

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

DANIEL E.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F072383

(Super. Ct. Nos. 10CEJ300110)

**OPINION**

**THE COURT\***

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

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

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

---

\* Before Levy, Acting P.J., Franson, J. and Peña, J.

Daniel E. (father), in propria persona, seeks extraordinary writ review of the juvenile court's orders issued at a contested 12-month review hearing (§ 366.21, subd. (f))<sup>1</sup> terminating his reunification services and setting a section 366.26 hearing as to his sons, Justin, Jessie and Jeremy. He contends the juvenile court erred in not granting his attorney a continuance. We concur and grant the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

In August 2014, the juvenile court exercised its dependency jurisdiction over then six-year-old Justin, four-year-old Jessie and three-year-old Jeremy after sustaining allegations that father and Ashley, the children's mother, engaged in ongoing domestic violence. The domestic violence included verbal altercations, intimidation and physical harm in the presence of the children. The court ordered reunification services for both parents and continued them to the 12-month review hearing. The Fresno County Department of Social Services (department) placed the children together in foster care.

Father denied engaging in domestic violence with Ashley and maintained his denial throughout the reunification period. He did so even though he was arrested in January 2015 for assaulting and falsely imprisoning Ashley and pled no contest to the resultant charges. Father claimed Ashley got "high" and made up stories and that she was mentally ill. In February 2015, while being assessed for domestic violence services, father "100%" denied being physically or verbally aggressive with Ashley. As a result, the clinical director for the program did not accept his referral for services and closed his file.

In its report for the 12-month review hearing, the department recommended the juvenile court find that father and Ashley made minimal progress in resolving the problems that necessitated the court's intervention and terminate father and Ashley's reunification services.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

On July 1, 2015, the juvenile court convened the 12-month review hearing. Father appeared with his court-appointed attorney (hereafter “father’s attorney”) who requested a contested hearing. The court granted her request and scheduled a settlement conference hearing for August 11, 2015 and a contested hearing for August 19, 2015. The court ordered father to appear and told him that it would decide the matter on the filings alone if he did not.

On August 11, 2015, father appeared at the settlement conference hearing with his attorney who confirmed the matter for trial and submitted a statement of issues and witness list. Father’s attorney requested that the social worker be made available for cross-examination and advised the court that father reserved the right to testify on his own behalf and intended to call his niece. The juvenile court ordered father to appear at the August 19, 2015 hearing and advised him of the consequences of not appearing.

On August 19, 2015, father appeared with his attorney who advised the juvenile court she was unavailable because she was in trial on another matter. The court granted her request for a continuance and reset the hearing for September 16, 2015.

On September 16, 2015, another attorney specially appeared on father’s behalf (hereafter “counsel”) and requested a continuance, explaining that father notified his attorney that morning that he may have food poisoning and could not come to court. Counsel further stated that father’s attorney was in trial and expected to be available in the afternoon. The court denied the request for a continuance and stated it was going to rule. The court added, however, that father’s attorney could cross-examine the social worker in the afternoon if she wished and the court would reconsider its decision if compelled by the evidence.

Counsel apologized and stated he could not guarantee father’s attorney would be available that afternoon. He also stated that father called his attorney the day before and gave her the name of a witness he wanted to subpoena. Counsel said the witness was not subpoenaed but he wanted to put that information on the record. The court commented

that a person cannot be subpoenaed in one day and that father bore the blame for advising his attorney at that late date.

Before ruling, the juvenile court commented at length about father's demeanor in court, stating he demonstrated "a flavor" of contempt for the court and a "control-type of demeanor and failure to get it in essence." The court also acknowledged father's long pattern and criminal history of domestic violence and the unlikelihood he would internalize and implement skills needed to develop safe parenting.

The juvenile court also quoted from a risk assessment father completed:

"[THE COURT:] The examiner finds that [father] likely has a personality disorder. A combination of obsessive narcissistic anti-social features. Maybe that's what the Court has been identifying as behaviors in Court. Thus [father] does not seem to experience remorse at all for his actions. Emphasize [sic] with a feeling of others instead as the Court suggested also he's found to be rigid, controlling, manipulative and dishonest and because of these traits services cannot ameliorate conditions which led to removal within the statutory time frame."

The juvenile court terminated father and mother's reunification services and set a section 366.26 hearing. This petition ensued.<sup>2</sup>

## DISCUSSION

"Our state's dependency statutory scheme imposes strict requirements to resolve cases expeditiously. It also requires due process for all parties, including parents." (*In re James Q.* (2000) 81 Cal.App.4th 255, 267-268 (*James Q.*))

"Significant safeguards have been built into the current dependency scheme. They include representation by counsel to assist parents at every stage of the proceedings (§ 317) ... and review hearings at which services and progress are reviewed (§§ 366.21, 366.22)." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308.)

---

<sup>2</sup> Mother did not file a writ petition.

“Review hearings are critical proceedings.” (*James Q.*, *supra*, 81 Cal.App.4th at p. 268.) Indeed, they are “an integral part of the constitutional safeguards provided to the parent and child in California’s dependency scheme. [Citations.]” (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 778-779.) They mark “the point at which, as occurred in this case, a parent may be denied further reunifications services.... [O]nce that occurs, the focus shifts from the parent’s interests and the burden is placed on the parent to demonstrate why the parent-child relationship should not end.” (*James Q.*, *supra*, at p. 268.)

Thus, “due process requires the juvenile court to permit a parent to avail himself or herself of the right, if he or she chooses, to a contested review hearing ....” (*David B.*, *supra*, 140 Cal.App.4th at p. 780.) This is because the “risk of an erroneous deprivation of a parent’s fundamental interest in his or her child outweighs [the department’s] interest in an expeditious decision. [Moreover, a] contested hearing is the minimal procedural safeguard available, one which is not onerous or unwarranted.” (*Ibid.*)

At the same time, the juvenile court has the power to control dependency proceedings with a view to expedient and effective resolution of the matter. (§ 350, subd. (a)(1).) To that end, continuances are generally disfavored. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) However, the juvenile court may continue a dependency hearing upon a showing of good cause, provided the continuance is not contrary to the interest of the child. (§ 352, subd. (a).)

We review the juvenile court’s denial of a continuance for an abuse of discretion (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481), recognizing that the court’s discretion is not “unlimited, and reviewing courts have never ascribed to judicial discretion a potential without restraint.” (*People v. Tabb* (1991) 228 Cal.App.3d 1300, 1311.) Discretion is therefore “abused when it exceeds the bounds of reason, all of the circumstances being considered.” (*People v. Ward* (2009) 173 Cal.App.4th 1518, 1527.)

We conclude the juvenile court abused its discretion in not continuing the contested 12-month review hearing. Counsel's reason for the request—i.e., father's attorney was in trial—constituted good cause to continue the hearing. Further, counsel was not prepared to represent father in a contested hearing and the court knew that. In addition, there was no doubt that father wanted a contested hearing. He attended the hearings and identified witnesses he wanted to call. By not continuing the hearing, the juvenile court deprived father the right to protect his interest in regaining custody of his children by challenging the state's evidence. The court denied father due process.

### **DISPOSITION**

The petition for extraordinary writ is granted. Let an extraordinary writ issue directing respondent court to vacate its order terminating father's reunification services and the section 366.26 hearing. Respondent court is further directed to conduct a contested 12-month review hearing and allow presentation of evidence. This opinion is final forthwith as to this court.