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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re F.C., a Person Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent,	A133467
v. B.C., Defendant and Appellant.	(Sonoma County Super. Ct. No. 3377DEP)
In re B.C. on Habeas Corpus	A134536

In an appeal and a petition for writ of habeas corpus, B.C. (Mother) challenges the order terminating her parental rights to F.C., who is currently three years old. She contends that her attorneys were ineffective throughout the case. We conclude Mother waived any challenge to the juvenile court’s exercise of jurisdiction and decision to terminate services. We also conclude Mother did not demonstrate her counsel was ineffective at any stage and, therefore, affirm.

I. BACKGROUND

Mother gave birth to F.C. in March 2009, when she was 16 years old. A dependency petition for F.C. was filed on July 2, 2010, alleging that Mother and the

father, whose whereabouts were unknown, had failed to protect and support F.C. (Welf. & Inst. Code, § 300, subds. (b), (g).)¹

According to the agency's jurisdiction and disposition report, Mother was 14 or 15 years old when she met and moved in with the father, who was 23. After F.C. was born, the father was arrested and convicted of a drug offense. He was deported to Mexico but returned to the U.S. Mother spoke with him after his return but did not know where he was living.

In support of the allegation that Mother had failed to protect F.C., the petition stated that Mother had a history of substance abuse and had acknowledged the use of marijuana on March 18 and June 30, 2010. The petition further stated that Mother had "left the minor in the care of [C.S., the apartment manager where Mother and her sister lived] to attend dances and parties." Mother told the social worker that this was "true. I was young and selfish. I should have known better, but I didn't know better." As for substance abuse and marijuana use, Mother admitted drinking alcohol at parties but said that she did not drink when she was pregnant. She had "gone through periods" since age 14 when she smoked marijuana, but had not smoked for two months.

The petition further alleged that Mother had "failed to provide [F.C.] with adequate care and provision of support," and had left him with C.S. full-time since September 2009. Mother admitted leaving F.C. in C.S.'s care. Mother told the social worker: "When I had my baby, I wanted a family. I realized that having a baby was much harder than I had thought. I didn't want to be responsible and I didn't want to be responsible for another person's life when I couldn't be responsible for mine." Mother said, "at first, I used to take the baby [to C.S.] just a couple of hours every few days. After awhile, it turned out to be just Friday or Saturday nights. A couple of months later, it turned out to be Friday, Saturday, Sunday, Monday. Since September or October, [F.C.] has been living with [C.S.] full-time. I have been seeing my baby almost everyday

¹ Subsequent statutory references are to the Welfare and Institutions Code.

since then. [C.S.] has been really nice and I know that [C.S.] and [her husband] take very good care of my baby.”

Attached to the report were notes of a June 30, 2010 meeting between Mother and the social worker, which stated that “due to lack of financial resources [Mother] has not provided any financial support for the baby. [Mother] is currently living with her sister and the sister’s two kids The sister is on Welfare and receiving Food Stamp[s]. [Mother] is not working . . . and has not graduated from high school.” The report indicated that Mother was in the 11th grade, and planned to complete the 12th grade by June 2011. She was looking for a job at Wal-Mart or Target without success. She had been employed at Subway from November to December 2009.

The report described F.C. as healthy, “developmentally on target,” and “extremely attached” to C.S. and her husband. Mother was “credited for using sound judgment in choosing [C.S.’s] family to care for her baby.” The case came to the attention of the agency when C.S. filed a guardianship petition for F.C. Mother appeared at the initial hearing in the case on July 6, 2010, with her court-appointed counsel, Nanette Johnson of Ciummo & Associates. Johnson advised the court that Mother “[w]ould like to have her child remain where he is. He’s comfortable there. He’s been there. But she’s also interested in exploring ways to become a better parent, parenting classes and things of that nature.”

Mother told the social worker that she wanted custody of F.C. The social worker noted that Mother “ha[d] not been able to acquire the adequate help and support to be a parent on her own,” and recommended that the court grant her reunification services. The social worker wrote: “[Mother] needs to take notice that this is her only chance to step up to the plate and make some decisions once and for all if she can be a mother who can provide care and safety for her son. The undersigned has explained to [Mother] about the time limitation in providing services to her due to her son’s young age.”

The recommended case plan required that Mother complete parenting classes; complete an outpatient substance abuse treatment program; participate in a 12-step program; submit to random drug testing; participate in recommended counseling; visit

regularly with F.C.; obtain employment; and show the ability to provide F.C. adequate housing.

At the August 4, 2010 jurisdiction and disposition hearing, Johnson acknowledged that the agency report was “very thorough,” stated that Mother “would really like to try to get her baby back,” and submitted on the issues without argument. The court adopted the agency’s recommendations, scheduled an “oral update” for November 9, and a six-month review for February 3. The court asked Mother if she had any questions and she said, “No.” The court asked Mother if she had any comments and she reported that everything was “going well so far,” and that she was complying with the case plan requirements.

On October 29, the agency reported to the court that Mother stopped attending individual therapy in September, but was otherwise complying with her case plan. She had drug tested when asked and the results were negative. She had visited with F.C. consistently at the agency’s office, and visits were now unsupervised. She and her boyfriend, G.S., were in couples therapy. She and G.S. were working with a parent educator and interacting well with F.C. during the visits.

At the update hearing on November 9, Mother was represented by Bonnie Alonso, another attorney at the Ciummo firm. Alonso advised that Mother had come to court but had to leave before the matter was called to go to work at a new job. The court acknowledged the “progress and hard work on the part of [Mother]” at that point.

On January 21, the agency reported for the six-month review that Mother had been living with G.S.’s parents, but that she and G.S. broke up in December, and she had gone to live with her father. She was starting junior college classes in January and taking other classes to get her GED. But the agency recommended that reunification services be terminated and that a section 366.26 (.26) hearing be set because she had failed to comply with various aspects of her case plan.

Mother had not met with the parent educator since the first week of November. Mother had left two messages with the educator between December 22, 2010, and January 20, 2011, but did not propose times when they could meet. Mother stopped going to individual therapy sessions in September, and did not resume them until

January. Mother told the social worker on November 9 that she had obtained a job at a convenience store, but reported on December 10 that her employment had been terminated. She was looking for a job as of the date of the report.

Mother completed an outpatient drug treatment program in November, but tested positive for marijuana on December 10, and failed to appear for drug tests on December 20, 22, and 23, and January 6 and 7. C.S. and her husband reported that Mother “smelled a little bit like alcohol” during her visit with F.C. on January 3, and that Mother appeared to be “under the influence of something” during a visit on January 6. Mother visited consistently with F.C. until January, when C.S. and her husband reported that Mother was missing visits and sometimes leaving them early.

The agency reported that F.C. continued to be developmentally on target, and remained “very bonded” to C.S. and her husband. C.S. and her husband were “confident that they want to continue caring for [F.C.],” but were unsure between guardianship and adoption. Mother told the social worker that she was “happy about knowing [C.S. and her husband] for a long time,” and “feels confident that [they] provide [F.C.] with adequate care.”

The agency had “no doubt that [Mother] loves and cares for [F.C.] very much. However, considering the two month gap in the parent education, the positive drug test for marijuana and the five missed tests, the considerable delay in starting individual counseling, and the concerns regarding visits it is the [agency’s] assessment that there is not a substantial probability of return with extended services.”

At the February 3, 2011, six-month review hearing, Mother, represented by attorney Johnson, asked for a settlement conference. The court had an extended colloquy with Mother, who told the court, “I’m ready to be a mom. I just need a chance to be a mom. That month that I did wrong, I slipped. I had a breakup. It was horrible — whatever. No excuse for what I did . . . [¶] . . . I’m going to school right now. I don’t have a job right now. I live with my father, and he supports me — my father and my stepmother. They have really good jobs. I just need my son.” The court told Mother that

she “had six months to make a difference in your son’s life, you blew one out of the six months. That’s a problem.” The court set a settlement conference for February 23.

Mother appeared back in court on March 2 represented by attorney Alonso, who told the court: “We did have a settlement conference, which I thought, given what’s going on in the case, and where my client is in her life, was a very productive settlement conference. The recommendation is to terminate her services, but the point of the fact is that mother does support the placement that currently exists and has a good relationship with that person. . . . [A]nd the mother is ready to submit on the recommendation to terminate her services, but will continue on her own to work on things.” Counsel for F.C. expressed “grave concerns for this young mother. In spite of the fact she’s submitting on termination of services, I certainly hope she does the work she needs to do to get healthy.” County counsel added, “It was a productive settlement conference, and the department appreciates mom’s putting [F.C.’s] needs ahead of her own desires, and the submission.” The court adopted the agency’s recommendation, terminated services to Mother, and set a .26 hearing for June 30.

The agency’s report for the .26 hearing recommended that Mother’s parental rights be terminated and that a plan of adoption be ordered. The report described F.C. as “a happy, charming, bright, and active two year-old boy.” The report stated that C.S. and her husband wanted to adopt F.C., and a May 26, 2011 adoption assessment by the California Department of Social Services (CDSS) reported that F.C. “has a clear attachment to both of them.” According to the adoption assessment, “[F.C.] has a very loving relationship with his foster family and would benefit from the establishment of a permanent parent/child relationship through adoption. He views them as his psychological parents and turns to them for comfort. He is content to stay in his foster mother’s arms and smiles readily at foster family members when they enter the room. He laughs often and is very curious about his surroundings. He moves easily in his placement and obviously considers it his home. He is fully integrated into their family. [F.C.] appears to have substantial emotional ties to the foster parents.”

The adoption assessment stated that Mother's visits with F.C. "continued to go well until January 2011, when the mother became inconsistent and would not stay the entire time. They were suspended for a time and then began again, but the mother has not visited for the past six weeks. However, she maintains phone contact with [F.C.] on an irregular basis. . . . [¶] The assessment by CDSS includes consideration of [section] 366.26 [subdivision] (c)(1)(B)(i).² Although the interaction between the minor and [Mother] may have some incidental benefit, such benefit does not outweigh the benefit the child will gain through the permanency of adoption. CDSS finds that termination of parental rights would not be detrimental to the child."

At the June 30 hearing, counsel Johnson advised that Mother did not agree with the agency's recommendations and requested a settlement conference, which was scheduled for July 20. When the parties returned to court on July 27, Johnson stated that no settlement had been reached, and a contested .26 hearing was set for August 9. Johnson was ill on August 9, and the hearing was continued to August 18.

On August 9, Johnson filed a section 388 petition on behalf of Mother seeking further reunification services and unsupervised visits with F.C. The petition stated that Mother began a relationship with a new boyfriend, M.Z., in January 2011. She was living with M.Z., and M.Z.'s mother and stepfather in a four bedroom, "clean and sober" home, with "a spare room and a room used by the step-dad's daughter who visits on weekends." M.Z.'s sisters had offered to help with child care arrangements while Mother went to school. Mother "want[ed] to raise [F.C.] in the family atmosphere I now can offer him. I am grateful to [C.S] and her family for stepping up but feel it is my turn now. I know I am young and have made some mistakes but I have learned from them. I have support from clean and sober, healthy people Please give me another chance."

² Under this statute, the court may decline to terminate parental rights based on a finding that the termination would be detrimental to the child because a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

The agency filed an opposition to the petition, observing that Mother “does not contend that [F.C.] should be, or could safely be, returned to her at this time. [Mother] simply wants more reunification services, an option which is not available given her own failures in the reunification process and her current situation.” The agency “submit[ted that] Mother has offered no facts to support her allegations that circumstances have changed so as to justify her proposal that she receive additional reunification services. [F.C.] has lived with his current foster-adopt family for approximately 80% of his life. He is a young child in need of permanence and security. Clearly [Mother] is not in a position to provide those critical elements for him. Furthermore, [Mother’s] proposal actually would disrupt his permanence and security by preventing him from remaining in the only home he truly knows. Even if [Mother’s] representations were to be construed as presenting a genuine change of circumstances, the [agency] submits she has presented absolutely no evidence to support the second requirement, namely, that the proposed order would be in [F.C.’s] best interests.”

On August 15, the court issued a temporary restraining order preventing Mother from coming within 100 yards of F.C. and C.S. The order was prompted by a report from C.S. that Mother often came by C.S.’s home and interacted with F.C. when he was outside. On one occasion, Mother and her boyfriend parked their car in front of C.S.’s house, Mother got out of the car and spoke with F.C., and then took F.C. to the car and stood him up in the driver’s seat. In the application for the order, agency counsel noted that Mother’s visits with F.C. were supposed to be supervised.

Mother was served with the restraining order at the August 18 hearing on the section 388 petition and .26 matters. Attorney Johnson argued for Mother that Mother’s circumstances had improved, and that Mother did not appreciate the impropriety of approaching F.C. at C.S.’s home and taking F.C. to her car. Johnson stated with respect to the beneficial relationship exception (fn. 2, *ante*) that “legally, I think there is a relationship there. I don’t think I can offer the amount of evidence that would be necessary to prove that it rises to the level of the beneficial relationship under the law.” She continued: “I think clearly [Mother’s] visited regularly. I don’t think anybody

would dispute that. . . . This is a young lady [whose] situation is getting a lot better, much more stable. Her boyfriend — I’ve met him. He seems like a good person. She’s got a better living situation, but she did not complete her case plan. And since the termination of reunification services, she’s moving forward with her education and her life, and that’s basically where we stand today. And I don’t think that her coming to the apartment complex and interacting with her child and even taking the child to the car — I don’t think her intention was to cause anyone fear . . . that she might take her child and go.”

F.C.’s counsel argued that Johnson was being “gullible” in professing that Mother’s circumstances had changed enough to warrant further reunification services. Agency counsel submitted the section 388 issue on the agency’s written opposition, but noted that Mother had missed a visit with F.C. in July. Mother asked to speak before the court ruled on the section 388 petition, and explained that she missed the July 30 visit because she went to Great America to celebrate her birthday, and that she had tried to reschedule the visit. The court responded that while everyone agreed that Mother visited regularly and well with F.C. it was denying the section 388 petition.

The court asked Johnson for her comments on the permanent plan and Johnson said, “Again, your Honor, I think I can provide testimony and evidence that my client has visited regularly. I don’t think that’s really the problem here. I think the issue is as the Court stated earlier, where this baby has been for the greater part of his life. And while he may know that [Mother] is his mom, the day-to-day care is being provided by someone else, and I think that’s what the testimony would provide. But my client very much wants to raise her child.” The court observed, given F.C.’s age and the length of his placement with C.S., that “the psychological parent would be the current care provider,” and F.C.’s counsel agreed with that assessment. Agency counsel noted that adoptability had been stipulated, and argued that no exceptions to termination of parental rights applied. Counsel also pointed out that Mother’s visits with F.C. were supervised, and that there were documented inconsistencies in the visitation.

The court adopted the agency’s recommendations, terminated Mother’s parental rights, and freed F.C. for adoption.

II. DISCUSSION

A. Introduction

Mother challenges the termination of her parental rights by appeal and petition for writ of habeas corpus on the grounds that she received ineffective assistance of counsel in the case. We have granted her request to consolidate her appeal and petition.

Mother's appeal argues that counsel was ineffective for not arguing the beneficial relationship exception when the court was considering termination of parental rights at the .26 hearing. Mother's habeas petition argues that counsel was ineffective not only in connection with the .26 issues, but also because "she failed to challenge the sufficiency of the petition at jurisdiction; failed to advocate for continued reunification services; [and] failed to file an extraordinary writ after termination of reunification services."

B. Habeas Petition (A134536)

(1) Evidence

The declarations lodged to support and oppose the habeas petition may be summarized as follows.

With respect to the court's exercise of jurisdiction, Mother declares that Johnson did not discuss the allegations of the petition with her. Mother states that "Ms. Johnson never asked me if I continued to support [F.C.] when I placed him with [C.S.] and I did not know that was important. If she had asked me, I could have told her that I bought diapers, clothes, and bottles for [F.C.] while he was with [C.S.]." Johnson declares that, at the jurisdiction and disposition hearing, she discussed the agency's report, which included the petition's allegations, with Mother.

With respect to the termination of services, Mother declares that, at the February 23 settlement conference, "Ms. Johnson did not say very much. The other attorneys did most of the talking; telling me that I should not fight for more reunification services and that I would still get to visit [F.C.]. Ms. Johnson did not speak up for me or tell the other attorneys that I did want more services."

But Agency counsel declares that attorney Alonso, not Johnson, represented Mother at the settlement conference, and that Alonso expressed Mother's desire for more

services. “[H]owever, Ms. Alonso had virtually no facts to argue in support of that position in light of the following facts which were discussed at the settlement conference: (1) mother had not contacted the parent educator; (2) mother had failed to drug test or tested positive when she did test; (3) mother had not engaged in therapy until January 13, 2011, approximately five months into the six month service period; (4) mother no longer had a job; (5) mother was not in school; (6) visits had been suspended until mother could provide two clean drug tests; (7) when mother previously had visited the baby, her interaction was not appropriate, including her having teased the baby; (8) if visits resumed, they would need to be supervised by the Department; and (9) the baby was very bonded with the foster parents with whom mother had placed him in September, 2009, long before the Department’s official detention of him on July 2, 2011.”

Mother declares that following the settlement conference, she “did not know that Ms. Alonso was going to agree to termination of my services until she said it on the record” at the March 2 hearing. After the hearing, she told Johnson that she wanted to appeal the order terminating services. She states that “[w]hen the court terminated my services I had a job, a stable place to live, and had completed a drug program.”

Agency counsel observes in her declaration that Mother did not object at the March 2 hearing when the attorneys reported that she was submitting to termination of services. Agency counsel states that Mother confirmed at the settlement conference that she did not have a job. Agency counsel also points out that, although Mother had completed a drug treatment program, she thereafter tested positive for drugs and missed five drug tests.

Mother declares that, at the settlement conference before the .26 hearing, Johnson “did not say very much,” “told me to tell the other attorneys what I wanted,” and “mostly agreed with what the other attorneys were saying to me.” At the settlement conference, she “never heard Ms. Johnson or any of the other attorneys talk about my relationship with [F.C.] or the beneficial relationship exception” to termination of parental rights. “Ms. Johnson never asked me about my relationship with my son but the social worker

who supervised my visits, Rose, talked to me about it. Rose said that [F.C.] and I had a good bond.”

Agency counsel declares that Mother never mentioned her opinion about the alleged bond at the settlement conference. “Ms. Johnson actively participated in the settlement conference with [Mother] but could not ignore the fact that the minor had been with the current care giver for approximately 80% of his life by virtue of mother’s having placed him with that care giver in September, 2009, long before the Department’s intervention.”

(2) Analysis

“[A] parent in a dependency proceeding has a right to effective assistance of counsel” (*In re Carrie M.* (2001) 90 Cal.App.4th 530, 535 (*Carrie M.*); § 317.5, subd. (a)) and “a right to seek review of claims of incompetence” (*Carrie M., supra*, at p. 535). “ ‘[H]abeas corpus is available “[where] a parent seeks custody of a child living with another.” . . . A claim of ineffective assistance of counsel in a dependency matter is generally cognizable in the Court of Appeal on a petition for writ of habeas corpus.’ ” (*Id.* at p. 533; see also, e.g., *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.) In order to prevail on an ineffective assistance of counsel claim, the party must show that counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and that, but for counsel’s failings, a different result would have been reasonably probable. (*In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711 (*Emilye A.*.)

In general, “an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order on an appeal from a later appealable order.” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1151 (*Meranda P.*.) This “ ‘waiver rule’ ” (*ibid.*) is justified by a number of considerations, including “the apparent legislative intention to expedite dependency cases and subordinate, to the extent consistent with fundamental fairness, the parent’s right of appeal to the interests of the child and the state” (*id.* at p. 1156). In view of this consideration and others, the *Meranda P.* court decided that “if a parent, for whatever reason, has failed to timely and

appropriately raise a claim about the . . . quality of counsel received at a proceeding antedating the .26 hearing, we will apply the waiver rule to foreclose the parent from raising such an objection on appeal from the termination order.” (*Id.* at p. 1160.)

Meranda P. also rejected the parent’s attempt raise to representational issues with respect to earlier final appealable orders via a petition for habeas corpus, observing that “the rationale which supports our holding that the waiver rule should be enforced on the mother’s appeal from the termination order applies equally to the mother’s habeas corpus petition. The now paramount interests of the child in a stable, secure, long-term, continuous home environment and the associated interest of the state in reasonable expedition and finality, which have overcome the parent’s interests in maintaining the family relationship, would be no less subject to subversion by a habeas petition than they would be by a direct appeal.” (*Meranda P., supra*, 56 Cal.App.4th at p. 1163.)

Meranda P. was interpreted in *Carrie M., supra*, 90 Cal.App.4th 530, 534, to preclude use of habeas corpus to challenge antecedent final orders. “[F]or example, a claim of ineffective assistance of counsel in connection with jurisdiction and disposition orders . . . may not be raised by a habeas corpus petition filed in connection with an appeal from an order terminating parental rights.” (*Ibid.*) However, “a parent is entitled to raise a claim of ineffective assistance of counsel in connection with a parental rights termination order by habeas corpus petition filed concurrently with an appeal from the termination order.” (*Ibid.*)

Meranda P. was persuasively interpreted by Division Two of this Appellate District in *In re Janee J.* (1999) 74 Cal.App.4th 198, 208 (*Janee J.*), to require enforcement of the waiver rule “unless due process forbids it.” “[S]ignificant safeguards [were] built into this state’s dependency statutes which tend to work against the wrongful termination of a parent’s right to a child even though a parent may be . . . poorly represented,’ . . . includ[ing] a focus on return of the child during the reunification period, independent judicial review every six months, and notice to a parent of all proceedings and the right to counsel at all stages. . . . Thus in the usual case, application of the waiver rule will not offend due process,” and the rule is subject only to limited

exceptions. (*Janee J.*, *supra*, 74 Cal.App.4th at p. 208, quoting *Meranda P.*) “First, there must be some defect that fundamentally undermined the statutory scheme [such as lack of notice] so that the parent would have been kept from availing himself or herself of the protections afforded by the [dependency] scheme as a whole. . . . Second, to fall outside the waiver rule, defects must go beyond mere errors that might have been held reversible had they been properly and timely reviewed. To allow an exception for mere ‘reversible error’ of that sort would abrogate the review scheme . . . and turn the question of waiver into a review on the merits. . . . Finally, it follows that resort to claims of ineffective assistance as an avenue down which to parade ordinary claims of reversible error is also not enough [to avoid the waiver rule].” (*Id.* at pp. 208–209.)

Under these standards, the waiver rule precludes the claims of ineffective assistance of counsel Mother attempts to raise in her habeas petition in connection with jurisdiction and termination of reunification services. None of the deficiencies alleged with respect to her counsel’s performance at those stages of the case are so egregious that they could be considered to violate Mother’s right to due process so as to prevent her from availing herself of the protections provided by the dependency scheme. (*Janee J.*, *supra*, 74 Cal.App.4th at p. 208.) Mother received notice of, and participated in, every stage of the case. At most the alleged deficiencies might have led to reversible error that is not excepted from the waiver rule. (*Id.* at p. 209.)

Moreover, even if we were to reach the merits of Mother’s arguments about counsel’s competence in connection with jurisdiction and termination of services, we would conclude that no incompetence was shown. As for jurisdiction, Mother told the social worker that she did not have the financial resources to provide “any financial support for the baby.” She was in the 11th grade and had no job. The habeas petition adds the facts that Mother bought diapers, clothes, and bottles for F.C. while he was living with C.S. But those facts did not alter the reality that Mother was not caring for nor supporting F.C. when the petition was filed. (§ 300, subd. (g).) As for the termination of services, the record shows that Mother failed in multiple ways to comply with her case plan when services were provided. Given her failures, it is not reasonably

probable that more vigorous advocacy for continued services, or an appeal over the denial of additional services, could have succeeded. (*Emilye A.*, *supra*, 9 Cal.App.4th at p. 1711; see also *In re Frank G.* (1980) 104 Cal.App.3d 593, 595 [counsel is not constitutionally required to take every conceivable action for which there is any colorable basis] (*Frank G.*.)

Consistent with the decision in *Carrie M.*, we will address the habeas petition on the merits insofar as it raises issues concerning the order terminating Mother's parental rights. Here again, however, Mother failed to establish incompetence. Mother faults her counsel for failing to advocate for the beneficial relationship exception to the termination of parental rights. The habeas petition adds nothing to this argument other than Mother's hearsay statement that one of the social workers who observed her visits with F.C. said that she and F.C. had a "good bond." The record, including that additional fact, does not demonstrate that the beneficial relationship exception applied.

"[I]nteraction between natural parent and child will always confer some incidental benefit to the child" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342), but the beneficial relationship exception does not apply unless the parent-child "relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). "A parent must show more than frequent and loving contact or pleasant visits. . . . The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent." (*In re C.F.* (2011) 193 Cal.App.4th 549, 555 [applying *Autumn H.*]) "The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child's need for a stable and permanent home that would come with adoption. That showing will be difficult to make in the situation, such as the one here, where the parents have essentially never had custody of the child nor advanced beyond

supervised visitation. The difficulty is due to the factual circumstances of the parents in failing to reunify and establish a parental, rather than caretaker or friendly visitor relationship with the child.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Here, C.S. and her husband had custody of F.C. for all but the first few months of his young life, and Mother’s attempts to reunify with F.C. had not progressed beyond supervised visitation at the point when the court ruled on the termination of her parental rights. In light of those facts, Mother’s counsel reasonably determined that advocacy of the beneficial relationship exception was unwarranted. (*Frank G., supra*, 104 Cal.App.3d at p. 595.) Counsel did the best she could for Mother under the circumstances by seeking further reunification services under section 388.

The habeas petition must therefore be rejected.

C. Appeal (A133467)

In her appeal, Mother argues incompetence of counsel pertaining to the order terminating parental rights on the ground that “ ‘there simply could be no satisfactory explanation’ ” for counsel’s failure to argue for the beneficial relationship exception. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.) That argument fails for the reasons explained above in part II.B.

III. DISPOSITION

The order terminating parental rights is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.