

S260928

Supreme Court Case No. S_____

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

In re A.R., A Person Coming Under
the Juvenile Court Law

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIAH B.,

Defendant and Appellant.

Court of Appeal No. A158143

Alameda County

Superior Court No. JD02839802

APPEAL FROM AN ORDER OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

HONORABLE CHARLES SMILEY, JUDGE PRESIDING

PETITION FOR REVIEW

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By appointment of the Court of

Appeal under the First District

Appellate Project, Assisted Case

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APPEAL FROM AN ORDER OF THE SUPERIOR
COURT STATE OF CALIFORNIA, COUNTY OF ALAMEDA

HONORABLE CHARLES SMILEY, JUDGE PRESIDING

**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE, AND TO THE HONORABLE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

Pursuant to the California Rules of Court, rule 8.500, petitioner mother, Mariah B., petitions for review following the unpublished decision of the Court of Appeal First Appellate District, Division One (per Margulies J., Acting P.J.), filed on January 21, 2020. The opinion is attached to this petition as Exhibit A. A petition for rehearing was denied by the Court of Appeal on February 7, 2020. A copy of the denial is attached as

Exhibit B. This petition for review is timely. (Cal. Rules of Court, rule 8.500(e).)

ISSUE PRESENTED

Should a parent in a juvenile dependency case be denied their right to appeal when they were diligent in asserting their challenge to the disputed ruling within the 60-day time limit but their court-appointed attorney failed to timely file the notice of appeal?

NECESSITY FOR REVIEW

This case presents a vital question of statewide importance. (Cal. Rules of Court, rule 8.500(b).)

Many parents in juvenile dependency matters are often indigent and represented by court-appointed attorneys. Parents rely on their court-appointed attorney to provide competent legal representation throughout the proceedings, including the timely filing of a notice of appeal when requested. When that court-appointed attorney fails to discharge his or her responsibilities, the parent should not be denied their right to an appeal.

In the last few months, parents in juvenile dependency proceedings have petitioned this Court for review of decisions dismissing appeals after the notices of appeal were late filed through no fault of the parent. For example, in November 2019, a parent petitioned this Court for review of the Third District Court of Appeal's dismissal of their appeal as being untimely. (*In Re S.V.* (C090377) review den. Jan. 29, 2020, S259156.) Although the petition was denied, Justice Liu was of the opinion the petition should be granted. On January 15, 2020, a petition for

review was filed in *In re J.A.* (Dec. 6, 2019, E072398) _Cal.App.5th_ (petn. for review pending, petn. filed Jan. 15, 2020, S260160) from the published decision of the Fourth Appellate District, Division Two, dismissing mother's notice of appeal as late despite the juvenile court's failure to advise mother of her appellate rights. The petition for review is pending.

Criminal defendants and civil litigants are often faced with a similar situation where they have diligently asserted their right to an appeal but their attorney failed to timely file the notice of appeal on their behalf. In those instances, courts have applied the constructive filing doctrine to ensure that the defendant be relieved of the effects of late filing of the notice of appeal when the delay is not caused by the defendant. (*In re Benoit* (1973) 10 Cal.3d 72.)

Parents in juvenile dependency proceedings should be afforded that same protection. Parents have a fundamental liberty interest in the care, custody and management of their children (*Santosky v. Kramer* (1982) 455 U.S. 744, 753) and a "fundamental liberty interest ... in retaining a parent-child relationship." (*In re Laura F.* (1983) 22 Cal.3d 826, 844). Mother contends that when a parent has timely communicated to their court-appointed attorney their desire to appeal an order of the juvenile court, that attorney's dereliction of their responsibilities should not preclude a parent from their right to an appeal. Without the application of the constructive filing doctrine, a parent in a juvenile dependency proceeding, who may face the

irrevocable termination of their parental rights, does not have any other meaningful remedy for the loss of their right to appeal.

Review is necessary to address this issue of statewide importance for families involved in juvenile dependency proceedings.

STATEMENT OF THE CASE AND FACTS

To determine whether to grant a petition for review, as a matter of policy the Supreme Court will ordinarily accept the description contained in the appellate Court's Opinion as to what were the material facts in the record and the factual and legal issues and arguments raised. (Cal. Rules of Court, rule 8.500(c)(2).) Therefore, where an Opinion misstates or omits a material fact or legal issue raised, a petition for rehearing should be filed so the Court can consider whether to modify the Opinion before it becomes final. (See, *Marriage of Goddard* (2004) 33 Cal.4th 49, 53, fn. 2; *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1000, fn. 2.) Here, the Court of Appeal issued an order, not an opinion, omitting any description of the material facts and legal issues.

On June 12, 2019, the juvenile court summarily denied mother's section 388 petition for modification and terminated her parental rights under section 366.26. (2CT 423.) Mother was not present at the hearing as she had a severe asthma attack that day and rushed to the emergency room at Highland Hospital in Oakland, California where she received a treatment to stabilize her breathing. (Declaration of Mother attached to Appellant's

Application for Relief from Default filed in the Court of Appeal on December 27, 2019.) Soon after the June 12, 2019 hearing, mother contacted her social worker at East Bay Family Defenders to inquire as to the status of her case. (*Ibid.*)

Mother was told that her parental rights had been terminated and that she had a right to appeal that decision. Mother contacted her court-appointed attorney and soon thereafter informed her attorney she wished to appeal the juvenile court's order. (*Id.*)

Mother's court-appointed trial attorney, Rita Rodriguez, learned on June 17, five days after the hearing, that mother wished to file a notice of appeal from the juvenile court's findings and orders. (Declaration of Rita Rodriguez attached to Appellant's Application for Relief from Default filed in the Court of Appeal on December 27, 2019.) Despite mother's request, Ms. Rodriguez forgot to file the notice of appeal within the sixty-day time limit. (*Ibid.*) On August 14, 2019, Ms. Rodriguez realized she had not filed the notice of appeal and filed the notice of appeal the next day. (*Ibid.*) The notice of appeal was lodged with the Court of Appeal on August 23, 2019 and was assigned case number A158143. (2CT 432.) The record on appeal was prepared and filed with the Court of Appeal. Appellate counsel was appointed to represent mother.

https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2295478&doc_no=A158143&request_token=NiIwLS EmXkw9W1BRSCM9WEIIMEA6UVxfJiBeQz5TQCAgCg%3D%3D
[D.](#))

On December 27, 2020, mother filed an application for relief from default and appellant’s opening brief raising issues related to the denial of her section 388 petition for modification and the termination of her parental rights. On January 21, 2020, the Court of Appeal denied mother’s application for relief from default and declined to address the issues raised in mother’s appeal. (See Exhibit A.) On February 4, 2020, mother filed a petition for rehearing and a writ of habeas corpus. On February 7, 2020, the Court of Appeal denied mother’s petition for rehearing. (See Exhibit B.) Mother is still awaiting a decision on her writ of habeas corpus.

ARGUMENT

I. REVIEW SHOULD BE GRANTED TO EXTEND THE CONSTRUCTIVE FILING DOCTRINE TO PARENTS IN JUVENILE DEPENDENCY PROCEEDINGS WHO DILIGENTLY ASSERT THEIR RIGHT OF APPEAL.

A. The Constructive Filing Doctrine

The principle of constructive filing serves as a “basis for judicial acceptance of an excuse for the appellant’s delay in order to do justice.” (*In re Benoit, supra*, 10 Cal.3d at p. 84; See also *People v. Snyder* (1990) 218 Cal.App.3d 480, 491-492, overruled on other grounds by *People v. DeLouize* (2004) 32 Cal.4th 1223, 1233, fn. 4 [noting that the constructive filing doctrine “springs from the recognition that delayed filings should be permitted where ‘slavish adherence to such deadlines . . . [would] violate[] more basic justice’ ([and where the cause of the delayed filing was

not principally attributable to the fault of the appellants”]; *In re Jordan* (1992) 4 Cal.4th 116, 125 [“the principle of constructive filing . . . should be applied where the untimeliness of the notice resulted from the negligence of counsel”]; see also *In re Pickett* (1972) 25 Cal.App.3d 1158, 1166 [noting that the right to appeal is “one of the most important rights possessed by a convicted defendant, and every legitimate element should be exercised in its favor”].)

The constructive filing doctrine has a long history in California. *People v. Slobodian* (1947) 30 Cal.2d 362 recognized that a prisoner appellant should not be penalized when prison authorities failed to forward a prisoner’s notice of appeal in a timely fashion. This Court found that a prisoner’s notice of appeal shall be considered timely filed as of the date it was properly submitted to prison authorities for filing or mailing. In *Slobodian*, the self-represented prisoner delivered a notice of appeal of his criminal conviction to the state prison employees for mailing six days prior to the final date for taking an appeal. The notice was not received by the county clerk until five days after the applicable exception period. The Court found that any delay in filing the notice of appeal due to the dereliction of prison officials did not affect the timeliness of the prisoner’s notice of appeal. (*Id.*, at pp. 365-368.) “So it is here that the state’s failure, through its employees, to function in protection of appellant’s exercise of his right of appeal, will not deprive him of such right after he has timely performed...all steps required by the state law in perfection of his appeal.” (*Id.*, at p. 368.)

This principle was extended to include the situation where a prisoner within the prescribed time delivered his notice of appeal to the prison authorities for mailing but it did not reach the clerk's office in time. In *People v. Dailey* (1959) 175 Cal.App.2d 101, 104, the court held that "delivery by defendant of his notice of appeal to the prison authorities on the tenth day was a constructive filing in the court clerk's office as of that day." (*Id.*, at p. 107.)

In re Benoit (1973) 10 Cal.3d 72, expanded on the principles set forth in *Slobodian*. In *Benoit*, this Court explained that the constructive filing doctrine "should be extended to apply to situations like the instant one where the defendant is incarcerated or otherwise in custody after having been properly notified of his appeal rights by the sentencing judge and has made arrangements with his trial attorney to file a notice of appeal for him." (*Id.*, at p. 86.) This Court reasoned that a defendant in this situation "may choose to discharge this responsibility by such arrangements," which the Court noted would be a reasonable "inclination." (*Id.*, at pp. 86-87.) When trial counsel then fails to follow through on his or her part of the arrangement to timely file a notice of appeal, the constructive filing doctrine should apply "in such circumstances" because "such an appellant may be lulled into a false sense of security in believing that an attorney – especially his trial attorney – will carry out his undertaken task." (*Id.*, at p. 87.)

Benoit set forth several factors relevant to the determination of whether the constructive filing doctrine should

be applied: (a) the justifiable reliance of the parent on his or her attorney to file a notice of appeal, (b) the due diligence of the parent in assuring herself that a notice of appeal was being timely filed, and (c) the ineffective assistance of counsel in failing to timely file such a notice. (*In re Benoit, supra*, 10 Cal.3d at pp. 86-89.)

This “prison-delivery rule” was expanded over the years to include a prisoner’s notice of appeal in a civil contest or for an administrative appeal. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106 [prison-delivery rule applied to self-represented prisoner filing notice of appeal is a civil case]; *In re Jordan* (1992) 4 Cal.4th 116 [prison delivery rule continued to apply even though period for filing an appeal was extended]. In *Silverbrand v. County of Los Angeles, supra*, 46 Cal.4th 106, this Court reiterated that the prison-delivery exception rule does not excuse or cure a late filed notice of appeal. (*Id.*, at p. 127.) Rather, the exception is intended to address those situations where the party has timely filed his or her notice of appeal, but was prevented from doing so due to obstacles outside of their control. (*Ibid.*) The prison-delivery exception was meant to redefine the point as which notice was deemed filed and did “not subvert the policies of speedy resolution and finality of judgment that underlie the jurisdictional requirement of a timely appeal.” (*Id.*, at p. 121, 125.) In discussing the evolution of the rule, the *Silverbrand* Court noted that the prison-delivery exception rule was “intentionally drafted broadly to encompass both current and potential future exceptions.” (*Id.*, at p. 129.)

The doctrine of constructive filing has been determined to be compelled by “reason and justice,” and allows a reviewing court to satisfy the jurisdictional requirement as contemplated by law. (*In re Benoit, supra*, 10 Cal.3d 72 at p. 84.) It constitutes “a basis for judicial acceptance of an excuse for the appellant’s delay in order to do justice.” (*Ibid.*)

B. Parents In Juvenile Dependency Proceedings Have A Right to Effective Assistance of Counsel

An indigent parent has a statutory right to appointed counsel in dependency proceedings. (Welf. & Inst. Code¹ § 317, subd. (b).) Further, “[a]ll parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel.” (§ 317.5, subd. (b).) “Although this right is merely statutory, it has been interpreted in substantially the same manner as the constitutional right to the effective assistance of counsel.” (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 812.)

The United States Supreme Court has recognized there is a due process right to the assistance of counsel in civil matters that involve liberty interests, such as proceedings to terminate parental rights. (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 27.) Where there is a due process right to counsel, there is a concomitant right to the effective assistance of counsel. (*In re Isaac J.* (1992) 4 Cal.App.4th 528, 531.) An attorney provides ineffective assistance of counsel by failing to file a notice

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

of appeal after a client requests that an attorney do so. (*Roe v. Flores-Ortega* (2000) 528 U.S. 470, 477.) Counsel's failure to file a notice of appeal cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and failing to file reflects inattention to the defendant's wishes. (*People v. Diehl* (1964) 62 Cal.2d 114, 117-118.)

Ineffective assistance of counsel is shown when counsel's representation fell below an objective standard of reasonableness. (*Strickland v. Washington* (1984) 466 U.S. 688, 687.) *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1662 established that a parent may raise a claim of ineffective assistance of counsel on appeal or by writ. A parent must show that counsel 1) failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law and 2) the deficiency of counsel subjected the parent to demonstrable prejudice. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180, citing *People v. Cain* (1995) 10 Cal.4th 1, 28.)

Mother was entitled to competent counsel in these proceedings. In this case, mother herself was a minor when her child was first removed from her care by the Agency. (1AUG CT 4,6.) Mother visited with her child regularly throughout the proceedings and worked on her case plan as she completed her high school education. (1 CT 85,188.) Mother was opposed to the Department's recommendation to terminate her parental rights and intended to contest that recommendation at the section 366.26 hearing. (6/12/2019 RT 1.) However, due to a medical emergency requiring hospitalization, mother was not present at

the hearing. (Declaration of Mariah B. attached to Appellant's Application for Relief from Default filed in the Court of Appeal on December 27, 2019) Mother contacted her court-appointed attorney's office within five days after the hearing to inquire about the status of her case and was informed that her parental rights had been terminated and she had a right to appeal. She immediately informed her attorney that she wished to have a notice of appeal filed on her behalf. (*Ibid.*) Mother's attorney, Ms. Rodriguez, forgot about her client's request to file a notice of appeal until three days after the sixty-day deadline. Immediately upon realizing her error, Ms. Rodriguez filed the notice of appeal. (Declaration of Rita Rodriguez attached to Appellant's Application for Relief from Default filed in the Court of Appeal on December 27, 2019.)

In this case, there is no question counsel's error in timely filing the notice of appeal was prejudicial because it effectively barred mother from exercising her right to appeal.

C. Fairness and Justice Requires that the Constructive Filing Doctrine Be Extended To Parents In Juvenile Dependency Proceedings.

Parents in juvenile dependency appeals have the right to appeal. (§ 395.) *Appellate Defenders, Inc. v. Cheri S.* (1995) 35 Cal.App.4th 1819, 1821, held that "the right to an effective appeal exists in all proceedings which terminate parental rights, whether the proceedings are initiated by private persons or the state." This right to an appeal is only meaningful if the court-appointed attorney fulfills his or her responsibilities to provided

competent representation, which includes filing a notice of appeal when requested. Parents involved in juvenile dependency proceedings have no remedy like those where money damages awarded in a civil malpractice or post-conviction relief can make a defendant “whole” again. The only recourse a parent in the juvenile dependency system has are their due process rights which includes the crucial right to appeal.

Despite the fundamental liberty interests at stake in juvenile dependency proceedings, the protections of the constructive filing doctrine have not been extended to parents in juvenile dependency proceedings. Instead, several cases have held that the special consideration for finality in parental termination cases prevails over the policy consideration in favor of constructive filing. (*In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1254; *In re Ricky H.* (1992) 10 Cal.App.4th 552, 560; *In re Isaac J.*, *supra*, 4 Cal.App.4th at p.525; *In re A.M.* (1989) Cal.App.3d 319, 322.) In declining to extend the doctrine to cases involving termination of parental rights, the Court of Appeal has cited public policy and legislative concerns particular to termination cases: namely, the need to provide stability and finality for the dependent minor involved, and the risk of jeopardizing ongoing adoption proceedings. After parental rights have been terminated, the court’s focus must be on the child’s need for finality and permanency. (*In re Marilyn H.* (1993) 5 Cal.4th at 295, 307-308; *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 868.)

For instance, *In re A.M., supra*, 216 Cal.App.3d at p. 322, the Court concluded that the constructive filing doctrine did not apply to appeals from termination of parental rights, and dismissed the appeal as untimely because the notice of appeal was filed sixty-one days after the notice of entry of judgment was served. It reasoned that the application of the constructive filing doctrine in this case “would be clearly impracticable or inappropriate” due to the “paramount importance” of the child and the special need for finality and stability in termination of parental rights cases. (*Id.*, at 322.) Furthermore, “[a]doption proceedings could be jeopardized if the finality of a judgment [terminating parental rights] were uncertain.” Such considerations, the *A.M.* Court concluded, were not present in criminal cases. (*Ibid.*)

In *In re Isaac J.*, petitioner father filed a writ for habeas corpus seeking relief after the Court dismissed his late-filed appeal from the termination of parental rights under prior Civil Code section 232. Following *In re A.M.*, the *In re Isaac J.* Court refused to apply the constructive filing doctrine based primarily on the policy that, “in adoption related proceedings [including termination of parental rights cases], the simple fact that an apparently final judgment is placed in danger of being upset must have a deleterious effect on the child.” (*In re Isaac J., supra*, 4 Cal.App.4th at pp. 534-35.)

Similarly, in *In re Ricky H., supra*, 10 Cal.App.4th at p. 560, mother attempted to appeal from the termination of parental rights following a section 366.26 hearing. In again

refusing to apply the constructive filing doctrine, the Court simply noted that existing case law only applied to incarcerated defendants in criminal cases, and that it had previously expressly declined to extend the doctrine to appeals of orders terminating parental rights. (*In re Ricky H.*, *supra*, 10 Cal.App.4th at p. 560.)

Two years later, in *In re Alyssa H.*, *supra*, 22 Cal.App.4th 1249, appellant father appealed from a judgment declaring his minor daughter free from his parental custody and control pursuant to former Civil Code section 232. Citing *In re Isaac J.* and *In re A.M.*, the Court found his late notice of appeal void and declined to apply constructive filing, again because of “the special need for finality in parental termination cases and the danger of imperiling adoption proceedings prevails over the policy considerations in favor of constructive filing.” (*In re Alyssa H.*, *supra*, 22 Cal.App.4th at p. 1254.)

In re Ryan R., did not discuss constructive filing but dismissed the mother’s late-filed notice of appeal from the termination of her parental rights based on the same policy of “children’s special need for finality in adoption related proceedings.” (*In re Ryan R.* (2004) 122 Cal.App.4th 595, 598.)

Permanency is a significant factor in juvenile dependency proceedings. However, mother disagrees with the reasoning of the Courts of Appeal who have not extended the constructive filing doctrine in juvenile dependency cases. When a parent has timely communicated to counsel their desire to appeal the termination order, interests of fairness and justice require application of the constructive filing doctrine. When a parent can

establish that the factors set forth in *Benoit* have been met - (a) the justifiable reliance of the parent on his or her attorney to file a notice of appeal, (b) the due diligence of the parent in assuring herself that a notice of appeal was being timely filed, and (c) the ineffective assistance of counsel in failing to timely file such a notice - the constructive filing doctrine should be extended to apply to parents in juvenile dependency proceedings.

The application of the constructive filing doctrine would not be clearly impracticable or inappropriate when the parent has diligently asserted their right to appeal which has been thwarted by the actions of court-appointed counsel. The paramount importance of the child and the special need for finality and stability in termination of parental rights cases is not jeopardized when Courts assure that the irrevocable termination of a parent and child relationship was not made in error.

Permanency for a child is already delayed when a parent exercises their right to file a notice of appeal. Even with the deadlines applicable to section 366.26 fast track appeals, the appellate process can take many months.² This may result in a delay in permanence but this delay is permitted to ensure a parent receives due process. This delay does not necessary equate to a disruption in permanency for a child. Children with permanent plans waiting for their adoption finalization are not

² The 2017 Court Statistics Report: Time from Notice of Appeal to Filing a Court of Appeal Opinion (90th percentile and median) Figure 33 Fiscal Year 2015-2016 statewide is 842 days. (<https://www.courts.ca.gov/documents/2017-Court-Statistics-Report.pdf>.)

moved from their adoptive homes while an appeal is pending. These children remain in the same home with the same caregivers.

It is without dispute that parents have a fundamental liberty interest in the care, custody and control of their children. Due process also requires the state to provide fundamentally fair procedures to parents in juvenile dependency proceedings. The interests of the parents must be balanced against the child's interests in permanency and stability. Overriding these interests are the intersecting interests of the state, the parent and the child in the correct adjudication of decisions that result in the irrevocable termination of the parent-child relationship.

An appellate court has the inherent authority to determine, on its own motion, whether it has jurisdiction in a case” (*People v. Zarazua* (2009) 179 Cal.App.4th 1054, 1062, citing *Rescue Army v. Municipal Court* (1946) 28 Cal.2d 460, 464, *People v. Williams* (2005) 35 Cal.4th 817, 824, *Walker v. Superior Court* (1991) 53 Cal.3d 257, 267, *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 302-303.) Therefore, it naturally follows that “an appellate court has jurisdiction to determine whether a notice of appeal has been constructively filed, and that jurisdiction may be invoked by a noticed motion in the appellate court.” (*Zarazua, supra*, 179 Cal.App.4th at p. 1063.)

When a parent has diligently asserted their right to appeal, the constructive filing doctrine should be extended to and applied in juvenile dependency proceedings. Here, mother relied on her court-appointed attorney to file a notice of appeal. Mother

contacted her attorney less than a week after the section 366.26 hearing requesting that a notice of appeal be filed. Her court-appointed attorney failed to discharge her duties and forgot to file the notice of appeal as requested within the sixty-day time limit. Mother did not contribute to or cause the delay in filing the notice of appeal. It was the ineffective assistance of her counsel which caused the delay. To deny a parent the right to appeal the order terminating parental rights in such cases leaves a parent with no meaningful remedy.

Review is necessary to address this important question of law that will continue to recur for parents in juvenile dependency proceedings all over the state.

CONCLUSION

Mother respectfully requests this Court to grant review to settle an important question of law, namely, whether a parent in juvenile dependency proceedings should be denied their right to appeal when they were diligent in asserting their desire to appeal but their court appointed attorney failed to timely file the notice of appeal.

Date: February 28, 2020

Respectfully submitted:

/Candice Saadian Costa/
Candice Saadian Costa
Attorney for mother, Mariah B.

CERTIFICATE OF WORD COUNT

Counsel for Mariah B., hereby certifies that this brief consists of 4930 words (excluding proof of service and this certificate), according to the word count of the computer word-processing program. (Cal. Rules of Court, rule 8.630 (b)(2).)

February 28, 2020

/Candice Saadian Costa/
Candice Saadian Costa

**Declaration of Service by Mail and Electronic Service by
Truefiling**

Re: *In re Aamiyah R.* Case No: A158143

DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of San Mateo, and am not a party to the instant action. My business address is 1325 Howard Ave. #232 Burlingame, CA 94010. My e-service address is CandiceSaadian@gmail.com. On 2/28/2020 I served a copy of the Petition for Review on each of the parties:

Supreme Court of the State of California – by truefiling

Court of Appeal, First Appellate District Division One – by truefiling

Alameda County Counsel – true filing

First District Appellate Project - truefiling

**East Bay Family Defenders Attorney for the appellant -
rita@familydefender.org**

Alicia Park – parklaw@mindspring.com

**Petitioner, Mariah B.
[confidential]**

**Alameda County Superior Court by USPS Mail:
2233 Shore Line Drive
Alameda, CA 94501**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 2/28/2020 at San Mateo, California.

/s/Candice Saadian Costa
CANDICE SAADIAN COSTA

EXHIBIT A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re A.R., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

A158143

(Alameda County
Super. Ct. No. JD02839802)

BY THE COURT¹:

On December 27, 2019, appellant M.B. (mother) filed an application for relief from default. On June 12, 2019, the juvenile court terminated mother's parental rights and denied her petition under Welfare and Institutions Code section 388, and she filed her notice of appeal on August 15. As she recognizes, the notice of appeal was untimely because it was filed more than 60 days after the order appealed. (Cal. Rules of Court, rule 8.406(a)(1).) She argues that she should be relieved from default because, through no fault of her own, her trial counsel inadvertently failed to file the notice of appeal in time. Respondent opposes the application for relief and asks that the appeal be dismissed.

Mother's application is denied. Mother relies on the principle that notices of appeal must be liberally construed, but none of the authorities she cites support extending the deadline to file a notice of appeal. Specifically, although mother does not explicitly rely on this ground, she is not entitled to relief based on the doctrine of constructive

¹ Before Margulies, Acting P.J., Banke, J., and Sanchez, J.

filing, under which a late notice of appeal will be deemed timely filed if the appellant is incarcerated and the delay resulted through no fault of his or her own. (See *In re Benoit* (1973) 10 Cal.3d 72, 86.) That doctrine generally does not apply in dependency cases, and the court declines to apply it here. (See *In re Ricky H.* (1992) 10 Cal.App.4th 552, 560; see also *In re A.M.* (1989) 216 Cal.App.3d 319, 322.) Because the notice of appeal was untimely, the court lacks jurisdiction, and the appeal is dismissed.

Dated: 01/21/2020

Margulies, J.

ing P.J.

EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re A.R., a Person Coming Under
the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

A158143

(Alameda County
Super. Ct. No. JD02839802)

BY THE COURT:

Appellant’s petition for rehearing, which argues grounds already considered and rejected by this court in its January 21, 2020 order dismissing the appeal, is denied. (See *Gentis v. Safeguard Business Systems, Inc.* (1998) 60 Cal.App.4th 1294, 1308 [denying petition for rehearing: “The balance of defendants’ petition restates arguments that were raised and considered on appeal.”]; 2 Eisenberg, et al., Cal. Practice Guide, Civil Appeals and Writs (Rutter Nov. 2019 update) § 12:1 [“[R]ehearings are not granted simply to give ‘disappointed’ parties an opportunity to reargue the appeal or ‘undo’ their mistakes in presenting or opposing the appeal in the first instance.”].)

Date: 02/07/2020

Margulies, J.

P.J.

Before: Margulies, J., Banke, J., and Sanchez

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **In re A.R.**
Case Number: **TEMP-
MLKGJHMB**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **candicesaadian@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW (FEE PREVIOUSLY PAID)	Boykins_PFR_SC

Service Recipients:

Person Served	Email Address	Type	Date / Time
Alameda County Counsel	occappeals.eservice@acgov.org	e-Serve	2/28/2020 1:36:31 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/28/2020

Date

/s/Candice Saadian

Signature

Saadian, Candice (249948)

Last Name, First Name (PNum)

Law Office of Candice Saadian

Law Firm
