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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL S.,

Petitioner

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES  
AGENCY et al.,

Real Parties in Interest.

G048231

(Super. Ct. No. J-437910)

O P I N I O N

Original proceeding; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Petition denied. Stay dissolved.

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

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

No appearance for Real Party in interest K.S.

\* \* \*

Michael S. (father) seeks to vacate a March 21, 2013 juvenile court order entered pursuant to Welfare and Institutions Code section 366.3 (all further statutory references are to this code) that scheduled a permanency planning hearing under section 366.26. The juvenile court issued the ruling based on the Orange County Social Services Agency's (SSA) most recent reports and its finding father's daughter, nearly 17-year-old K.S. (the child), needed continued supervision, but the current plan of less restrictive foster care was no longer appropriate. The order also included approval of SSA's proposed case and visitation plans, the latter of which allowed "unlimited" visitation between the child and father.

Father complains about the conduct of almost everyone involved in this dependency proceeding. He even contends the clerk intentionally omitted a document he filed in 2011 from the six-volume, 1500-plus page clerk's transcript. To the extent his complaints relate to actions before the March 21, 2013 order, they are not properly before us. We therefore address only those issues that pertain to the section 366.3 order. With respect to those issues, we conclude the juvenile court did not err in issuing the order.

## FACTS

The initial dependency proceeding involving the child and her two sisters began after the 1996 drowning death of a younger sibling. The juvenile court established

a guardianship for the child and her sisters, appointing the paternal grandfather as their guardian. In 2003, conflicts erupted between the guardian and father, and father filed a section 388 petition to terminate the guardianship and have the children placed with him. That dispute resulted in a stipulated order and the withdrawal of the petition without prejudice.

Father filed another section 388 petition in 2005, wherein he sought to either dissolve the guardianship and the return of his daughters or increased visitation and reunification services. The court scheduled a hearing on the petition but, when a dispute arose as to the nature of the hearing, father appealed. In an unpublished opinion (*In re Melissa S.* (Dec. 27, 2005, G035750) [nonpub.opn.]), we acknowledged he was entitled to a hearing and ruled, based on the posture of the case, the standard for visitation reviews “are family law standards.”

The current dependency proceeding began in early 2011 when the child’s paternal grandfather relinquished his status as her legal guardian. He now lives in an assisted living facility. Several months later, the child was placed in a foster home.

The SSA reports prepared for the March 21 hearing reviewed the child’s history in the juvenile dependency system. It noted the child had age-appropriate interests. She is in the 11th grade; her grades on her final 10th grade report card, her mid-semester report, and her January 2013 report ranged from B+ to F. The child was also reported as frequently being truant and was disciplined for using marijuana and having cigarettes at school. With respect to these problems, the child maintained a negative attitude. She has a 21-year old boyfriend, is receiving psychological therapy, and has been prescribed psychotropic drugs.

The report recommended against placement with the child’s adult sisters and placement with her mother was also not recommended, primarily because of mother’s hoarding and maintaining a filthy house. As for father, the report stated he lived out of state, “has had no contact with” the assigned social worker during the

reporting period, and the child “refuses [to have] contact with her father.” The child expressed the desire to have her current foster mother appointed as her legal guardian and the foster mother shared this desire. The assigned social worker expressed the intent to support this proposal, concluding a “[l]egal guardianship appears to be the most appropriate permanent plan at this time.”

In addition, the report stated a “[t]ransitional [i]ndependent [l]iving [p]lan has been completed on behalf of the [child], which identifies her emancipation goals and includes appropriate and meaningful independent living skill services that will assist the [child] with the transition . . . to independent living.” SSA’s reports recommended the court schedule a permanency planning hearing under section 366.26.

At the March 21, hearing, all counsel, including father’s lawyer, signed a stipulation (1) admitting the SSA’s reports into evidence, (2) ordering a section 366.26 hearing be scheduled, (3) agreeing the present plan was no longer appropriate, and (4) approving the case plan in the SSA report. Father did not appear at the hearing. The court issued a number of orders. It found notice of the hearing had been given to all parties, scheduled a hearing under section 366.26, authorized SSA to draw funds for the child’s care and support and to permit her to travel within the U.S., plus it approved SSA’s proposed case and visitation plans.

Father’s writ petition followed. We stayed the hearing on the section 366.26 hearing pending our resolution of the petition.

## DISCUSSION

Section 366.3, subdivision (h) was properly applied here. The subdivision applies to children in long-term foster care. The child falls into this category. The subdivision provides that “the the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent,

placed for adoption, . . . or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest of the child, whether the child should be placed in another planned permanent living arrangement.” The subdivision then provides that the court schedule a hearing under section 366.26 “unless it determines by clear and convincing evidence that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship.”

Father argues that, instead of ordering a hearing under section 366.26, the child should have been ordered returned to his custody. But there was nothing before the court at the time of the March 21 hearing to support such a decision. Father had not contacted the assigned social worker during the last reporting period, the social worker had very little information on his living arrangements, and the child stated she did not want any contact with him. Further, not only did father’s lawyer stipulate to the admission of the SSA’s reports, the approval of its case plan, and the setting of a permanency planning hearing, father did not even appear at the hearing.

Section 366.3, subdivision (h) requires the court to order SSA to prepare an assessment report. SSA’s reports recommend appointment of a legal guardian for the child. Father argues that such appointment would be inappropriate. But this is an argument to be made at the section 366.26 hearing. It is not a basis for reversing the order scheduling it. Nothing prevents father from presenting evidence in support of his position at that time.

Father spends the bulk of his memorandum in support of the petition raising allegations that take issue with prior decisions of the court, SSA, and various persons involved in the child’s care. But, as noted earlier, these issues are not before us in this petition which deals solely with the decision to schedule a section 366.26 hearing.

(§ 395, subd. (a)(1); *In re T.G.* (2010) 188 Cal.App.4th 687, 692 [in juvenile dependency

proceedings, ““the order entered at the dispositional hearing is a final judgment,”” that order plus all ““following orders are directly appealable, with the exception of an order scheduling a . . . hearing under section 366.26,”” and “[g]enerally . . . a parent may not attack the validity of a prior appealable order for which the statutory time for filing an appeal has passed”].)

In his reply brief father accuses county counsel of misstating the facts without specifying what these alleged misstatements are. And the “facts” asserted by father all relate to matters not germane to the issue whether the court erred in scheduling a section 366.26 hearing. His request that “this Court summarily terminate dependency and grant him custody” asks us to do something beyond our jurisdiction.

#### DISPOSITION

The petition is denied. The previously issued stay is dissolved.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.