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

MICHAEL B.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

F065816

(Super. Ct. No. JJV065562D)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Hugo J. Loza, Commissioner.

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

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Abel C. Martinez, Deputy County Counsel, for Real Party in Interest.

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

Michael B. in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a dispositional hearing denying him reunification services and setting a Welfare and Institutions Code section 366.26 hearing¹ as to his three-month-old daughter L.B.² We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Michael and Rebecca³ are the parents of Melody, Zachary, Robert and L.B., the subject of this writ petition. Rebecca has a history of drug abuse and Michael has a history of not protecting his children from her. In August 2011, the juvenile court ordered Melody, Zachary and Robert removed from Michael and Rebecca's custody and ordered a plan of reunification for them. In July 2012, after 12 months of reunification services, the juvenile court terminated their services and set a section 366.26 hearing for November 2012. Michael challenged the juvenile court's setting order by writ petition which this court denied (F065363).

These dependency proceedings were initiated in August 2012 when Rebecca gave birth to L.B. at 32 weeks gestation with the assistance of paramedics in the home of L.B.'s paternal grandmother (grandmother). Rebecca and L.B. were transported to the hospital and admitted. Rebecca was released the following day.

Rebecca denied using drugs during her pregnancy. She told a social worker that she voluntarily entered inpatient drug treatment two weeks before giving birth to L.B. but left after four days. She said she was homeless and relied on Michael for support but could not be with him because of their child welfare case.

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

² Michael's daughter will be referred to by her first and last initials because of the uniqueness of her name. (Cal. Rules of Court, rule 8.401(a)(2).)

³ Rebecca did not file a writ petition.

At the hospital, L.B.'s nurse told a social worker from the Tulare County Health and Human Services Agency (agency) that L.B. exhibited mild signs of possible drug exposure and was monitored for 36 hours. During that time, she quivered and did not wake up to be fed; however, her symptoms subsided.

Approximately a week after L.B.'s birth, a social worker spoke to Rebecca outside the grandmother's home. While they were talking, the grandmother closed the gate to the property. When the social worker asked Rebecca if she could enter the home to check the residence, Rebecca said she would need a few days to clean. She said she was living with the grandmother, but was homeless and was not prepared to care for L.B. The social worker told Rebecca that L.B. would be placed in protective custody and scheduled a meeting to discuss the situation. She asked Rebecca to inform Michael and any other family members who wanted to attend. No one attended the meeting, but Michael went to the agency office later in the day and identified himself as L.B.'s biological father. He denied he was in a relationship with Rebecca, stating he had not had any contact with her in weeks. He also denied knowing that Rebecca left a drug treatment program. Rebecca's drug and alcohol guide at the treatment center, however, stated that she was with Rebecca when Rebecca telephoned Michael and told him to pick her up.

The agency filed a dependency petition on L.B.'s behalf, alleging under section 300, subdivision (b) that Rebecca's drug use and Michael's failure to protect L.B. placed L.B. at a substantial risk of suffering serious physical harm. In support, the agency further alleged in part that L.B. was exhibiting symptoms commonly associated with in utero drug exposure. The agency also alleged under section 300, subdivision (j) that Rebecca exposed Robert to drugs in utero, was provided reunification services which were terminated, and that L.B. was at risk of suffering similar abuse or neglect.

In late August 2012, the juvenile court convened a detention hearing on the dependency petition and appointed counsel for Michael and Rebecca. The juvenile court

asked whether L.B. was still in the hospital and Rebecca responded that she was as far as she knew. The social worker stated that L.B. had been released the previous day and placed with her siblings in foster care. The juvenile court received the detention report into evidence without objection, found that Michael is L.B.'s biological father, and ordered her detained. The juvenile court also ordered supervised visits and set a contested jurisdictional hearing for September 2012.

Prior to the hearing, the agency filed a jurisdictional/dispositional report recommending that the juvenile court exercise its dependency jurisdiction under section 300, subdivisions (b) and (j) and deny Rebecca and Michael reunification services; Michael because he is L.B.'s biological father and had not shown it would be in L.B.'s best interest that he receive reunification services. The agency stated it was not plausible that Michael was no longer in a relationship with Rebecca or that he did not know of her substance abuse. The agency further reported that the children's foster parents wanted to adopt all four of them.

In September 2012, the juvenile court convened the contested jurisdictional hearing. Michael and Rebecca appeared represented by counsel and waived their right to a hearing on the matter. The juvenile court sustained the petition and adjudged L.B. a dependent child under section 300, subdivisions (b) and (j). Subsequently, Rebecca's attorney stated they were not contesting the disposition and Michael's attorney stated they were "submitting also." The juvenile court denied Rebecca and Michael reunification services as recommended and set a section 366.26 hearing.

Michael filed a writ petition challenging the juvenile court's setting order. He also filed a request to augment the record which this court denied.

DISCUSSION

Michael contends that the agency was deceptive in its dealings with the juvenile court and with him, all in an effort to facilitate adoption of his children. Specifically, he

contends: (1) the agency withheld the results of L.B.'s toxicology report that would have shown she did not test positive for drugs; (2) the agency did not consider that L.B.'s withdrawal-like symptoms could have been caused by her premature birth; (3) the agency released L.B. from the hospital to the foster parents without informing Michael or Rebecca; (4) the social worker did not identify herself as such when she visited Rebecca at the grandmother's property and tried to gain access to a residence Rebecca did not own; (5) the agency inaccurately reported that there were no baby items for L.B.; and (6) the agency refused to accept proof of his competence as a caregiver.

There are several problems with Michael's contentions. First, there is no evidence that the agency attempted to deceive the juvenile court into believing that L.B. was born with drugs in her system. Rather, the agency alleged in the petition that L.B. was "exhibiting symptoms commonly associated with being a drug exposed infant such as premature birth and being underweight," not that she tested positive for drugs. Further, though L.B.'s test results are not in the record, there is no evidence that the agency deliberately withheld them from the juvenile court. Since L.B.'s drug-exposed-like symptoms were only one allegation in support of sustaining the petition, there was no need for the agency to follow up with the results or consider other possible explanations for her symptoms.

As to the agency's failure to inform Michael and Rebecca that L.B. was discharged from the hospital, Michael fails to explain how the failure to inform him influenced the juvenile court's ruling or why he could not have obtained L.B.'s discharge date himself. As far as the social worker's conversation with Rebecca at the grandmother's house, that information was included in the agency's detention report which was admitted into evidence without objection. Having failed to object to its contents at the detention hearing, Michael forfeited his right to now challenge it on appeal. (Evid. Code, § 353.)

Finally, Michael contends the agency faulted him for not reunifying with L.B.'s siblings, but did not properly credit him for programs he completed. To that end, he refers this court to documents attached to his request for augmentation which was denied. In light of that denial, we will not review the documents or Michael's argument with respect to them.

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.