

1 violated by the state court and his attorney in failing to give him proper notice of these hearings.
2 (Id.). Petitioner also argues that the state court order terminating his parental rights should be
3 modified. (Id., p. 18).

4 DISCUSSION

5 A. Procedural Grounds for Summary Dismissal

6 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

7 If it plainly appears from the face of the petition and any exhibits annexed to
8 it that the petitioner is not entitled to relief in the district court, the judge shall
make an order for its summary dismissal and cause the petitioner to be notified.

9 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.1990). A district court may entertain a
10 petition for writ of habeas corpus "on behalf of a person in custody pursuant to the judgment of a
11 State court only on the ground that he is in custody in violation of the Constitution or laws or
12 treaties of the United States." 28 U.S.C. S § 2254(a). The Advisory Committee Notes to Rule 8
13 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion
14 under Rule 4, or pursuant to the Respondent's motion to dismiss, or after an answer to the
15 petition has been filed.

16 B. Lack Of Habeas Jurisdiction Over Child Custody Or Parental Rights Issues.

17 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241
18 of Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner
19 unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:

20 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall
21 entertain an application for a writ of habeas corpus in behalf of a person in
22 custody pursuant to a judgment of a State court *only on the ground that he is in
custody in violation of the Constitution or laws or treaties of the United States.*

23 (emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United
24 States District Court. The Supreme Court has held that "the essence of habeas corpus is an attack
25 by a person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475,
26 484 (1973). Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254,
27 Petitioner must demonstrate that the adjudication of his claim in state court
28 resulted in a decision that was contrary to, or involved an unreasonable application

1 of, clearly established Federal law, as determined by the Supreme Court of the
2 United States; or resulted in a decision that was based on an unreasonable
3 determination of the facts in light of the evidence presented in the State court
4 proceeding.

4 28 U.S.C. § 2254(d)(1),(2).

5 In the instant case, Petitioner fails to state a cognizable federal claim. Petitioner does not
6 allege a violation of the Constitution or federal law, nor does he argue that he is in custody in
7 violation of the Constitution or federal law. Instead, Petitioner maintains that the state courts
8 failed to give Petitioner proper notice of two hearings divesting Petitioner of parental rights and
9 “reunification services.” Petitioner also maintains that his attorneys in those proceedings
10 provided ineffective assistance in failing to give sufficient notice to Petitioner of those hearings
11 that Petitioner could appear at those hearings. Such claims do not invoke the habeas jurisdiction
12 of this Court.

13 Federal courts are to decline jurisdiction of cases concerning domestic relations. See,
14 e.g., In re Burrus, 136 U.S. 586, 593-94, 10 S.Ct. 850, 852-53 (1890); Peterson v. Babbitt, 708
15 F.2d 465, 466 (9th Cir.1983). Specifically, the United States Supreme Court has held that habeas
16 corpus relief is not available to challenge a state court’s decision on parental rights or child
17 custody. Lehman v. Lycoming County Children’s Services, 458 U.S. 502, 511-12, 102 S.Ct.
18 3231, 3237-38 (1982); see also Roman-Nose v. New Mexico Dep’t of Human Services, 967 F.2d
19 435, 436 (10th Cir.1992). Reasoning that state-ordered child custody does not raise the concerns
20 and restrictions customarily associated with habeas corpus relief, the Supreme Court in Lehman
21 stated: “[t]he federal writ of habeas corpus, representing as it does a profound interference with
22 state judicial systems and the finality of state decisions, should be reserved for those instances in
23 which the federal interest in individual liberty is so strong that it outweighs federalism and
24 finality concerns.” Id. at 516.

25 Here, Petitioner does not challenge the fact or duration of his present confinement. Since
26 the only relief this Court can afford a habeas petitioner is an order granting him his freedom, the
27 Court, in a federal habeas proceeding, necessarily lacks both the jurisdiction to intervene in a
28 California court’s decisions regarding parental rights and the power to correct the mistakes, if

1 any, committed by those state courts in domestic relations proceedings.

2 **RECOMMENDATION**

3 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas
4 corpus be DISMISSED with prejudice for lack of habeas jurisdiction and failure to state a claim
5 upon which habeas relief can be granted.

6 This Findings and Recommendation is submitted to the United States District Court
7 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
8 of the Local Rules of Practice for the United States District Court, Eastern District of California.

9 Within twenty days after being served with a copy, any party may file written objections
10 with the court and serve a copy on all parties. Such a document should be captioned “Objections
11 to Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served
12 and filed within fourteen days after service of the objections. The Court will then review the
13 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that
14 failure to file objections within the specified time may waive the right to appeal the District
15 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16
17 IT IS SO ORDERED.

18 Dated: June 11, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE