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

JOE M.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F065921

(Super. Ct. No. 12CEJ30018-1)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Joe M., in pro. per., for Petitioner.

No appearance for Respondent.

Kevin B. Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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

Joe M., in propria persona, seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's order issued in September 2012, at a six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e)),¹ terminating reunification services and setting a section 366.26 hearing as to his nine-month-old son, Joel. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Ashley is the mother of Joe's son, Joel. Ashley and Joe have a history of drug use. In December 2011, Ashley and newborn Joel tested positive for amphetamines and methamphetamines. Ashley had already participated in three substance abuse treatment programs. The Fresno County Department of Social Services (department) offered Ashley voluntary family services and placed her in an inpatient substance abuse treatment program with Joel. However, a month later, Ashley left the program and the department took Joel into protective custody.

At the time of Joel's removal, Joe was in county jail for violating his probation by testing positive for opiates in late December 2011. According to the record, Joe violated probation by using drugs multiple times beginning in 2008. In January 2012, Joe was sentenced to three years, to be served in county jail.

In March 2012, Joe appeared in custody at a combined jurisdictional/dispositional hearing. The juvenile court ordered reunification services for Ashley and set a six-month review hearing for September 2012. The court denied Joe reunification services (§ 361.5, subds. (b)(13) & (e)(1))² but ordered reasonable supervised visits for him while he was in county jail. Joe did not appeal from the juvenile court's dispositional orders.

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

² Section 361.5, subdivision (b)(13) allows the juvenile court to deny a parent reunification services if the parent has a history of extensive, abusive and chronic use of drugs and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition or failed or refused to comply with a program of drug treatment on at least two prior occasions. Section 361.5, subdivision (e)(1) allows the juvenile court to deny an incarcerated parent reunification services if

By September 2012, Joel had been placed with relatives who wanted to adopt him, and Ashley's whereabouts were unknown. Consequently, in its report for the six-month review hearing, the department recommended that the juvenile court terminate Ashley's reunification services and set a section 366.26 hearing. The department also advised the juvenile court that Joe was in state prison and had requested visitation. Joel's care providers had been approved by the department to supervise Joe's visits but had not received clearance from the state prison.

In September 2012, on the date originally set, the juvenile court convened the six-month review hearing but continued it for two weeks because Joe was not present and was not aware of the recommendations. Joe did not appear at the continued hearing and his attorney informed the juvenile court that Joe had not responded to his correspondence. Ashley did not appear either.

The juvenile court terminated Ashley's reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Joe contends incarceration hindered his ability to participate in and progress in reunification. He asks this court to vacate the section 366.26 hearing and direct the juvenile court to provide him reunification services and order visitation. We decline to do so.

The juvenile court denied Joe reunification services at the dispositional hearing and Joe did not challenge the juvenile court's order by appeal. Consequently, Joe forfeited his right to challenge the juvenile court's denial order. The order is now final and Joe is precluded from raising it in his writ petition. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) To the extent Joe seeks a modification to the juvenile court's

granting services would be detrimental to the child for a variety of factors including the age of the child and the length of the sentence.

order denying him reunification services, he must do so by petitioning the juvenile court under section 388.³

Further, since Joe was not in reunification with Joel, Joe has no independent grounds for challenging the juvenile court's setting of the section 366.26 hearing. Once the juvenile court terminated Ashley's reunification services, it had no choice but to proceed to a section 366.26 hearing.

Finally, with respect to visitation, the juvenile court ordered Joe weekly visitation while he was in county jail. The juvenile court did not, it appears, modify its visitation order after Joe was transferred to state prison. Nevertheless, the department was operating as if there was a visitation order in place by approving third-party supervised visits. The only bar to visitation remaining was clearance by the Department of Corrections. Thus, there does not appear to be a need for a visitation order for visitation to occur. However, to the extent that Joe seeks to change or enforce the visitation order, he must do so by petitioning the juvenile court under section 388.

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.

³ Section 388, subdivision (a)(1) allows the parent of a child adjudged a dependent of the juvenile court to petition the court to change, modify or set aside any order upon grounds of change of circumstance or new evidence.