident. That same month, the juvenile court granted J.P.'s father sole legal and physical custody over her.

In June 2012, the juvenile court conducted the 12-month review hearing as to D.H. and C.W. David appeared through his attorney who objected to the agency's recommendations which were to terminate reunification for the mother and set a section 366.26 hearing to establish a permanent plan of adoption. At the conclusion of the hearing, the juvenile court followed the agency's recommendations. This petition ensued.

DISCUSSION

David contends the juvenile court erred in removing D.H. from his parents without good cause, denying him reunification services and setting the section 366.26 hearing without his personal appearance. He contends the juvenile court's rulings were based on erroneous information that he was convicted of murdering a child and that his older children were removed from him because of child abuse and neglect. Finally, he contends the agency removed D.H. from his parents for unfounded reasons and refused to place her there again without explanation.

We conclude that David forfeited the right to challenge the state of the evidence or the juvenile court's rulings by failing to raise an objection in the juvenile court or challenging the rulings by a timely appeal. In addition, we affirm the juvenile court's setting order issued without David's personal appearance. Our analysis follows.

The issues David raises stem from two separate periods of dependency, July 2009 to September 2010 and March 2011 to June 2012. It was during the first period of dependency that D.H. was placed with and then removed from David's parents because they did not comply with the placement requirements. Further, neither David nor his

parents legally challenged D.H.'s removal by filing a section 388 petition seeking a change in the juvenile court's removal order. With respect to David's contention that the agency was remiss in not placing D.H. with his parents after she was removed from parental custody the second time, there is no evidence on the record that his parents requested placement of her.

As to David's contention that the record contains the false information that he was convicted for murdering a child and that he physically abused and neglected his older children, we note that those allegations were contained in the dependency petition which the juvenile court sustained in May 2011. By challenging the factual basis for the allegations, David is challenging the juvenile court's jurisdictional findings as to those allegations. However, David did not object to the truth of the allegations at the jurisdictional hearing. Consequently, he forfeited his right to challenge it on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Moreover, even if David had preserved his right to challenge the truth of the allegations and even though the allegation that David murdered a child *was* unfounded, he could not establish on this record that he was prejudiced by the false allegation because there was sufficient other undisputed evidence upon which the juvenile court could find that D.H. was a child described under section 300 for jurisdictional purposes.

As to David's contention that the juvenile court erred in denying him reunification services, we conclude that he forfeited his right to challenge the juvenile court's denial order by failing to raise it on a timely appeal from the May 2011 dispositional order. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.)

Finally, we conclude the juvenile court did not err in setting the section 366.26 hearing without David's personal appearance. An incarcerated parent has a statutory right to be present only at the dispositional hearing and section 366.26 hearing. (Pen. Code, § 2625.) Therefore, David had no statutory right to be present at the 12-month

review hearing. Moreover, he received meaningful access to the juvenile court through his appointed counsel. (*In re Axsana S.* (2000) 78 Cal.App.4th 262, 269.) We find no error on this record.

DISPOSITION

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