

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

IN RE A.B., A Person Coming)
Under the Juvenile Court Law.)
_____)
)
SAMPLE COUNTY HEALTH AND)
HUMAN SERVICES AGENCY,)
)
Plaintiff and Respondent,)
)
v.)
)
MOTHER B.,)
)
Defendant and Appellant.)
_____)

C012345

[Sample] County
Superior Ct. No. [###]

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF [COUNTY]

Hon. [Name], Judge

APPELLANT’S OPENING BRIEF

(In re Phoenix H. (2009) 47 Cal.4th 835)

[Name of Attorney]
ATTORNEY AT LAW

State Bar No. [Bar Number]
[Street Address]
[City], [State] [Zip Code]
[area code] [phone number]

Attorney for Appellant Mother B.
By appointment of the Court of Appeal
under the Central California Appellate
Program [INDEPN/ASSIST] case system

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(In re Phoenix H. (2009) 47 Cal.4th 835)

STATEMENT OF APPEALABILITY

This appeal is from a final judgment that finally disposes of the issues between the parties. (Cal. Rules of Court, rule 8.204(a)(2)(B).)

ABBREVIATED STATEMENT OF THE CASE/FACTS

[Note: A combined statement of case and facts should be summarized in this portion of the brief with citations to the transcripts. However, only the relevant facts and procedures should be summarized in a *Phoenix H.* brief as the court does not expect extensive, nor detailed statements. The following hypothetical sample is provided to illustrate brevity and succinctness.]

Appellant Mother B. is currently in custody in the Sample county jail awaiting charges in the severe head and neck injuries sustained by her six-year-old severely mentally disabled child, C.B., while in the care of her and her boyfriend. (RT 14.) The medical center doctor determined

that the extensive injuries to C.B., causing paralysis, were non-accidental and the child could not have caused the injuries to herself. (CT 29-30.) Mother said the injuries occurred while she was putting out the trash cans for trash collection so she did not know what had happened. (RT 199.) Mother plans to marry the boyfriend, who is the father of both A.B. and C.B. (RT 205.) A.B. (minor in this appeal) was born while mother was incarcerated and removed at birth. (CT 18.) A.B. has been placed with Ms. B's sister who plans to adopt both A.B. and C.B. (CT 30.)

This appeal is from the Welfare and Institutions Code section 366.26 hearing terminating mother's parental rights as to A.B. Mother appeared in jail garb and was allowed to address the court. (RT 190.) She argued that it was not fair to terminate her parental rights to a child she had never seen or touched, nor had she been convicted of the underlying crimes charged as to C.B. (RT 200-202.) She did not argue whether A.B. was likely to be adopted, or whether any exceptions to adoptability applied. A.B. is generally adoptable and there were other relatives who were interested in adoption. (CT 31.) Mother was denied reunification services due to the injuries to C.B. and was never allowed visitation with A.B. A study showed that she had no beneficial relationship with her mother but that she recognized and responded to her sister C.B. (CT 44.)

The trial court terminated mother's parental rights as to A.B. and chose adoption as the permanent plan pursuant to Welfare and Institutions Code section 366.26, subdivision (b)(1). (RT 209.) Appellant mother timely filed her notice of appeal. (CT 60.)

ARGUMENT

I.

BRIEF SUBMITTED UNDER AUTHORITY OF *IN RE PHOENIX H.*

This brief is being submitted pursuant to the opinion of the California Supreme Court in *In re Phoenix H.* (2009) 47 Cal.4th 835. Appellant has been advised by present counsel of [his/her] right to file a motion seeking leave to file a supplemental brief in this court within 30 days of the date this brief is filed. (See *Id.* at p. 845 [court has discretion to consider appellant's request].) Appellant has been advised that [his/her] motion must demonstrate to the court that "a showing of good cause that an arguable issue does, in fact, exist." (*Id.* at p. 844.)

[*Choose one¹: option 1*] Appellant has been further advised that upon [his/her] request present counsel will forward appellant's copy of the record on appeal for the purpose of preparing the motion or a supplemental opening brief, but that counsel will retain the record for the present to allow proper representation in the event this court requests further briefing. *Or option 2*): A copy of the record on appeal has been forwarded to appellant to allow proper preparation of [his/her] motion to the court.]

Appellant has been further advised that [he/she] may ask the court to relieve present counsel at the court's discretion.

Dated: _____

Respectfully submitted,

[Attorney]
State Bar No. [Bar Number]
[Address]
[City], [State] [Zip code]
[Area code] [phone number]

¹ Appointed counsel's election to send or not send the record along with this Phoenix H. brief to the client is a matter of practice and is not determined by the wishes of either the courts or the project; it is a matter of choice for counsel of record.

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DECLARATION OF COUNSEL

I, [name of appellate counsel], declare:

As counsel appointed to represent appellant, [Client Name], in this appeal, I have read the entire record consisting of [CT length] pages of clerk's transcript as well as [RT length] pages of reporter's transcript. I have discussed in correspondence with my client my findings and my client's views regarding the case. In a letter dated [letter date], I advised my client of the nature of this brief; that I would serve a copy of this brief on my client; that [s/he] may file a motion seeking leave of this court to file a supplemental brief within 30 days of my filing the opening brief on [his/her] behalf; that [his/her] motion must demonstrate a showing of good cause that an arguable issue does, in fact, exist; [CHOOSE ONE: option 1): that upon request I would send [him/her] the client's copy of the record on appeal to aid [his/her] preparation of the motion or a supplemental brief, if any; Or option 2): A copy of the record on appeal has been forwarded to appellant to allow proper preparation of [his/her] motion to the court]; that I would remain available to brief issues as requested by the court; and that [she/he] may ask the court to relieve present counsel at the court's discretion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **[insert date]**, at **[City]**, California.

[Name of Counsel]
Attorney for Appellant

CERTIFICATE OF WORD COUNT (Rule 8.204)

I, **[insert appellate counsel's name]**, counsel for appellant, certify pursuant to the California Rules of Court, that the word count for this document is **[insert word count]** words, excluding the tables, this certificate, and any attachment permitted under rule 8.204(d). This document was prepared in **[Word/WordPerfect]**, and this is the word count generated by the program for this document. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed, at **[City]** California, on **[Date]**.

[Name of Counsel]
Attorney for Appellant