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

CHARLES Y.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

F065536

(Super. Ct. Nos. JJV065639A, B, C)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jennifer Shirk, Judge.

Charles Y., in pro. per., for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

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

Charles Y. (petitioner) 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 366.26¹ hearing as to his three children, ranging in age from one to three years of age. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In August 2011, petitioner's then 2-year-old, 15-month-old and 7-month-old children were taken into protective custody by the Tulare County Health and Human Services Agency (agency) after the police found two of the children in a motel with petitioner's girlfriend, Sara, and several other adults who were smoking methamphetamine. Sara told the police that petitioner left the children in her care because the children's mother was incarcerated and petitioner was in violation of his probation and evading the police. Sara said she did not know where petitioner was. She was arrested for child endangerment. The children were placed together in foster care.

A social worker from the agency spoke to the mother at the detention facility. She said she encountered Sara at the detention facility and through Sara was able to contact petitioner. Mother said petitioner would not tell her where he was but he apologized for causing the children to be detained.

The agency filed a dependency petition seeking the children's removal under section 300, subdivision (b). During the detention hearing on the petition, the juvenile court's clerk conducted an internet search and informed the juvenile court that petitioner was released from Tulare County to the state of Missouri in January 2011. In February 2011, he entered a guilty plea and was given a three-year prison term. The prison term

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

was suspended and he was granted a five-year probation. The website also listed the name and telephone number of petitioner's parole/probation officer.

In September 2011, the juvenile court found that the agency used due diligence in locating petitioner, stating "I don't think [petitioner] wants to be found" and "Apparently, law enforcement has been unsuccessful as well." The juvenile court exercised its dependency jurisdiction and ordered reunification services for the mother only. The juvenile court also set the six-month review hearing for February 2012.

In January 2012, the social worker received information that petitioner was in custody at a local facility. According to the information, he had been there since September 2011 and was expected to be released in March 2013. In January 2012, the social worker served petitioner notice of the six-month review hearing at the detention facility.

In February 2012, the juvenile court conducted the six-month review hearing. Petitioner appeared in custody. The juvenile court appointed him counsel, continued reunification services for the mother and set the 12-month review hearing for July 2012. In June 2012, the social worker served petitioner notice that the 12-month review hearing would be conducted in July 2012 and that the agency's recommendation would be to terminate reunification services.

The hearing set for July 2012 was conducted as a contested hearing in August 2012 with petitioner and the mother present and represented by counsel. Petitioner made an offer of proof that he was involved in the "RSAT program," which provided parenting and intensive drug treatment and that he began the program in July 2012. He also stated, as his offer of proof, that he expected to be released from custody in March 2013. There were no objections to his offer of proof.

At the conclusion of the hearing, the juvenile court terminated the mother's reunification services and set a section 366.26 hearing to implement a permanent plan. This petition ensued.²

DISCUSSION

Petitioner contends the following: (1) the allegations in the agency's report are untrue; (2) he was unable to attend "any type of court custody case" because he was incarcerated; (3) he was never notified or given any "type of legal mail" pertaining to his children; and (4) he was not given appropriate legal services. In addition, petitioner informs this court that he is currently in a treatment program and asks for an opportunity to regain custody of his children. We find no error.

Petitioner's contentions distilled to their essence raise an evidentiary issue as well as issues of notice and adequacy of trial counsel. With respect to notice, the appellate record reflects that petitioner was aware that the agency had his children in protective custody because the mother informed him. He chose, however, not to disclose his whereabouts to the agency because he was evading the authorities. Consequently, he cannot now claim that the agency was derelict in not formally notifying him of the proceedings when he was actively avoiding detection. Further, the record does not support his claim that he was not notified of the proceedings by mail. On the contrary, the record contains copies of the notice of service informing him of the 6- and 12-month review hearings at which he appeared. With respect to adequacy of trial counsel, the record reflects that the juvenile court appointed counsel for petitioner at his first appearance. By that time, the juvenile court had adjudicated the children dependents of the court, denied petitioner reunification services and six months of mother's reunification had elapsed. Petitioner does not specify how his attorney was inadequate in

² The mother did not file a writ petition.

representing him in the proceedings that followed nor will we, as the reviewing court, review the record for such evidence. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Consequently, to the extent that petitioner has raised a claim of ineffective assistance of counsel, we must reject it. Similarly, petitioner fails to specify the false information reported by the agency or the report that contains it. Thus, we are unable to review petitioner's evidentiary challenge.

In light of the foregoing, we find no error on this record and deny the petition.

DISPOSITION

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