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

AMANDA E., Petitioner, v. THE SUPERIOR COURT OF KERN COUNTY, Respondent, KERN COUNTY HUMAN SERVICES AGENCY, Real Party in Interest.	F065671 (Super. Ct. Nos. JD099542-02, JD123701-00, JD125397-00) OPINION
MICHAEL P., Petitioner, v. THE SUPERIOR COURT OF KERN COUNTY, Respondent, KERN COUNTY HUMAN SERVICES AGENCY, Real Party in Interest.	F065672 (Super. Ct. Nos. JD099542-02, JD123701-00, JD125397-00)

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jon Edward Stuebbe, Judge.

Amanda E., in pro. per., for Petitioner.

Michael P., in pro. per., for Petitioner.

* Before Kane, Acting P.J., Poochigian, J. and Detjen, J.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Jennifer E. Feige, Deputy County Counsel, for Real Party in Interest.

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Petitioners Amanda E. and Michael P. are the former prospective adoptive parents of three juvenile dependents, who range in age from nine to three years of age and have been freed for adoption. Petitioners in propria persona seek an extraordinary writ (Cal. Rules of Court, rule 8.456) from superior court orders upholding the removal of the children from petitioners' care under Welfare and Institutions Code section 366.26, subdivision (n).¹ The superior court found removal of the children from petitioners' care was in the children's best interests based on evidence that all of them lost significant amounts of weight while placed with petitioners.

Petitioners contend they should have been given an opportunity to help the children gain weight. Petitioners also argue the court did not give them an opportunity to explain their thoughts. On review, we conclude their petitions are meritless.

PROCEDURAL AND FACTUAL HISTORY

The dependent children in this matter are nine-year-old Tori D., her three-year-old sister Alexis D., and four-year-old sister D.A., who is unrelated to Tori and Alexis. In April 2011, real party in interest Kern County Department of Human Services (department) placed Tori and Alexis in the petitioners' foster home. The following month, the department placed D.A. in the same home.

The superior court terminated parental rights in December 2011 with regard to D.A. In April 2012, the superior court terminated parental rights regarding Tori and Alexis. Petitioners had expressed interest in adopting all three children.

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

In July 2012, a social worker discovered that D.A. had lost more than two pounds since August 2011. The social worker also saw that D.A.'s ribs were discernible on her back and the child had noticeable dark circles under her eyes. When confronted with information about the weight loss, Amanda appeared unconcerned. She claimed the child had "stretched out" and was "tall for her age." She also claimed D.A. ate a lot all of the time.

A doctor saw D.A. on July 19, 2012. The doctor determined from plots in the child's growth chart that she had steadily gone from being in the 50th percentile in weight to the 5th percentile for children her age. According to the doctor, typically being underweight comes from being underfed. D.A.'s weight loss commenced around the same time she was placed with petitioners.

The doctor advised Amanda on providing D.A. with a high calorie diet, by using high fat foods. "Every bite" should be supplemented in some way with more calories. The doctor anticipated a weight gain with the high caloric diet, if there was not a medical cause underlying D.A.'s poor weight.

By the time of D.A.'s return appointment on July 30, 2012, petitioners had yet to start the high caloric diet recommended by the doctor. Amanda still minimized concerns about D.A.'s weight and said "she's just tall for her age." Amanda, who appeared defensive, also claimed D.A. was just small. The doctor explained to Amanda that D.A. met the criteria for failure to thrive based on the sharp decline in weight in the previous year.

During a visit to petitioners' home by a public health nurse the following day, Amanda questioned increasing D.A.'s fat intake. "With all that fattening food, I'm gonna get fatter." Amanda also pointed out that nine-year-old Tori was happy when she lost one pound.

Tori also had lost weight. In December 2010, she weighed 67 pounds, while in February 2012, she had dropped to 63.4 pounds. The nine-year-old appeared to be malnourished. As of early August 2012, Tori weighed 62.2 pounds.

The public health nurse also determined that Alexis had lost four pounds between June 2011 and July 30, 2012. She had dropped from the 75th percentile for weight to below the 5th percentile for her age range. The children's doctor later confirmed Alexis had dropped to "well below the 3rd percentile." Alexis was also diagnosed with failure to thrive.

On July 31, 2012, the department removed the children from petitioners' home due to the imminent risk to their health as well as the department's ongoing concerns regarding the children's treatment in the home. There had been five referrals by different reporters voicing the same concerns within the preceding three months. All had been determined to be unfounded. However, the county adoption agency had reason to believe Amanda had intimidated the children. During each investigation the children were interviewed in petitioner Amanda's presence. All three children appeared to have been coached.

When they were transported away from petitioners' home, the children were laughing and chatting. They also smiled and "seemed ok" when they arrived at their new foster home.

The children, Tori in particular, had also made a number of unsolicited remarks about petitioners after the children were removed from petitioners' home. Tori's statements suggested that Amanda appeared concerned about her weight and size. Amanda also told the children "don't eat so much, I don't want you to become fat like me." Tori also volunteered that the children "were not able to eat a lot, no seconds." According to Tori, the younger children were too scared to ask for more food.

As of August 7, 2012, the weights of all three children had dramatically increased. The weight gains for D.A. and Alexis were characterized as “HUGE.” D.A. gained six and one-half pounds. Tori gained two pounds. Alexis gained four pounds.

Petitioners filed objections to the removal. In her objection, Amanda claimed the children had been properly cared for and had “never been deprived from eating or drinking.”

At an August 8, 2012, hearing on petitioners’ objection, the court offered petitioners the opportunity to provide any further information with regard to their objection. It explained:

“If you want to speak to the Court about the situation, if you want to testify, if you have other witnesses you’d like to have testify, this would be the time to do it.”

With the assistance of the children’s counsel, petitioners called, as witnesses, an adoption worker and director of the foster family agency involved in the children’s placement with petitioners. Neither witness could address the children’s weight issues. At most, the director testified, based on communications from all of the agency’s social workers who had been in petitioners’ home, that the children were in a safe and appropriate environment. As of the hearing, the children were no longer placed through the foster family agency.

After these witnesses testified, the court asked petitioners if they had any other witnesses they would like to call. Petitioner Amanda E. replied those were the only witnesses.

The court then invited each petitioner to “say what you want the Court to hear that you think I should consider to make a decision whether or not to -- to grant your objection.”

Amanda told the court that “the girls were fine. They weren’t sick.” She also said she was trying to get into some nutrition classes. She added the children’s stomachs were

not hurting and they were “eating fine.” “We always have food in our refrigerator when they come and check.”

Petitioner Michael P. told the court “I believe the children are living in a safe home. We’re feeding them. And we treat them well. We don’t hit them. We give them everything they ask for. What else do they want?”

After listening to closing arguments, the court denied petitioners’ objection to the children’s removal. The court found removal of the children from the petitioners’ care was in the children’s best interest.

DISCUSSION

The purpose of writ proceedings such as this is to facilitate review of the juvenile court’s order regarding the children’s removal. (Cal. Rules of Court, rule 8.454.) The court’s decision is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is up to petitioners to raise one or more claims of reversible error or other defect and present argument and authority on each point made. This court will not independently review the record for possible error. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Here, petitioners claim, in conclusory fashion and without citation to legal authority, that they should have been given an opportunity to help the children gain weight. They overlook the evidence that they had the opportunity to provide D.A., in particular, with the high caloric diet that the doctor recommended. However, they did not pursue the doctor’s advice. In addition, the legal issue is not about the caregivers’ interests, but rather what is in the children’s best interest. (§ 366.26, subd. (n).)

Here the court as well as the department could properly find that petitioners were underfeeding the children in their care based on: (1) the younger children’s failure to thrive since they had been placed with petitioners; and (2) the children’s dramatic weight gain in one week’s time after their removal from petitioners’ home.

To the extent petitioners complain about the court in this matter, they ignore the record, which undermines their complaint. The court gave petitioners more than an adequate opportunity to express themselves. There is no indication on this record that the court prevented petitioners from presenting evidence or making their positions known.

DISPOSITION

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