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

In re MADISON C. et al., Persons Coming
Under the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ROBERTO C.,

Defendant and Appellant.

F067497

(Super. Ct. Nos. 11CEJ300219-1,
11CEJ300219-2)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Timothy A. Kams, Judge.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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

Roberto C. (father) appealed from a juvenile court order terminating his parental rights (Welf. & Inst. Code, § 366.26) to his five-year-old daughter, Madison, and two-and-a-half-year-old son, Robert.¹ After reviewing the record, father's court-appointed appellate counsel informed this court he found no arguable issues to raise in this appeal. 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 does exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.)

Father has filed a letter in which he claims his trial counsel did not follow deadlines and prepare a "good argument" in her contested issue statement for the hearing that resulted in the termination order. Consequently, he contends his trial counsel was ineffective and his due process rights were violated at the termination hearing. On review, we disagree with father's criticism of his trial counsel and conclude father has not made a good cause showing that an arguable issue of reversible error did exist.

PROCEDURAL AND FACTUAL HISTORY

The underlying dependency proceedings commenced in October 2011 when the children's mother so abused drugs that she seriously neglected the children. (§ 300, subd. (b).) Then as now, father was incarcerated in state prison. Before his incarceration, he did not make a plan for Madison's care, other than to leave her with the mother whom he knew, or should have known, had a substance abuse problem. Also, he did not make a plan for both children after Robert was born. Furthermore, once father was taken into custody, he did not have any visits with Madison or any contact with Robert after his birth.

The juvenile court subsequently adjudged the children juvenile dependents, removed them from parental custody and ordered reunification services for the mother. It denied father services pursuant to section 361.5, subdivision (e) in that he: was

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

incarcerated and would remain so until 2015, well past the statutory time for reunification; and had no contact with Robert and only minimal contact with Madison. The court did order quarterly, supervised visits between the children and father.

Although father appealed the juvenile court's dispositional orders, this court dismissed his appeal for lack of any arguable issue. (*In re Madison C. et al.* (Aug. 13, 2012, F064535) [nonpub. opn.].) When the mother failed to reunify, the juvenile court terminated reunification efforts and set a section 366.26 hearing to select and implement a permanent plan for the children.

In a written report to the court, respondent Fresno County Department of Social Services (department) recommended that the court find adoption was the most appropriate permanent plan for the children and terminate parental rights. According to the department's report, the children were:

“generally adoptable in that they are beautiful, overall healthy children with no significant behavioral issues. Madison [had] no developmental delays and although Robert [did] have some cognitive and developmental delays his delays would not impede his ability to be adopted.”²

The department also reported that it identified the children's maternal grandfather and stepgrandmother as their prospective adoptive parents. (See § 366.26, subd. (n)(1).) They wished to adopt the children, who had been in the prospective adoptive parents' care for more than a year.

Prior to the section 366.26 hearing, father's trial counsel filed a “STATEMENT OF ISSUES [AND] WITNESS LIST” (issue statement), which raised as issues: whether

² In order to terminate parental rights in dependency proceedings, clear and convincing evidence is required of the likelihood that the dependent child will be adopted within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; § 366.26, subd. (c)(1).) The likelihood of adoptability *may* be satisfied by a showing that a child is *generally* adoptable, that is, independent of whether there is a prospective adoptive family waiting in the wings. (*In re Jayson T.* (2002) 97 Cal.App.4th 75, 85, disapproved on another ground in *In re Zeth S.*, *supra*, 31 Cal.4th at pp. 413–414.)

Robert was “generally adoptable”; and whether there was a beneficial relationship between the children and father that should be preserved. It also listed the names of the social worker, father, and possibly the paternal grandmother as witnesses. Counsel twice amended her witness list. The second amended list expanded the number of witnesses and included for the first time the prospective adoptive parents and a second paternal relative.

At the section 366.26 hearing, the children’s counsel objected to father’s second amended witness list as untimely. Father’s counsel disputed the claim adding that the department provided last minute discovery, which revealed the prospective adoptive parents wanted someone else to adopt the children. The department objected to counsel calling the prospective adoptive parents as witnesses because the issue father sought to raise was irrelevant to the hearing and beyond the scope of his issue statement.

The court initially ruled the additional evidence father sought to introduce was inadmissible under Evidence Code section 352 as unduly time consuming and not probative to the issues before the court. The court clarified that it did not base its ruling on the claim that the second amended witness list was untimely filed.

However, the court reconsidered the matter and ruled if it found Robert was not generally adoptable, it would hear father’s evidence. The court added it would proceed first on the issue of whether Robert was generally adoptable.

On that issue, the department submitted on its report and father’s counsel cross-examined two department social workers. Following argument on the issue, the court found by clear and convincing evidence that Robert was generally adoptable. In spite of the child’s symptoms and issues, he was a good candidate for adoption.

The matter then proceeded on father’s claim that he had a beneficial relationship with the children so that termination of parental rights would be detrimental to them, a claim which the superior court rejected. Having found the children were likely to be adopted, the court terminated parental rights.

DISCUSSION

Father claims his trial counsel prevented him from bringing up important issues by not following deadlines and not preparing a good argument in her contested issues statement. He points to, as proof, the following remark by the court: “[y]ou have two issues identified [in your contested issues statement], and now you are telling me there’s all other kinds of issues that actually ... need to be discussed.”

Father overlooks the balance of the section 366.26 hearing transcript, as summarized above, which does not support his criticism. The court clarified it did not find the second amended witness list was untimely filed. More importantly, although the court initially foreclosed father’s evidence regarding whether the prospective adoptive parents intended to adopt the children, the court reversed itself, deciding it would hear father’s evidence if it determined that Robert was not generally adoptable.

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant’s burden to raise claims of reversible error or other defect and present argument and authority on each point made. If appellant fails to do so, the appeal should be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Because father’s claim of ineffectiveness and due process violation are not supported by the record, we conclude father has not made a good cause showing that an arguable issue of reversible error did exist. We will dismiss therefore this appeal. (*In re Sade C., supra*, 13 Cal.4th at p. 994.)

DISPOSITION

This appeal is dismissed.