

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL – SECOND DIST.

FILED

Sep 08, 2016

JOSEPH A. LANE, Clerk

Z. Clayton Deputy Clerk

SANTOS M.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

MARIA M.,

Real Party in Interest.

B277308

(Los Angeles County
Super. Ct. No. BF056018)
(Rolf M. Treu, Judge)

NOTICE OF INTENT TO GRANT
PEREMPTORY WRIT OF MANDATE
IN THE FIRST INSTANCE

BY THE COURT:*

We have read and considered the petition for writ of mandate filed by petitioner Santos M. on September 1, 2016.

Santos M. challenges the trial court's order issued on July 20, 2016, denying petitioner's request for an order regarding child custody and Special Immigrant Juvenile Status (SIJS, 8 U.S.C. § 1101(a)(27)(J)) findings. The court concluded that joinder of petitioner's father and personal jurisdiction over him were required to proceed with the determination of whether Santos M. meets the predicate findings required to make him eligible to qualify for SIJ status. The court declined to make the requested findings primarily because it concluded Santos M.'s request for an award of sole custody to mother in an action under the Uniform Parentage Act necessarily implicated paternity and parental rights (if any), which in turn made father an indispensable party to the parentage action.

The record provided in support of the petition establishes, however, that Santos M.'s father's identity and whereabouts are unknown, and that diligent efforts to locate him have been futile.

Under these circumstances, the respondent was required to proceed with hearing the matters regarding child custody and Special Immigrant Juvenile Status. Father's joinder was not required where he could not be located or identified. (See Fam. Code, § 7635 [Uniform Parentage Act notice must comply with Fam. Code, § 7666]; § 7666 [notice not required where alleged biological father cannot be located or his identity cannot be ascertained].)

In view of the clear legal error apparent in the respondent court's order of July 20, 2016, and this court's determination the matter should be expedited because Santos M. will reach the age of majority on November 1, 2016, the parties are notified of our intention to issue a peremptory writ of mandate in the first instance compelling the respondent to vacate its order of July 20, 2016, and instead proceed forthwith to consider Santos M.'s request for an order regarding child custody and SIJS findings. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-183; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223.)

The respondent may avoid issuance of a peremptory writ by vacating its order of July 20, 2016, and scheduling a hearing to consider petitioner's request for an order regarding custody and whether he is eligible for SIJ status. Because there is no adverse party here to object to the court proceeding in this manner, we find that the court need not inform the parties that it is considering taking such action and provide them with an opportunity to be heard, as would be required in a case involving adverse parties. (See *Brown, Winfield & Canzoneri v. Superior Court* (2010) 47 Cal.4th 1233, 1250.)

If the respondent proceeds as we have suggested, it shall, prior to September 28, 2016, transmit a copy to this court of its order vacating its order of July 20, 2016, and scheduling a hearing prior to November 1, 2016, to consider petitioner's request regarding custody and SIJS findings. We express no opinion on the merits of the request.

In the event respondent does not vacate its order and schedule a hearing, this court intends to promptly issue a peremptory writ of mandate requiring the trial court to

schedule such a hearing before November 1, 2016. Because there is no party who opposes the petition for writ of mandate now before us, further briefing would not be required prior to issuance of the peremptory writ of mandate. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1238.)

We have received a request to file an amicus brief, filed collectively by Public Counsel, Esperanza Immigrant Rights Project, Central American Resource Center, International Institute of Los Angeles, Harriet Buhai Center for Family Law, Immigration Center for Women and Children, and Community Legal Services of East Palo Alto. The application is granted, and the amicus brief is deemed filed as of the date of this notice.



* EDMON, P.J.

ALDRICH, J.

LAVIN, J.