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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JENIFER P.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

S.T., a Minor, et al.,

Real Parties in Interest.

A133879

(Contra Costa County  
Super. Ct. No. J10-00379)

The juvenile court terminated reunification services for petitioner Jenifer P. (Mother) after 18 months. The court set a hearing to terminate her parental rights and to develop a permanent plan for her child pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> Mother argues her due process rights were violated at the final review hearing, she was not provided reasonable services, and there was insufficient evidence of a substantial risk of harm to her son if he was returned to her care. We disagree on all points and deny her petition.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## I. BACKGROUND

### *Mother's Background*

Mother herself had an extensive dependency history as a minor. Born in 1987, “[s]he was listed as a victim in ten referrals . . . from 1996 through 2004, with allegations of physical abuse at the hands of her mother and older brother, and general neglect and caregiver absence by the maternal grandmother. Allegations of physical abuse . . . were substantiated in 1996, 2000, and 2001. The maternal grandmother pled no contest to charges of willful cruelty to a child in 1996.” Mother also had an extensive history of arrests from the time she was 12 years old, including charges of burglary, drug possession, battery of a police officer, and vehicle and petty theft.

### *Prior Dependency Cases of S.T.*

S.T. was born in March 2007<sup>2</sup> and detained in the hospital after Mother acted erratically in the hospital, ignored nurses’ instructions on how to care for S.T., tried to feed the infant sausage, and walked naked down the hallway following a Caesarian delivery. Contra Costa County Children and Family Services (Agency) filed a juvenile dependency petition on S.T.’s behalf pursuant to section 300. S.T. was returned to Mother’s care four days after his detention on the understanding Mother would live with S.T.’s maternal grandmother, who would help care for the child. Mother participated in parenting classes and showed progress in her parenting skills, although she had a tendency to overfeed the baby to the point of causing him to vomit. The petition was dismissed in May.

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<sup>2</sup> S.T.’s father (Father) married Mother in October 2007, but never lived with her. He was homeless and rarely spoke to or visited Mother or S.T. after S.T.’s birth. The record does not indicate whether Father participated in the 2007 dependency proceeding. When S.T. was removed again in September 2008, Father was advised of the case but did not appear at the hearings or otherwise participate. When the current petition was filed in March 2010, Father was identified as S.T.’s alleged father and the petition stated that his whereabouts were unknown. Absent parent searches were conducted in April and October 2010 without success. Father appeared at an April 22, 2011 hearing and the court ordered counsel appointed, but he did not appear at the next two hearings and did not pursue appointment of counsel.

Another petition was filed in about September 2008 (when S.T. was about 18 months old) after S.T. reportedly was found crying and alone in Mother's apartment, and Mother did not return for one and one-half hours. The following day, S.T. reportedly was left unattended on a second-story balcony and was seen climbing a chair that gave him access to the railing. When police responded, they found Mother's home in disarray and saw S.T. try to eat food he picked up off the floor. S.T. was removed from Mother's home. Following a 30-day extended visit in January 2009, he was returned to Mother's care under a family maintenance plan, which included services from the Agency's family preservation services unit. Services included parenting classes and weekly individual therapy for Mother.

A supplemental petition was filed in March 2009, when S.T. was almost two years old. In February 2009, S.T. had been found standing alone alongside Willow Pass Road in Concord, about to enter the street. In March 2009, a social worker visited the home and found a bottle of bleach in the middle of the bathroom floor and an exposed electrical outlet next to S.T.'s bed, even though Mother had been repeatedly instructed on how to provide a safe home for S.T. The family preservation unit concluded it could no longer help Mother and terminated her services. S.T. was again removed from Mother's care. He was enrolled in a We Care Services for Children (We Care) developmental program. Mother completed a parenting class, underwent an evaluation at the Regional Center of the East Bay, attended weekly individual therapy, and had multiple extended visits with S.T. During extended visits in July 2009, S.T. exhibited aggressive behavior at We Care, "punching and choking other students . . . without provocation."

In August 2009, S.T. was returned to Mother's care on a family maintenance plan, and Mother was referred for in-home therapeutic Wraparound services (WRAP) provided by a multidisciplinary mental health and services team. WRAP team members (led by facilitator Carol Rossi) apparently met with Mother about once a month to review and implement a safety plan for her care of her children. Mother also received weekly visits from a parent partner, and S.T. was still enrolled in the We Care school. After S.T. returned home, his behavior at school regressed and We Care assigned a one-on-one

support person to shadow him the entire school day. Liza Brennan, a We Care therapist who had worked with S.T. since July 2009, conducted parent-child therapy with Mother and S.T. from October 2009 to March 2010.

Mother gave birth to another son, P.P., in November 2009. She then moved with S.T., P.P., and P.P.'s father to a subsidized housing complex with an on-site social worker. In December, P.P.'s father left S.T. in the community room of the complex during an organized activity and neither Mother nor P.P.'s father could be contacted for about 20 minutes. Mother was advised never to leave S.T. unsupervised. Mother continued to receive individual therapy, WRAP services, and parent partner visits. The dependency case was terminated in January 2010.

#### *Current Dependency Case*

On March 8, 2010, the Agency received a report of possible physical abuse of S.T. Mother had called We Care to say that S.T. had a bruise on his left eye because he fell into a dresser at home. When S.T. arrived at school, he had not only a black eye but also bruises on his ears and a bruise on his left arm. A social worker asked S.T. how he got his "owie" and S.T. hit himself in the head and said, " 'Poppa did it.' " Mother had previously told school staff that S.T. "always says 'Poppa' 'Poppa' [the name he used for P.P.'s father] and points to his owie." A few weeks earlier, a classroom aide had asked S.T. about puncture marks on the bottom of his right heel and he said, " 'Papa did it.' " When the social worker went to Mother's home to investigate, she discovered that Mother had left P.P. on a bed surrounded by pillows while she walked out of the apartment to wait for S.T. to return home from school.

The Agency filed petitions pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse or neglect of sibling) on behalf of both children. The petition alleged that S.T. had "multiple bruises of various ages on different parts of his body including a black eye, two bruised ears, a bruise on his left forearm, and a bruise on his leg, all caused as a result of mother's failure or inability to supervise the child or monitor the mother's live-in boyfriend's [(P.P.'s father)] treatment of the child," and that Mother left P.P. alone in the family apartment, placing him at risk of harm.

In a March 2010 joint detention and jurisdiction report, the Agency recommended that the children remain with Mother and P.P.'s father on a family maintenance plan, but conveyed concern about the children's safety. Rossi, the WRAP facilitator, told the Agency that the team was concerned that Mother might not understand safety issues. Rossi said, "[Mother] is trying very hard, however, she does not seem to be able to follow through with the things they are giving her, like keeping the flip lock on the door to keep [S.T.] in the home safely. . . . 'Either they have not found the tools to help mom or she cannot get it.' "

S.T. was ordered detained on March 12, 2010. At an April 2 jurisdiction hearing, Mother admitted an allegation under section 300, subdivision (b) that she "failed to provide adequate supervision of the child, thus the child was harmed," establishing jurisdiction, and the original allegations were dismissed.

#### *Disposition Report*

In an April 2010 disposition report, the Agency reported that a child abuse expert had viewed photographs of S.T.'s ear injuries and concluded they were not accidental, but resulted from someone pinching or grabbing his ears, likely for reasons of discipline or punishment.

S.T. was displaying aggressive and belligerent behavior in his foster home and at school that threatened actual harm to others because of S.T.'s large size (67.5 pounds and 43 inches tall at 3 years old). The caregiver had "observed [S.T.] place a pillow over [P.P.'s] face, place his hand over the baby's nose and mouth[,] place his mouth over the baby's nose and mouth[,] and stuff a toy in the baby's mouth." He also threw a shoe at P.P. A mental health specialist who observed S.T. in the foster home characterized these violent behaviors toward P.P. as "learned behaviors" not typical of toddlers. S.T. also "charge[d] at his caregiver, hitting, kicking, biting, and pulling her hair." He called the foster mother "stupid bitch" and when she asked where he had heard those words, he said, "papa." He told his foster mother that Mother hit him, which he knew was wrong. At school, S.T. "lifted a child by the hair, picking him off the ground. He'd hit, punch, bite, kick, pinch, blow his nose on others, and spit at staff." S.T. also exhibited

aggressive sexualized behavior toward adults and other children. Mother confirmed that S.T. had also hit her when they lived together.

In April 2010, P.P. and three other foster children living with S.T. were moved to new foster homes to protect them from S.T. S.T. changed schools, moving from the We Care developmental program to a We Care preschool, and was again assigned one-on-one support in the classroom. Brennan started individual play therapy with S.T. at We Care. S.T. was assessed at the Regional Center as “ ‘functioning within the borderline delayed to low average range intellectually, with significant adaptive skill deficits that likely stem from his psychosocial history and Attention-Deficit/Hyperactivity Disorder (ADHD) symptoms.’ ” His low functioning did not appear to be related to mental retardation.

S.T. had mixed reactions to receiving daily phone calls from Mother, sometimes being loving and responsive, and other times being very angry and hostile. Visits between Mother and S.T. went well overall. “[Mother] is very affectionate and [S.T.] is happy to see his mother.” However, visitation supervisors needed to intervene and prompt Mother to redirect S.T. when he became aggressive. Mother was advised not to use sugary foods to distract and satisfy S.T.

The Agency recommended removal and family reunification services for Mother. “The prognosis for the children to be able to permanently reside with [Mother] is guarded, given the previous dependencies and multiple services that have been provided to [her].” The Agency specifically recommended intensive individual therapy for Mother to explore the impact of her own childhood abuse on her parenting skills.

### *Disposition Hearing*

The disposition hearing, originally scheduled for April 27, 2010, was set for contest and repeatedly continued until June 10. After Mother testified, the hearing was continued to August 10 due to scheduling difficulties.

In a July 2010 declaration in support of a request to medicate S.T., the social worker reported that S.T.’s aggressive and disturbing behaviors had continued. A psychiatrist stated that he “destroyed her office in the process of [an] evaluation.” The social worker had observed him kick and hit his caregiver and had “viewed a cell phone

video of [S.T.] with blood smeared over his face and hands. The caregiver reported that [S.T.] was digging his fingers in his nose to the point of heavy bleeding and then smearing the blood over his face and hands. On June 17, 2010, the caregivers reported that [S.T.] punched his nose to make it bleed.” In early August 2010, the court (over Mother’s objection) ordered psychotropic medication to treat S.T.’s ADHD based on the recommendations of two psychiatrists who had examined S.T. The order was renewed in February and May 2011.

In an August update of the disposition report, the Agency wrote that the “level of violence during [S.T.’s] temper tantrums [in the foster home] had increased. [S.T.] had bitten the foster mother on her breast and had scratched her during a temper tantrum.” S.T. was moved to an intensive therapeutic foster care home in mid-August. In June 2010, Dori Mackel, a therapeutic behavioral services provider, started working with S.T.

Mother continued to bring food to visits with S.T. despite specific WRAP advice not to do so. Rossi “expressed disappointment that mother has not learned to nurture and engage with [S.T.] in a healthy way.” The Agency wrote, “In spite of multiple parenting classes, instruction and support, the mother has not shown that she is able to put into practice the information that she has been given to keep her children physically and emotionally safe.”

The appellate record does not include a transcript of the August 24, 2010 hearing. A minute order for the hearing states that the court adopted as modified the findings and recommendations in the Agency’s report for the August hearing. S.T. was removed from Mother’s care and reunification services were ordered for Mother. A further status review hearing was scheduled for November.

#### *November 2010 Status Review*

In a November 2010 report, the Agency wrote that S.T.’s behavior had deteriorated in September, and he was “raised to the second highest level of Intensive Therapeutic Foster Care.” S.T., now three years old, had told his foster parent and support counselor, “ ‘Fuck You. I’m going to kill you. I’m going to strangle you.’ He

proceeded to demonstrate how he intended to strangle the foster mother and his support counselor. They described [S.T.] throwing furniture in the home and running into walls[,] . . . flood[ing] the toilet, . . . [and] shov[ing] his clothes down the air vents.” In September, he told the social worker “there was always a monster with him and that he (the monster) was at school.” He did not allow the foster mother to nurture him and responded by hitting her. S.T. was diagnosed with ADHD, oppositional defiant disorder or reactive attachment disorder, and mixed expressive receptive language disorder. As noted, psychotropic medication was approved in July and was periodically modified to find the right dosage.

S.T.’s behavior “slightly improved” by November 2010. “[He] has recently begun to use words to express his feelings and his needs. He has also begun to talk about his mother. The foster parents report that they are now able to take [S.T.] places without him running into the street and that [S.T.] is able to accept hugs and kisses from them. [He] is able to ask his support counselor to pick him up and to hold him . . . [and he] was recently able to positively respond to the social worker’s request for a high five and allowed her to touch his hair and his arm.”

“It was reported that [S.T.] was unable to control or manage his emotions after visits with his mother, that [S.T.] was refusing to speak to his mother when she called, and that he was hiding under his bed covers or locking himself in the bathroom when the mother called.” However, while S.T. said beforehand that he did not want to attend the visits, he was glad to see Mother when he arrived at the visits. Following his first unsupervised visit with Mother on August 27, 2010, S.T. became upset when he was picked up because he said Mother had told him he was going home. Mother denied making the comment and stood by as the support counselor struggled to get S.T. in the car. In about November, S.T. told his support counselor Mother “is a ‘bad boy’ and she ‘makes bad choices.’ ” When he was allowed to decline phone calls from Mother in about November, he politely said, “ ‘no thank you,’ ” when she called, and the aggressive behaviors that used to follow the calls decreased. S.T. said he did not want to visit

Mother. On the way to a November 10 visit, he begged not to be taken to the visit, and after the visit he picked his nose until it bled for two days.

Mother had been counseled to hold and touch S.T. during visits, but did not follow those instructions. The social worker contacted Mother's individual therapist, who agreed to work with her on the issue. The Agency also asked for an additional weekly visit between S.T. and Mother "to take place in a therapeutic setting, with a therapist guiding and supporting the mother to hold [S.T.]" Mother had completed two parenting classes and was participating in individual therapy.

The Agency recommended continuing S.T.'s removal and Mother's reunification services and noted that S.T.'s therapist and physician supported the recommendation. S.T. "is beginning to make progress in his ability to manage his emotions. . . . [His] needs are being met at some level by his support counselor who readily picks him up and holds him. It is uncertain if the mother is able to follow through with the specific recommendation about holding and touching [S.T.], or if she is able to further incorporate those basic needs to be able to respond to him to keep him safe from harm. It is unknown if [S.T.] will develop the trust to want to visit and speak to his mother again."

At the November 2010 hearing, the court continued S.T.'s removal and ordered continued reunification services to Mother. A 12-month review hearing was scheduled for February 2011.

#### *March 2011 Status Review Report*

The February 2011 hearing was continued to March. In a status review report for the March hearing, Mackel reported S.T. was "exhibiting defiant outbursts ranging in intensity from mild to severe,' and that 'severe defiant outbursts occur[ed] up to 2 times in a 24-hour period and [could] last up to 30 minutes.' . . . [S.T.] also continue[d] to pick his nose until it bleeds." On March 8, 2011, however, Brennan "reported recent positive changes in [S.T.'s] behavior which she attributes to adjustment to his current level of medication for ADHD, and to feeling secure in the foster home. [S.T.] has developed a close relationship with his foster father and his foster foster [*sic*] is picking him up from school more often. [S.T.] is doing better transitioning when it is time to go home. . . .

[¶] . . . [S.T.] was the highest billed child in the county for mental health services for the previous fiscal year; and that the costs for the current fiscal year will probably be higher. WRAP services are continuing for [S.T.]”

The Agency reported that at a visit on November 22, 2010, Mother “was struggling to get [S.T.] to comply with the clean up of the playroom, and as she attempted to pick him up, [S.T.] said to her, ‘fuck you’ and hit her with his hands. . . . [Mother] did not respond and showed no visible emotion to [S.T.’s] aggression. Walking out to the car [S.T.] refused to hold his mother’s hand and ran away from her. . . . [He] proceeded to kick and hit his mother telling her he hated her. [Mother] followed the social worker’s suggestion to get down at eye level with [S.T.] and acknowledge his anger and assure him that she loved him. [Mother] again did not appear to show any emotion or reaction to [S.T.’s] aggression. She later commented to the social worker that she believed the visit had gone well because she was able to hold [S.T.] for a period of time during the visit. In consultation with [Mother’s] therapist it was agreed that [Mother] would work on . . . giving [S.T.] appropriate responses, i.e. distress when he hit her.” Brennan reported that in March, around the anniversary of his removal which was near his birthday, S.T. told his teacher he did not want to go home.

S.T. and Mother began therapeutic visits with Dr. Kristin Denver in December 2010. As of March 2011, Dr. Denver reported that Mother was making progress and S.T. was starting to interact with Mother positively. However, “[t]he therapist could not say that [Mother] is able to spontaneously respond in a positive manner to [S.T.] but rather that during her observations of the visits, [Mother] accepts the feedback given to her.”

The Agency recommended against returning S.T. to Mother’s care because therapist reports indicated she could not control his challenging behaviors, which required consistency and the application of appropriate parenting skills. “However, the mother continues to make great efforts and the therapeutic visits seem to be showing some promise. It is hoped that [Mother] will gain the skills to appropriately manage

[S.T.'s] challenging behaviors; and that visits with [S.T.] will increase.” Therefore, the Agency recommended further reunification services.

#### *Contested 12-Month Status Review Hearing*

At the March 2011 status review hearing, the court rejected the Agency’s recommendations for continued services and set the matter for contest in April 2011. The contested hearing was repeatedly continued.

#### *April 2011 Supplemental Report*

In an April 2011 supplemental report, the Agency recommended the court terminate services and set a section 366.26 hearing. “[O]n April 6, 2011 the WRAP team acknowledged that [S.T.] is doing remarkably better due to the consistency of his foster parents, and the safe and stable home environment they have provided him; as well as the efforts of the multiple service providers. At school [S.T.] is able to say what he wants and what he doesn’t want. In the foster home [he] is able to go into his room and ask for his personal space when he is over stimulated or upset. In general he is verbalizing more. . . . [¶] . . . [¶] . . . He is making friends at school and has been observed holding hands with two girls in his class. [He] is hugging his foster parents and allowing the foster mother to ‘steal kisses.’ There is reason to be hopeful about [S.T.’s] future.”

“[S.T.] continu[es] to verbalize that he does not wish to visit with his mother, in spite of what appears to be progress in the visits. . . . [Mother’s] responses are scripted and prompted by the facilitating therapist. . . . The [WRAP] team believes that [S.T.] truly does not wish to visit his mother and supports the [Agency’s] recommendation that visits with the mother be decreased. [However, S.T.] recently accepted two telephone calls from his mother after months of running from the phone and refusing to speak to her.”

#### *Continued Contested Status Review Hearings*

The April 2011 hearing was continued to May. At the May hearing, Mother presented testimony by Dr. Denver, who had supervised weekly therapeutic visits between Mother and S.T. since December 2010. Denver explained that her goals were “to increase attachment and bonding between child and parent, and to increase the

parent's ability to read the child's cues, and . . . to provide verbal and physical affection to the child." S.T. "had some pretty high acting-out behaviors when I first met him," and Mother did not know how to respond. Denver coached Mother on setting appropriate rules and boundaries. To increase Mother's attachment with S.T., Denver role-played strategies such as "increasing her use of labeled praises[,] her ability to describe [S.T.'s] play so as to reinforce his play as positive and appropriate," and "imitating his behaviors for the purpose of increasing their attachment and bond," and she prompted Mother with specific phrases during visits. Mother used these strategies and increased her ability to read S.T.'s cues, to redirect S.T. if it appeared he was about to act out, to show affection and nurturing, and to provide basic rules and boundaries. She also "increased her ability to provide basic rules and boundaries." When asked to quantify the increase in Mother's ability to read S.T.'s cues ("Significant? Moderate"), Denver said, "Observably so." When asked if Mother came up with her own words while talking to S.T., Denver said, "[T]here is collaboration and I do support [her]." When asked if Mother came up with appropriate rules and boundaries on her own, Denver testified, "Well, again, it was also collaborative." Denver acknowledged giving Mother prompts at their most recent of 20 or 21 visits. Denver testified that S.T. had become less reluctant to interact with Mother when he arrived for sessions, he initiated play with Mother, and he held Mother's hand when the sessions ended. However, he did not spontaneously reach out to Mother physically.

Following an unreported chambers conference, the court announced that it would continue Mother's reunification services until September 2011, the 18-month mark. The court explained: "I think [M]other's doing everything she can. The issue is whether or not it's sufficient . . . . [¶] . . . I think [Mother's] been given about as many skills and cues and help and prompting and whatever as she possibly could, and I think the visits should now be at the Department and not using Dr. Denver." The court ordered a minimum of two one-hour visits per month. An 18-month review hearing was scheduled for September.

*September 2011 Status Review Report*

In a September 2011 status review report, the Agency again recommended termination of services. In June, Mackel “stated that she felt [S.T.] had developed the ability to attach in a healthy manner. . . . The WRAP team acknowledged that it appeared [S.T.] had formed a strong attachment to his foster father as he would ask the foster father to carry him and ‘drape’ foster father with kisses when he picked [S.T.] up from school.” The social worker had also observed S.T.’s enthusiasm and physical affection with the foster father, whom he described in August 2011, as his favorite person in the world. “This was the social worker’s first recollection of [S.T.] laughing and being happy.” S.T. was “able to articulate his feelings and his needs without becoming aggressive.” He had attended many social gatherings with his foster family, he was polite, and he played well with other children, including babies and young children. S.T. had also “ ‘mastered not opening the front door without an adult.’ ” S.T.’s We Care teacher reported that S.T. had learned to “resolve conflict with peers using his words without needing direct support from his behavioral specialist,” his sentences were clearer, and he had showed an increased awareness of personal safety, asking for adult help before going into an unsafe area such as an unsupervised garden. S.T. was still taking medication for ADHD daily.

Following the May 2011 hearing, visits continued without the support of Dr. Denver.<sup>3</sup> In May 2011, Brennan reported that S.T. had responded to questions about the visits by saying he had visits with “ ‘that lady Jenifer,’ ” the visits were on Friday, and he was glad it was not Friday. He said he expected to still be with his foster parents when he turned five in March 2012. In a July 2011 email, Mackel reported that S.T. had a “meltdown” following a visit in June, but was otherwise handling the visits well. She opined that the spacing of the visits (no more than twice monthly) helped decrease S.T.’s

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<sup>3</sup> In the social worker’s words, the court wanted Mother “to demonstrate that she was able to use the skills and tools she had been given in the therapeutic visits and in the multiple parenting classes she had completed, during her visits with [S.T.] . . . [¶] . . . [T]he goals and objectives for therapeutic visits were stated as follows, ‘(Mother) to be attuned to [S.T.’s] needs, (mother) to hold and touch him, (mother) to give [S.T.] facial cues, (mother) to read [S.T.’s] cues, less talk, more action.’ ”

anxiety. “By having 14 days between visits [S.T.] is able to adjust and function in a safe calming environment for a long period of time that when it is time to visit his biological mother he (is) in a place of calm and not anxiety of anticipation.”

During the summer of 2011, Mother had requested an increase in visitation. The assigned social worker supervising visitation (Okendo) denied the request, and Mother then filed a complaint against Okendo. An agency manager (Patricia Perkins) investigated the complaint, affirmed the decision not to increase visitation, and assigned a new social worker (Joanne Boucher) to supervise visits (without finding any bias or misconduct by Okendo).

The Agency opined, “It is not safe for [S.T.] to return to the care of his mother. The mother has not been able to demonstrate that she is able to meet [his] needs. [S.T.’s] interactions with his mother during visits, and his statements to his therapist, are cause for concern. [S.T.] does not share a trusting or loving relationship with his mother. . . . [¶] . . . [¶] . . . In spite of multiple parenting classes, therapy, and suggestions from the [Agency] on how to promote attachment, [S.T.] was unable to receive the affection and security he needed from his mother. The mother has not demonstrated that she is able to safely care for, and protect [S.T.] from abuse and neglect.” The Agency recommended termination of services.

#### *October 2011 Update to Status Review Report*

At Mother’s request, the status review hearing was set for contest on October 27, 2011.

On October 20, 2011, the Agency prepared a memorandum updating its September report with three letters from service providers attached (all dated October 2011). In the memorandum, the Agency disclosed that S.T. had “said his foster father hit him with a belt. [However, S.T.] had no marks, bruises, or injuries, and his demeanor in describing the abuse was inconsistent. The investigating social worker concluded that the allegations were unfounded. The allegations were made on a Monday following a Friday visit with the mother and a weekend in respite care. The behavioral support person reported that [S.T.] was mad that he was going to respite care.” In

October, the foster parents decided they wanted to adopt S.T. if parental rights were terminated. On visitation, the Agency reported that the new visitation supervisor, Boucher, “reports a pattern similar to what was previously reported by this social worker[,] i.e., [M]other reminds [S.T.] of the rules, speaks almost constantly throughout the visit describing in detail the toys that [S.T.] is playing with, praises [S.T.] for following the rules, and pats or rubs [S.T.]’s back. [S.T.] will ask his mother for help with a toy, occasionally engages in an activity with his mother, and generally plays quietly by himself.”

In the first of the three attached letters, Mackel reported that, during the time she had worked with S.T. beginning in June 2010, she had observed “a pattern of behavior after [S.T.] has contact with [Mother]. On days when [S.T.] has planned visits . . . I have observed him become increasingly defiant, physically destructive and verbally aggressive. . . . On days when [S.T.] does not have contact with [Mother] I observed him follow directives, ask for help when he feels triggered, and express his needs in a socially appropriate manner.”

In a second letter, Dr. Abraham Rice wrote that S.T.’s diagnosis of ADHD and emotional disturbance was rare in a three-year-old child, “represent[ing] the severity of his behaviors,” which prompted his clinic to take the unusual step of prescribing psychotropic medication for S.T. “In the past 9 months I have witnessed [S.T.] improve dramatically. He has become calm and well spoken. He is now developing normally. He is a kind and articulate 4.5 year old. He is still on medication, but we anticipate a time in the near future for a trial off of medications.”

In the third letter, which spanned four pages, Brennan provided an overview of S.T.’s progress since she started working with him in July 2009. She explained that S.T.’s behavior deteriorated after he was returned home in August 2009, and even further in February 2010, shortly before he was once again removed from Mother’s care (i.e., the commencement of the present dependency action). Following his March 2010 removal, S.T.’s anxiety continued to increase despite being placed in a familiar foster home. Between April and August 2010, he underwent numerous changes—a new school and

classroom, new service providers, a new foster home, and changes in his medication—and his behavior regressed again in August 2010.

“[O]nce [S.T.] began to feel more secure with his new foster parents and with the help of service providers, [he] slowly began making progress towards his goals. . . . Around the end of January 2011, foster parents and service providers noticed a steady decrease in anxiety and increase in affect regulation. It appeared that keeping his dosage the same also helped. . . . [S.T.] continued to show consistent improvement in the home and the classroom setting in April of 2011. In July of 2011, it was determined that [S.T.] met several of his previous goals . . . . [¶] [S.T.] now demonstrates a range of feelings and is able to verbalize his needs and emotions appropriately. . . . His foster parents share that activities that help [S.T.] stay calm include rocking him in their arms while singing songs, hugging him, holding him like a baby and being receptive and reciprocal of any affectionate gesture [S.T.] makes to them. . . . [¶] [S.T.] speaks positively of his foster parents during individual play therapy sessions and has told me multiple times that he wants to live with them until he ‘grows up.’

“[S.T.] also occasionally brings up his mother in session and now refers to her as his ‘other mom.’ While he expresses that he feels happy when he sees her during their visits, [S.T.] also states that he does not want to live with her for a ‘long, long time.’ . . . As history has shown, [S.T.] has a tendency to experience severe regression when going through significant changes and each time it takes him a longer period of time to process, recover and adjust. Given the progress he has made, it is imperative that his needs be considered when making any decisions that could alter the schedule he has become familiar with and thrived in.”

In October, the Agency also produced Boucher’s visitation notes for August to October 2011. At the start of an August 12 visit, S.T. was standing with his head down while mother stood next to him and spoke quietly to him. Mother told S.T. the rules for the visit, then spoke constantly during the visit, describing toys and praising S.T. S.T. was generally calm and in control. At the start of an August 26 visit, S.T. again looked sad with his head bent towards the floor. Mother told S.T. the rules for the visit,

described his toys, praised him and rubbed his back. S.T. spoke to mother when he needed help with a toy or game, speaking very quietly to mother. “It often appeared that S.T. was not paying attention to mother’s constant comments, as he was busy playing with toys.” During two September visits and one October visit, Mother talked less and seemed more relaxed. At the first visit, S.T. spoke to Mother only when he needed help with a toy or game. He was more talkative at the next visit. At the first visit, S.T. held Mother’s hand as they walked to the parking lot. There were no other notes of physical contact between them during these visits.

#### *Motion for Continuance*

On Monday, October 24, 2011, Mother requested a continuance pursuant to section 352 because of “late discovery,” which included the October 20 memorandum and its attachments as well as Agency contact notes that included Boucher’s visitation notes. She argued the new information “has completely changed my strategy and my case.” The court denied the motion.

#### *October 2011 Status Review Hearing*

At the October 2011 contested hearing, Mother’s presentation had four elements. First, she elicited evidence from Vida Grigaliunas (supervisor of S.T.’s behavioral support counselors), Brennan, and Okendo that certain incidents of disturbing behavior by S.T. during visits were prompted by factors out of Mother’s control rather than S.T.’s reactions to Mother. Second, she elicited evidence from Linh Nguyen (a member of S.T.’s behavioral support staff), Brennan and Okendo that in recent months S.T. generally was not having negative reactions to his visits with Mother. Third, she elicited evidence from Grigaliunas and Okendo of Okendo’s alleged bias against Mother and reunification. Finally, Mother attempted to show that Okendo had provided insufficient reunification services to Mother following the May 2011 hearing. Okendo testified, “My recollection from the last hearing on May 20th was that the Court wanted the mother to demonstrate that she was able to apply all of the skills that she had been given not only in

the therapeutic visits with Doctor Denver but with the multiple parenting classes that she had taken.” Services therefore primarily included supervised visitation.<sup>4</sup>

Explaining her decision to deny Mother’s request for an increase in visitation, Okendo cited Brennan’s May 2011 report that S.T. said he was glad it was not a day to visit Mother; S.T.’s meltdown following a visit in June 2011 (reported in Mackel’s email); Mackel’s recommendation in the July 2011 email that visits remained spaced out in two-week intervals; and reports that S.T. became anxious around visits, apparently a reference to Mackel’s October 2011 letter. The Agency manager, Perkins, testified that she had reviewed and confirmed Okendo’s decision after Mother filed her complaint.

Regarding Mother’s performance during visitation, Okendo acknowledged that Mother used certain strategies during visits that were cited as effective by the WRAP team, including positive reinforcement, telling S.T. to use his words, warning him about transitions, and calling him by his name. However, Mother did not effectively use one-on-one play and interaction. S.T. generally played alone during the visits unless he needed her to help him with something, and during a May visit he repeatedly told Mother not to move closer and not to talk. Mother also did not effectively use redirection. For example, during a June 2011 visit Mother responded to S.T.’s ignoring her by grabbing his arms and trying to make him pick up his toys. She had never seen Mother give S.T. a timeout, which had been recommended in the WRAP plan. One of Dr. Denver’s objectives was for Mother to hold and cuddle S.T. almost like a baby, which Mother “attempted to [do] but didn’t seem to be able to grasp that concept.”<sup>5</sup> Another objective was for Mother to respond to S.T.’s cues with appropriate actions (anticipating his needs)

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<sup>4</sup> Okendo testified that services also included consultations about her individual therapy sessions. Mother was no longer eligible for MediCal, which had been paying her individual therapist, Presley, so Okendo referred Mother to low-fee or no-fee therapists, which Mother declined. Presley apparently continued to treat Mother on a pro bono basis.

<sup>5</sup> Mother testified that she displayed physical affection as suggested by Dr. Denver by holding hands with S.T. at the end of visits, and she said S.T. sometimes needed his own space while he played.

and emotions (e.g., acting hurt if he swore at her). “I believe that [Mother] tries, but I don’t believe she’s able to read his cues all the time. And I believe that [S.T.] is well-aware of that, and that he often responds with anger and frustration towards her.” She described incidents when S.T. would tell Mother, “don’t say that” or demanding that she “read it. Read it. Read it, please. Can you read it now?” In her opinion, Mother was not spontaneously reading S.T.’s cues. Boucher’s visitation notes, which were received in evidence at the hearing, were consistent with Okendo’s descriptions. The court also received in evidence a transcript of Denver’s testimony at the May 2011 hearing. As described *ante*, that evidence supported an inference that Mother was not fully incorporating the skills she was being taught in this intensive therapy.

At the conclusion of the hearing, the court terminated services and set a section 366.26 hearing. “This was a very very disturbed minor. . . . Actually, he was so disturbed I didn’t think he’d ever get better . . . . [¶] . . . He is improving significantly. . . . He’s improving with the relationship of affection, spontaneous, loving affection he gets from his foster father. [¶] . . . [¶] . . . [O]n the whole Mother is a very sweet, undemanding woman. I think she’s complied with the services. I was the one that gave her more services because I knew she had complied. . . . [¶] I think she tries to the best of her ability, but her ability is not enough. She just doesn’t get it. . . . She’s like a child herself. She eventually does pretty much what she’s told to do in a visit. Almost to the letter. Almost in a sing-song way. Almost rote. [¶] . . . [¶] . . . It’s just how she testifies in this court. With a flat affect. No inflection. No change of expression. [¶] . . . Something appears wrong, but I simply don’t know what it is. . . . [¶] The services mother has been given were extensive. . . . [¶] I find that Ms. Okendo has treated the mother with care and compassion and given her every service available. . . . [¶] . . . [¶] I do find by clear and convincing evidence that returning the minor to the mother would create a substantial risk of detriment to the safety and wellbeing of the child both physically and emotionally.” The court set a section 366.26 hearing for January 26, 2012. That hearing has been stayed pending further order of this court.

## II. DISCUSSION

### A. *Due Process*

Mother argues the trial court violated her due process rights during the October 2011 contested hearing. We find that none of her arguments has merit.

#### 1. *Motion for Continuance*

First, Mother argues the court violated due process by denying her motion for a continuance, which was based on her receipt of discovery from the Agency four business days (six calendar days) before trial.

Continuances are disfavored in juvenile dependency cases and “shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.” (§ 352, subd. (a).) This policy is consistent with the overall statutory scheme. “A ‘fundamental objective of California’s dependency system [is to] minimize[e] delay in the proceedings.’ [Citation.] . . . [T]he California Legislature ‘has recognized a dependent child’s ‘need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.’ ’ [Citation.]” (*Jessica A. v. Superior Court* (2004) 124 Cal.App.4th 636, 643–644, fn. omitted.)

The alleged late discovery consisted of visitation notes, the October 20, 2011 memorandum, and the three attached letters. The visitation notes were largely consistent with Okendo’s descriptions of visits in her reports and did not provide significant new information. The letters came from service providers well known to Mother and, with the possible exception of Mackel’s letter, largely summarized incidents or opinions that had already been disclosed in the Agency reports. Regarding Mackel’s letter, as discussed *post*, we find that late notice of the letter was in any event harmless because the trial court’s findings were supported by substantial evidence, even if the letter is disregarded.

Finally, the report of alleged abuse by the foster father in the Agency memorandum was not directly relevant to the issue before the court: whether there was a

substantial risk of detriment to S.T. if he were returned to *Mother's* care. Mother argued the allegation was relevant because the Agency's conclusion that the allegation was unsubstantiated should have called into question the Agency's conclusion that the allegation of abuse while S.T. was in Mother's care was credible. However, as the court noted, the jurisdictional basis for the proceeding had already been established and not subject to relitigation. Moreover, the evidence of abuse in Mother's care, in contrast to the report here, was not an entirely unsubstantiated allegation of abuse by a young child reportedly angry about being sent to respite care and unsupported by physical evidence. In the report involving Mother, S.T. exhibited physical injuries that a medical expert concluded were signs of deliberate physical abuse.

The trial court acted well within its discretion in denying the continuance. Moreover, the trial court indicated it would extend the hearing if Mother needed to call additional witnesses, and the court in fact extended the hearing, allowing Mother the opportunity to call all witnesses she wished to call. There was no error.

## 2. *Admission of Hearsay*

Mother next argues that the trial court erred by admitting the October 2011 letter written by Mackel, who was unavailable for cross-examination.<sup>6</sup> Mother raised a timely objection at the hearing, which was overruled. There was no error. Because the letter was attached to an Agency memorandum for the October 2011 hearing, it was part of a social service report within the meaning of section 281 and thus was admissible as competent evidence at the status review hearing. (§ 281; *In re Corey A.* (1991) 227 Cal.App.3d 339, 346–347.) Mother might nevertheless have had a general due

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<sup>6</sup> Mother also impliedly argues it was error for the court to admit evidence of Mackel's July 2011 email because Mackel was not available for cross-examination. Mother did not specifically object to the admission of the email. In any event, our analysis of the issue with respect to Mackel's letter applies equally to Mackel's email: it was admissible as part of a social service report and, although Mother might have had a due process right to cross-examine her, any violation of that right was harmless because the trial court's findings are supported by substantial evidence even if we disregard the email.

process right to call Mackel as a witness for cross-examination. (See *In re Corey A.*, at p. 348.) Mother’s counsel indicated that she intended to call Mackel, but had learned that she was unavailable because she had moved out of state. “[I]t does not violate due process to place the burden of securing the attendance of witnesses, whose statements are in a social study, on the parent.” (*In re Corey A.*, at p. 347, fn 7.) Mother was able to cross-examine other persons mentioned in the report, who were in state and available to testify. Mother cites no authority holding that her inability to cross-examine Mackel under these circumstances rendered Mackel’s letter inadmissible.

In any event, admission of the evidence was harmless beyond a reasonable doubt. (See *In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1426–1427 [due process violations require reversal unless harmless beyond a reasonable doubt].) The letter stated that S.T. showed anxiety as visits with Mother approached and calmed down after the visits were over. This evidence was relevant to the quality of S.T.’s relationship with Mother (and thus whether it would be detrimental to return S.T. to Mother’s care) and the reasonableness of reunification services, specifically the limitation of visitation to two times a month. As explained further *post*, the strained quality of S.T.’s relationship with Mother and the reasonableness of the Agency’s decision to limit visitation to twice monthly were amply demonstrated by other evidence in the record.

### 3. *Limits on Cross-Examination*

Mother challenges several evidentiary rulings as infringements on her due process right cross-examine witnesses. All of the rulings were well within the court’s discretion. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10 [evidentiary rulings reviewed for abuse of discretion].)

First, Mother faults the court for barring questions to Okendo about the complaint Mother filed against her in the summer of 2011. This ruling, even if error, was harmless because Mother fully explored this issue with Perkins, who testified that she investigated the complaint and found no bias or misconduct by Okendo. In any event, the court correctly ruled that the question to Okendo was irrelevant. The fact that Mother filed the complaint was not relevant; the complaint was relevant only if it had been sustained or

the substance of the complaint was otherwise established as true, but Mother did not establish these facts. As explained further *post*, substantial evidence in the record supported the court’s findings that reasonable services were provided and that Mother had never developed a close attachment with S.T.

Second, Mother challenges a ruling barring her from questioning Okendo about allegations of abuse of S.T. by the foster parents. For the reasons already stated *ante*, the court correctly deemed the issue irrelevant.

Third, Mother challenges a number of rulings that fall within the court’s power to bar repetitive or unduly time consuming testimony. (See Evid. Code, § 352.) For example, she objects to the court’s instructing her to move on to another line of questioning after she had reduced Okendo to tears on the witness stand; the court’s sustaining objections to questions that had already been asked and answered; and the court’s directing her to focus on recent history in the case rather than visits going back to 2010. Our review of the transcript persuades us that the court exercised its discretion reasonably in attempting to control an unfocused presentation of evidence by Mother’s counsel. (See Evid. Code, § 765, subd. (a); *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 [courts have the “inherent power to control litigation before them”].)

#### 4. *Conduct of the Hearing*

Mother cites incidents of alleged hostility by the court during the hearing and implies the court was biased against her. For example, she notes that the court told Mother’s counsel, “This is not a poker game,” following a sharp discussion about Mother’s slow pace of calling witnesses. The court also complained of Mother’s witness examinations moving at a glacial pace, of long pauses between questions, and of time consuming modes of questioning (e.g., asking the social worker a series of questions about what was absent from her visitation notes). At one point, Mother’s counsel stated on the record, “I feel I am, like, in trouble in this courtroom. [¶] . . . [¶] . . . I’m being talked to loudly, rudely.” Based on our review of the record, we conclude there were reasonable grounds for the court’s frustration with Mother’s counsel and no evidence that the court was biased or acted improperly in attempting to expedite the proceeding.

B. *Reasonable Services*

Mother argues she was not provided reasonable reunification services following the May 2011 hearing, thus requiring reversal of the order setting the section 366.26 hearing. The claim has no merit.

First, a reasonable services finding is not a prerequisite to setting a section 366.26 hearing following an 18-month hearing.<sup>7</sup> As Mother notes, California Rules of Court, rule 5.708(m) provides, “At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing

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<sup>7</sup> When a child under three years of age is removed from his or her parents’ care, the parents ordinarily are entitled to receive family reunification services only “for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.” (§ 361.5, subd. (a)(1)(B).) Section 361.49 provides that “a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.”

On March 12, 2010, when he was first detained, S.T. was still two years old. Pursuant to section 361.49, the date S.T. entered foster care was April 2, 2010, the date the jurisdiction hearing took place. S.T.’s dispositional hearing commenced on June 10, 2010, and concluded on August 24, 2010. The six-month period following the conclusion of the disposition hearing ended on February 24, 2011. Under section 361.5, subdivision (a)(1)(B), Mother was entitled to services only until February 24, 2011. The 12-month outer limit for services under section 361.5, subdivision (a)(1)(B) expired on April 2, 2011. The hearing that concluded in May 2011, must be deemed a 12-month hearing. (Cf. *In re Brian R.* (1991) 2 Cal.App.4th 904, 913–914 [status review hearing that commenced as 12-month hearing but concluded 22 months after child was removed from parents’ care properly treated as 18-month hearing].)

Notwithstanding the time limit in section 361.5, subdivision (a)(1)(B), “court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period.” (§ 361.5, subd (a)(3).) At the 12-month hearing that concluded in May 2011, the court granted additional services to the 18-month mark in the dependency case, mid-September 2011. (§ 366.21, subd. (g)(1).) The September hearing that concluded in November, therefore, was an 18-month hearing, which is governed by section 366.22.

evidence that reasonable services have been provided or offered to the parent or legal guardian.” As applied to an 18-month hearing, this language is misleading. (See *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1505 (*Earl L.*)). In 1991, the Legislature amended section 366.22, which governs 18-month hearings, to delete the requirement of a reasonable services finding as a *precondition* of setting a section 366.26 hearing. (Stats. 1991, ch. 820, § 4, p. 3646; see *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1016, fn. 9.) At the 18-month permanency review hearing, the authority of the juvenile court to set a section 366.26 hearing is not conditioned on a reasonable services finding. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1511–1512.) In 2009, section 366.22 was again revised to allow services to be continued at an 18-month hearing under certain limited circumstances (Stats. 2008, ch. 482, § 3; see *Earl L.*, at p. 1504), and in those specified circumstances, the court cannot set a section 366.26 hearing unless it finds reasonable services were provided. (§ 366.26, subd. (b); see *Earl L.*, at p. 1503.) However, those circumstances are not relevant here: they include a parent who has made substantial progress in a court-ordered residential substance abuse treatment program or has made substantial progress in establishing a safe home following a recent release from incarceration. (§ 366.22, subd. (b).) Here, the prior rule applies: while the juvenile court must ultimately make a reasonable services finding, an order setting a section 366.26 hearing is not conditioned on a finding that reasonable services were provided.

In any event, the court’s finding that reasonable services were provided is supported by substantial evidence. “The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We review a reasonable services finding for substantial evidence. “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) “We do not

reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We uphold the court’s findings if they are “supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.]” (*Ibid.*)

After May 2011, Mother’s services were limited to twice-monthly supervised visitation and consultation about Mother’s individual therapy. In assessing the adequacy of these services to promote reunification, they must be considered in the context of the prior dependency interventions in this family, as well as in the instant case. Mother had received extensive services over a four-year period. She attended parenting classes in 2007, 2009, and 2010. She took a community college course on child development. Mother participated in intensive in-home parent-child therapy with Brennan from October 2009 to March 2010. She participated in weekly individual therapy apparently from early 2009. She received WRAP services for S.T. from mid-2009 to the fall of 2011. Mother and S.T. participated in intensive therapy with Dr. Denver from December 2010 to May 2011. Mother also indirectly benefited from the services that were provided to S.T., which helped stabilize his behavior and increase her opportunity to reunify with him. S.T. attended We Care from April 2009; he had one-on-one support from 2009; he had individual play therapy with Brennan from April 2010; and he lived in an intensive therapeutic foster home with therapeutic behavioral support from Mackel from August 2010.

Despite Mother’s participation in all of the services offered to her, service providers repeatedly expressed concern that Mother was simply unable to incorporate and implement the skills she had learned, especially without in-person support. As early as March 2009, the Agency’s family preservation services unit concluded it could no longer help Mother after she allowed S.T. to get into unsafe situations despite repeated instructions on how to provide him with a safe home. In March 2010, WRAP facilitator Rossi expressed concern that Mother was unable to comprehend and implement safety skills. In April 2010, social worker Okendo said the prognosis for reunification was

guarded “given the previous dependencies and multiple services that have been provided to [Mother]. In August 2010, Rossi expressed disappointment that Mother continued to bring food to visits despite instructions not to and commented that Mother still had not “learned to nurture and engage with [S.T.] in a healthy way.” In November 2010, Okendo wrote that Mother was not following through on instructions to hold and touch S.T. during visits, and questioned whether she was able to do so. Also in about November 2010, Okendo had observed that Mother was not showing appropriate responses to S.T.’s behavior (e.g., showing distress when he hit her). In May 2011, Dr. Denver testified that, following 20 or more supervised therapeutic visits, Mother still did not *independently* set rules and boundaries for S.T., read his cues, show physical affection, or connect with him emotionally during play, but only did so in collaboration with Denver. Finally, visitation reports written both by Okendo and Boucher confirm that the skills Denver tried to transfer to Mother had been only superficially incorporated.

Because of this history, in May 2011, the court continued services despite the Agency’s recommendation to the contrary, but discontinued Mother’s therapeutic support. The court’s goal was to determine whether Mother could *independently* apply the skills she had been taught and forge a healthy relationship with her son. The court said, “I think mother’s doing everything she can. The issue is whether or not it’s sufficient[.] . . . [¶] . . . I think she’s been given about as many skills and cues and help and prompting and whatever as she possibly could, and I think the visits should now be at the Department and not using Dr. Denver.” For this purpose, a limitation of services primarily to supervised visitation was reasonable.

The *amount* of supervised visitation provided to Mother was also a reasonable choice. In an ordinary case, twice-monthly visitation might arguably be considered unreasonably restricted. However, this was not an ordinary case and S.T. was not an ordinary preschool foster child. S.T. was very disturbed when he entered foster care. He engaged in hostile, dangerous, and violent behavior rarely seen in a child of his age. Because of this highly unusual behavior, physicians took the extraordinary step of prescribing him psychotropic medication despite his young age. Substantial services (in

conjunction with adjustments in his medication) were still required over a two and one-half year period to stabilize S.T., i.e., get him to the point where he stopped engaging in dangerous and violent behaviors and became able to make age-appropriate bonds with his peers and caregivers. S.T. only began to stabilize in early 2011. In the following months his behavior improved dramatically. He made friends at school and close emotional attachments with his foster parents, while becoming calm during his visits with Mother. However, the changes were relatively recent.

With this background, the Agency could reasonably determine that S.T.'s progress was fragile and that disruptions to his routines should be minimized, particularly regarding visitation. There was a well-documented history of S.T.'s showing anxiety or anger around Mother's visits or phone calls. Although the pattern was not entirely consistent, the displays of anxiety that did occur were alarming and threatened S.T. or others with physical harm. When S.T. acted out during extended visits with Mother in July 2009, during the prior dependency proceeding, he punched and choked his classmates without provocation. In 2010, he struggled with the support counselor as she was putting him in the car, locked himself in the bathroom, picked his nose until it bled, hit Mother, and ran away from adults while in a parking lot. In March and April 2011, as S.T.'s behavior stabilized, he calmly and directly stated that he did not want to visit Mother or return to her home, and the WRAP team (which included service providers in daily contact with S.T.) concluded his statements were sincere and recommended that his desires be respected. In May 2011, he again told Brennan he was glad it was not a day to visit Mother and that he did not want to live with her for " 'a long, long time.' " It can be inferred that the decision to respect S.T.'s desires regarding the amount of visitation contributed to his stabilization and progress.

On this evidence, even without consideration of Mackel's July 2011 email or October 2011 letter, the Agency and the trial court could reasonably conclude there was a substantial risk that S.T.'s emotional and behavioral progress would be disrupted by an increase in visitation with Mother and therefore reasonably conclude that visitation should not have been increased. The Agency's decision to err on the side of protecting

S.T.'s still-recent and fragile progress by denying Mother's request for an increase in visitation was entirely reasonable.

Mother also complains that her services did not include continued individual therapy. However, the record supports an inference that Mother continued to receive individual treatment by her original therapist, although the therapy was not funded by the Agency. Mother faults Okendo for not asking her therapist to provide a report for the 18-month hearing, but does not cite any obligation for Okendo to do so. Okendo testified that she expected the therapist, who was angry about the termination of her payments, would not comply with such a request. Mother presumably could have provided a report herself or called the therapist to testify if she believed that it would have benefited her, but she did not do so.

We find no error in the court's finding that reasonable services were provided to Mother during the most recent reunification period.

C. *Substantial Risk of Detriment*

Mother argues the court erred in finding there was a substantial risk of harm to S.T. if he was returned home. We disagree.

At the 18-month permanency hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a)(1).) As we have noted, we review the trial court's factual findings on these issues for substantial evidence.<sup>8</sup> (*In re Katrina C.*, *supra*, 201 Cal.App.3d at p. 547.)

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<sup>8</sup> Mother's counsel acknowledges the substantial evidence standard of review but appears to ignore it. When a party challenges on appeal the sufficiency of evidence, the party must discuss all the evidence supporting the court's ruling or the party waives the point. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Counsel here focuses her efforts on re-arguing the evidence in Mother's favor. A reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re*

Four factors support the trial court's finding that S.T. faced a substantial risk of harm if returned to Mother's care: (a) Mother's repeated failures over S.T.'s lifetime to keep him safe and meet his emotional needs, (b) S.T.'s severe behavioral and emotional problems when most recently removed from Mother's care, (c) Mother's failure to develop the skills necessary to meet S.T.'s needs during this dependency case, and (d) S.T.'s dramatic improvement when his needs were met by other caregivers.

From S.T.'s birth, Mother's behavior indicated a fundamental misapprehension about the parent-child relationship. She failed to physically comfort and protect her infant. She did not heed nurses' advice that she hold and cuddle the child and she attempted to feed him sausage, which easily could have caused him to choke. During S.T.'s early toddler years, Mother repeatedly allowed S.T. to get into unsafe situations, leaving him alone in her apartment, giving him access to a second floor balcony without supervision, allowing him to wander off toward a busy street, and failing to protect him from physical abuse. It can readily be inferred from S.T.'s serious emotional disturbance at the start of this case that Mother neglected S.T. emotionally as well.

We have already amply described S.T.'s disturbing and dangerous behavior during the first year of this dependency case *ante*, as well as his remarkable improvement during 2011. Service providers attributed his improvement to caregivers' providing him with structure, physical affection, caring attention, and appropriate responses to his behavior. Multiple services were provided to Mother to help her develop these very skills. However, Mother was never able to demonstrate that she could effectively do so without direct therapeutic support.

Mother argues the trial court here failed to heed appellate courts' warnings that "[d]ependency proceedings should not be allowed to drift from major problem-solving circumstances to prolonged attempts to resolve shortcomings in the parental home which would not cause dependency in the first place" (*In re Venita L.* (1987) 191 Cal.App.3d

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*Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) We nevertheless address the issue on the merits.

1229, 1243, disapproved on other grounds by *In re Jasmon O.* (1994) 8 Cal.4th 398, 421 & fn. 3), and “[w]e are looking for passing grades here, not straight A’s” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790). We find no such error.

On the evidence before it, the trial court reasonably found that S.T. faced a substantial risk of emotional and physical harm if he was returned to Mother’s care. Substantial evidence demonstrated that S.T. developed emotional and behavioral stability through consistent, attentive and emotionally responsive adult caregiving, withdrawal of this adult support would cause him to regress (and given his violent behaviors place him at risk of physical as well as emotional harm), and that Mother seemed incapable of developing the ability to provide him that support. Thus, S.T. was at substantial risk of suffering both physical and emotional harm if returned to Mother’s care. (See *In re Joseph B.* (1996) 42 Cal.App.4th 890, 899–900 [evidence of detriment barring child’s return may be of different nature than harm that established jurisdiction].)

We acknowledge that Mother is an atypical parent of a dependent child in that she has participated in all offered services, she has substantially complied with her case plan, and she has no chronic drug or alcohol problem barring reunification with her child. Her demonstrated incapacity to meet her child’s needs may be the product of her own unfortunate dependency history. However, the risk of harm to S.T. if he is returned to Mother’s care is abundantly clear on this record.

In sum, the court reasonably found there was a substantial risk of harm to S.T. if he were returned to Mother’s care. The court thus was required to set a section 366.26 hearing.

### **III. DISPOSITION**

The order to show cause is discharged. The petition for extraordinary writ is denied. This opinion shall be final as to this court five (5) court days after the date this opinion is filed. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).) The stay of the

section 366.26 hearing shall be dissolved upon the finality of the opinion as to this court.  
(Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).)

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.