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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re SAMANTHA V., a Person Coming Under the Juvenile Court Law.	
TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. FELIPE V., Defendant and Appellant.	F066087 (Super. Ct. No. JJV065117E) **O P I N I O N**

THE COURT[*]

APPEAL from orders of the Superior Court of Tulare County. Jennifer Conn Shirk, Judge.

Roland Simoncini, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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[*] Before Kane, Acting P.J., Detjen, J., and Franson, J.

Felipe V. (father) appeals from a 2012 order terminating parental rights (Welf. & Inst. Code, § 366.26) to five-month-old Samantha (child).[1] After reviewing the entire record, father's court-appointed appellate counsel informed this court he could find no arguable issues to raise on father's behalf. Counsel requested, and this court granted, leave for father to personally file a letter setting forth a good cause showing that an arguable issue of reversible error did exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.)

Father has submitted a letter in which he requests visitation with, if not custody of, the child. He adds he is willing to participate in any programs to show he is a responsible father. Alternatively, he requests that the child be placed with one of his relatives or at least have visitation with family members.

Father's letter otherwise neither addresses the termination proceedings nor sets forth a good cause showing that any arguable issue of reversible error at the termination hearing does exist. (*In re Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) Consequently, we will dismiss his appeal. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

PROCEDURAL AND FACTUAL HISTORY

At the time of the child's birth, her mother, who had a history of substance abuse, tested positive for amphetamines. Father knew of mother's substance abuse but failed to protect the child. Father's gang-affiliations also placed the child at substantial risk of suffering serious physical harm. Consequently, respondent Tulare County Health and Human Services Agency (agency) detained the child and initiated the underlying dependency proceedings. At the outset, the superior court found father was the child's alleged father and consequently did not order any visitation for father.

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

In June 2012, the superior court exercised its dependency jurisdiction over the child (§ 300, subd. (b)) as well as adjudged her a juvenile dependent and removed her from mother's custody. It placed the child in the care, custody and control of the agency.

The superior court also denied both parents reunification services. In father's case, the court denied him services because he remained only an alleged father to the child. (§ 361.5, subd. (a).) Even if paternity testing revealed he was the child's father, it would still not order services because it would not be in the child's best interests. This was due to father's criminal history, threats he made to hospital staff at the time of the child's birth, and his ongoing anger management issues despite having previously completed a domestic violence program.

Having denied both parents reunification services, the superior court set a hearing pursuant to section 366.26 to select and implement a permanent plan for the child. Although both parents received personal notice of their appellate remedy by means of writ review in this court, father in particular did not pursue writ review.

Testing later established the very high probability that father was the child's biological father. The child's paternal aunt soon after petitioned (§ 388) the court to grant her physical custody based on the blood relationship she shared with the child.

At an October 2012 hearing, the superior court first denied the aunt's petition. Although there had been a change of circumstance in that father was now the child's biological father, the court found insufficient evidence that the proposed modification, that is moving the child to live with the aunt, was in the child's best interest.

The superior court then took up the issue of permanency planning for the child. In its report, the agency had recommended the court find the child was likely to be adopted and order parental rights terminated. The parties had no additional evidence to present or any argument to make. The court adopted the agency's finding and recommendation and, having found it likely the child would be adopted, terminated parental rights.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is an appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If an appellant does not do so, the appeal should be dismissed. (*In re Sade C.*, *supra*, 13 Cal.4th at p. 994.) Here, father does not claim, let alone make any showing, that the superior court committed error in issuing the termination order from which he appeals.

He instead asks this court to grant him and his family custody and visitation rights. However, this appeal is not father's opportunity to try or defend the case anew. Issues of fact and credibility are matters for the trial court alone. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.) On appeal, all conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. (*Ibid.*) An appellate court may not reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.)

In addition, to the extent father requests visitation with, if not custody of, the child or reunification services, he has forfeited any claim related to visitation, custody and reunification services as reviewable issues on this appeal. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) A challenge to the most recent order entered in a dependency matter may not dispute prior orders for which the statutory time to seek review has passed. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.)

Once the superior court granted father neither custody of nor visitation with the child at the June 2012 dispositional hearing, it was father's responsibility to seek writ review in this court of the superior court's decision in light of the superior court's order setting the section 366.26 permanency planning hearing if he believed the court erred. (§ 366.26, subd. (*l*).) Having failed to challenge the court's decision in a timely fashion, he cannot argue over visitation or custody now. (*Ibid.*)

As for relative placement, the aunt did ask for placement of the child in advance of the section 366.26 hearing, but she did not establish that to move the child would serve the child's best interest, as required under section 388. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).) As the Supreme Court explained in *Stephanie M.*, *supra*, at page 317, the court's focus by the time of a section 366.26 hearing shifts to the child's needs for permanency and stability. In this case, the child had lived, since only a few days after birth, with a foster family, who was committed to providing her a permanent home.

We therefore conclude father has not set forth a good cause showing that an arguable issue of reversible error as to the order terminating parental rights did exist. (*In re Phoenix H.*, *supra*, 47 Cal.4th at p. 844.)

DISPOSITION

This appeal is dismissed.