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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

LISA B.,
Petitioner,
v.
THE SUPERIOR COURT OF SAN
FRANCISCO COUNTY,
Respondent;
SAN FRANCISCO HUMAN SERVICES
AGENCY,
Real Party in Interest.

A134643

(San Francisco County
Super. Ct. No. JD11-3144)

Petitioner, Lisa B., mother of 11-year-old Anna B., seeks review by extraordinary writ, pursuant to California Rules of Court, rule 8.452,¹ of the juvenile court's findings and orders, in which the court denied her reunification services and set the matter for a permanency planning hearing, pursuant to Welfare and Institutions Code section 366.26.² Petitioner contends (1) the allegations in the dependency petition failed to state a basis for jurisdiction under section 300, subdivision (b), or, alternatively, there was insufficient evidence for the juvenile court to assume jurisdiction over Anna; (2) the juvenile court's finding by clear and convincing evidence that reunification services should be bypassed

¹ All further rule references are to the California Rules of Court.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

is not supported by substantial evidence; (3) the court violated her statutory right to reunification services by failing to order services for the period between the detention and disposition hearings; (4) the court abused its discretion by failing to make specific visitation orders and impermissibly delegating visitation authority to the social worker, the therapist, and Anna; (5) the court abused its discretion by continuing disposition beyond the statutory six-month time limit; and (6) she received ineffective assistance of counsel. We shall deny the petition for extraordinary writ.

FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2011, the San Francisco Human Services Agency (Agency) filed an original petition alleging that Anna B. came within the provisions of section 300, subdivision (b). The petition specifically alleged, inter alia, that (1) petitioner's ability to care for Anna was impaired by her mental health condition and history of instability, and (2) petitioner had a long child welfare history in that Anna was a dependent of the court previously, during which time (from August 7, 2006 to March 26, 2008) petitioner received services.³ The petition alleged that petitioner had failed to benefit from those services or from the voluntary services she received from November 3, 2000 to May 23, 2001 and from October 3, 2008 to June 2, 2009.

In a detention report filed on May 4, 2011, the social worker reported that petitioner had a diagnosis of borderline personality disorder and bipolar disorder. She also had "a history of instability, erratic and confrontational behavior, and can become violent." In addition, relatives had expressed concern for Anna's safety. Anna had previously been a dependent of the court and had been removed from petitioner's care from 2006 to 2007. Anna had thereafter asked to live in the home of Anne-Christine D., the mother of Anna's best friend. In 2008, petitioner signed a voluntary private guardianship agreement with Ms. D., and later signed a revised guardianship agreement

³ The petition originally contained additional allegations but was later amended to include only these two allegations. The petition also set forth allegations regarding Anna's alleged father, Gilvan S., who resides out of the country and is not a party to this writ petition.

in 2010. Petitioner had not provided physical care or financial support for Anna since approximately 2006.

On Friday, April 29, 2011, Anna went to visit her mother in San Francisco for the weekend, expecting to return to Ms. D.'s home and to school in Oakland by Monday. During the visit, petitioner told Anna she was going to stay with petitioner and go to school in San Francisco. In a text message to Ms. D., Anna expressed that she wanted to stay with Ms. D., but she was afraid of petitioner's anger if she said that to petitioner.

The social worker also reported that petitioner had a history of not providing appropriate care for Anna, including not taking her to school, not providing food or a bed of her own, and exposing her to sexual activity when petitioner brought boyfriends home. The social worker discussed petitioner's history of anger problems and a history of Agency involvement, including approximately 11 referrals and three open cases, a voluntary family maintenance case from 2000 to 2001, a family reunification case from 2006 to 2008, and another voluntary family maintenance case from 2008 to 2009.

Following the May 5, 2011 detention hearing, the juvenile court ordered Anna detained and placed in the home of Ms. D., with supervised visitation.

In a disposition report filed on June 6, 2011, the social worker reported that the previous dependency, which began in September 2006, was dismissed in March 2008, after petitioner completed dismissal requirements, including individual therapy, medication management, group and family therapy, obtaining medical care for Anna and ensuring her attendance in school and therapy, and maintaining contact with the supervising worker. When the dependency began in 2006, petitioner had "had a history of going off and on her psychotropic medications, having men in and out of her home, giving away her belongings and being in crisis. It was reported that she became at times highly agitated and almost psychotic."

Treatment providers and staff at Anna's school believed that petitioner "had impaired judgment, that she engaged in conflicts with others and that there [were] issues regarding keeping food in the home for Anna and with her school." It had also been reported that petitioner had some good parenting skills at times and that she and Anna

had a loving relationship. “The concerns were around Anna having to adapt to [petitioner’s] mood changes and anger towards others. Anna was described as smart and resilient but to be developing a fairly serious anxiety disorder.”

The social worker further reported that, in 2008, petitioner entered into a private legal guardianship agreement with Ms. D., a long-time family friend who is the mother of a friend of Anna’s and who has known Anna since she was in preschool. Anna stayed with both petitioner and Ms. D. and attended school in San Francisco until fall 2010. At that time, she started staying with Ms. D. in Oakland during the week, attending school there, and staying with petitioner in San Francisco on weekends. Petitioner began having conflicts with Ms. D., which escalated until petitioner had recently told Anna she would not be returning to Ms. D.’s home. “Anna wanted to return to the home [and] has asked to remain in this placement. She has and is expressing fear that she will not be able to calm her mother down when she becomes angry.”

The social worker reported that petitioner is intelligent and adept at acquiring competent services for herself. Petitioner said she was accessing mental health services, including therapy and medication management, and that her providers were meeting her needs. Petitioner had stated that Ms. D. undermined her and was trying to turn Anna against her.

The social worker described Anna as “a bright and well socialized 10-year-old who . . . cares about her mother and would like a supportive relationship with her but does not feel comfortable alone with her at this time.” Anna had been diagnosed with an anxiety disorder. She was able to recognize stress and was adept at trying to control it and relax. She reported that “she feels a great deal of stress when she interacts with her mother. Anna is very astute about her situation and is clearly stating she is comfortable in her current placement and wants to remain there. She appears to be very integrated and attached as a part of the family she is living with. She is doing well in school and has a close relationship with her teacher. . . . It is recommended she participate in therapeutic visits with the goal that she learn tools to negotiate her relationship with her mother.

Otherwise, she is in remarkable mental health and not showing serious signs of anxiety or other acute impacts on her life.

Since Anna's detention, petitioner had attended two weekly supervised visits with her in May, but then had failed to call to confirm the third visit. Anna was "hesitant" to attend supervised visits with petitioner due to petitioner's negative statements about her care. Therefore, therapeutic visitation had been requested.

The social worker further stated that it was clear that petitioner and Anna loved each other, but petitioner "was struggling with mental illness that impacts her ability to interact with Anna in supportive and appropriate ways." Petitioner had provided good nurturing for Anna by drawing supportive people into their lives, including the current caretaker. Anna had learned about her mother's disability and how to adapt to it, but was able to say she needed protection. She wanted a relationship with petitioner, but was being hurt by their interactions.

The social worker believed that petitioner was not able to see Anna's emotional needs apart from her own and, due to her mental illness, she had impaired judgment that had resulted in her exposing Anna to harmful individuals and situations on an ongoing basis. The social worker noted that, during the previous dependency, petitioner had participated in the same services that would be recommended now. In addition, soon after petitioner and Anna were reunified and during the in-home dependency, reportedly the same issues had arisen, including petitioner's involvement with people who posed a risk to Anna (including substance use and domestic violence), a lack of food in the home, instability in petitioner's mental health and inconsistency in parenting, such as not taking Anna to school.

The Agency recommended that no services be provided to petitioner due to the fact that she suffered from a mental disability that prevented her from benefiting from services. In addition, the Agency recommended guardianship with the current care provider unless petitioner disagreed with that recommendation, in which case the Agency recommended that petitioner receive two psychological and/or psychiatric evaluations to

determine if she could benefit from reunification services such that Anna could safely reunify with her.

At the June 9, 2011 jurisdiction hearing, petitioner submitted on the amended petition and the juvenile court sustained the two remaining allegations. Petitioner also agreed to participate in two psychological evaluations.

Two experts conducted psychological evaluations with petitioner and submitted reports of their findings. Dr. Jane Christmas, a licensed clinical psychologist, met twice with petitioner and provided an update to a prior psychological evaluation she had conducted with petitioner in February 2007. In her prior report based on the 2007 evaluation, Dr. Christmas had diagnosed petitioner with, inter alia, bipolar disorder and borderline personality disorder. At that time, she had found that petitioner was not “actively or deliberately endangering her child. Her mental health problems cause her to be labile and impulsive. Therefore, the over-riding concern is whether she can protect Anna from her affective lability and all the complications that creates.” She concluded that, if petitioner “has enough incentive to control her angry outbursts and can demonstrate that she can be a responsible, thoughtful parent who can put the needs of her child before her own, she should be allowed increasing access to her daughter.”

In the September 20, 2011 update to that earlier evaluation, Dr. Christmas reconfirmed petitioner’s diagnoses of, inter alia, bipolar disorder and borderline personality disorder. She noted that the same conditions that led to Anna’s removal in 2006 had resulted in her being removed again in 2011, including neglectful behavior and subjecting Anna to her significant mood swings and angry outbursts. Dr. Christmas found that the findings from her 2007 report “still appear to be in operation and relatively stable, suggesting these are deeply ingrained personality characteristics [petitioner] has been unable to impact significantly, even with regular, weekly psychotherapy.” She concluded that petitioner’s “mental health problems still cause her to be labile and impulsive and prevent her from thinking about Anna’s needs in a way that is appropriate for a parent with regard to a child. [¶] Since 2006, it appears she has not been able to

make the appropriate and increasingly important changes in her parenting abilities as Anna is approaching puberty, a critical time in the development of a young girl.”

A second licensed clinical psychologist, Dr. Maria Holden, evaluated petitioner in November 2011, and submitted a report in which she diagnosed petitioner with, inter alia, dysthymia and borderline personality disorder, with bipolar disorder “also under consideration.” Dr. Holden found that petitioner’s “core personality deficits are very significant and assessment strongly suggests that at this time she is not capable of using services to make significant improvements in her personality and relationships, her cognitive functioning, and her judgment. Anna is described as happy in her placement. As a result, it is my recommendation that services would be better utilized in order to maintain and even improve mother’s relationship with Anna.” She concluded: “I would like to reiterate that it is my professional opinion that reunification is at this point not in the best interest of the parties involved, especially Anna. She is doing well in her current placement and should remain there. [Petitioner] is for all of the reasons explained at length above incapable of benefiting from services to the extent that she could make enough therapeutic gains to be able to successfully and consistently parent her daughter and not regress.”

The contested disposition hearing began on January 9, 2012. Dr. Christmas testified that, after meeting with petitioner again in 2011, she concluded that “her mental health condition was pretty much the same as it had been the first time that I met with her in 2007.” With respect to her conclusion regarding whether petitioner’s disability prevented her from properly caring for Anna, Dr. Christmas testified that she had concluded that “the difficulties were still there with regard to her capacity to parent Anna.” Petitioner’s bipolar disorder made it “difficult to think about the needs of anyone else” or “to keep the child in mind.” Dr. Christmas did not believe that petitioner had the capacity at that point to safely parent Anna. Nor did she believe petitioner would be able to utilize services to learn how to parent Anna better.

Dr. Holden testified that, in light of her findings regarding petitioner’s mental disabilities, “it would be best that parenting be provided elsewhere by someone else.”

She did not believe that petitioner was capable of utilizing family reunification services “[i]n a manner and to an extent where she could benefit sufficiently in order to successfully reunify.” Her mental disabilities would make it “difficult for her to be able to integrate services and interventions into her personality and into every aspect of her functioning. [And] borderline personality disorder makes it very difficult for her to be able to affect change in the various areas of her life.”

Laura Morgan, the social worker for these proceedings, beginning in May 2011, also testified. In deciding to recommend bypassing reunification services, Morgan spoke with petitioner’s therapist, her previous case manager, family members, Anna’s caretaker, and Anna. She concluded that services should be bypassed based on “the overall history of the case in terms of the fact that the same issues keep recurring, and that the mother’s mental health issues do not seem amenable to change to the extent that the . . . circumstances would be different for the child if she participated in reunification requirements again. [¶] And in fact . . . , the same issues happened within two months after . . . we dismissed our previous dependency . . . even when the child had an in-home dependency” with additional services. Between the end of the prior dependency and the start of the current one, there were three referrals related to petitioner being unable to care for Anna, including one in 2008, in which petitioner contacted a friend to take Anna because petitioner could not take care of her. Morgan also noted that Anna “is very much advocating for no reunification services. She states very clearly that she does not feel even with services that she could [be] reunified with her mother.”

With respect to visitation, following two or three supervised visits shortly after the petition was filed in May, the visits were stopped because Anna said she was “very uncomfortable” visiting with petitioner and she was unwilling to engage in therapeutic visits. Morgan and Anna had recently discussed the possibility of trying to have visits with petitioner over the Internet via Skype because Anna “wants to feel like there’s a way to stop the visit if she feels uncomfortable.” Anna had said she was afraid that petitioner would not be able to control her anger, which made her very uncomfortable. She was not

afraid of petitioner hurting her, but she no longer felt like she could calm her down when she expressed anger towards other people.

Morgan had also attempted to initiate therapeutic visits between Anna and petitioner. As a first step, Anna had met with a therapist four times to attempt to facilitate such visitation, but it was ultimately decided not to force the visitation since the therapist said this would be detrimental to Anna. Morgan thereafter continued to discuss the issue of visitation with Anna, even though Anna maintained that she would not visit petitioner. Morgan testified that even if the court did not offer reunification services to petitioner, she would recommend exploring some type of services that would help petitioner and Anna reach a goal of future visitation. However, Anna had extreme anxiety related to seeing petitioner and had expressed irrational anxiety and fear about, for example, running into her in San Francisco or that “her mother will find out where her school is and come to her school. She’s afraid her mother is going to hurt the people who take care of her.” In light of Anna’s anxiety about being forced to return to petitioner and, to lessen her stress, Morgan had told her caretaker that she would not have to live with petitioner if she did not want to. As to the permanent plan, Anna had requested that she be adopted. Morgan would recommend either guardianship or adoption for Anna if reunification services were not provided to petitioner.

Morgan also testified that petitioner had initially been referred for a psychological evaluation to Dr. Taylor, but petitioner made some threatening statements to him and he said he could not do the evaluation. This delayed the process a bit, but, at petitioner’s request, she was referred back to Dr. Christmas and then to Dr. Holden for another evaluation.

Dr. Patricia Weiss, a clinical neuropsychologist, testified as an expert witness for petitioner. She had met with petitioner in December 2011, had reviewed Dr. Christmas’s 2007 psychological evaluation and 2011 update evaluation, Dr. Holden’s 2011 evaluation, other documents related to this matter, as well as other materials related to the denial of reunification services in juvenile dependency cases.

In Dr. Weiss's opinion, the testing methodologies used by Dr. Christmas in her 2007 evaluation were generally good. She was, however, critical of Dr. Christmas's failure to retest petitioner in 2011.

Regarding Dr. Holden's evaluation, Dr. Weiss did not believe the methodologies she used with several of the tests were appropriate. For example, Dr. Holden had used an outdated version of an intelligence test and had administered too few subtests or cards in several tests. Dr. Weiss also disagreed with Dr. Holden's primary diagnosis of dysthymia because a diagnosis of bipolar "trumps" a dysthymia diagnosis and because she gave no basis for the dysthymia diagnosis. In sum, Dr. Holden's failure to use the proper measures or fully score the tests given in the evaluation led Dr. Weiss to conclude that "the conclusions that were drawn were not based on evidence."

Following the disposition hearing, on January 25, 2012, the juvenile court issued a written order in which it found "by clear and convincing evidence that mother suffers from a mental disability that prevents her from being able to parent the child. All of the testifying experts agree that mother suffers from a mental disability and mother presents no evidence of her ability to parent apart from caring about her daughter. The factual record in this case presents compelling evidence of mother's inability to parent.

"The allegation that the Agency fails to carry out the order for therapeutic visits with mother is negated by the testimony received. The Agency did not delegate the decision to hold or cancel visits to the child. Rather, the Agency took into account the significant level of distress the child experiences when confronted with visits with her mother and took all reasonable steps to ameliorate the child's distress and to facilitate visits.

"Given mother's mental disability, the Court finds by clear and convincing evidence that a return of Anna to the home of her mother would create a substantial danger to the child's physical safety and emotional well-being and there are no reasonable means by which the child can be protected apart from removal from the home. The Court further finds by clear and convincing evidence that mother is unable to benefit

from reunification services”⁴ The court then set the matter for a hearing pursuant to section 366.26.

Petitioner subsequently filed this petition for extraordinary writ seeking review of the juvenile court’s order.⁵

DISCUSSION

I. Dependency Petition’s Alleged Failure to State a Basis for Jurisdiction and Alleged Insufficiency of the Evidence for the Court to Assume Jurisdiction

Petitioner first contends the allegations in the dependency petition failed to state a basis for jurisdiction under section 300, subdivision (b), or, alternatively, there was insufficient evidence for the juvenile court to assume jurisdiction over Anna.

The allegations in the amended dependency petition, which the juvenile court found true, were that Anna had suffered or there was a substantial risk she would suffer “serious physical harm or illness” in that (1) petitioner’s “ability to care for the child is impaired by her mental health condition and history of instability,” and (2) Anna had “a long child welfare history,” having been a dependent of the court, for which petitioner received services from August 2006 to March 2008. Moreover, petitioner had “failed to benefit from these services and the voluntary services that she received” from November 2000 to May 2001 and from October 2008 to June 2009.

Section 300, subdivision (b), provides, in relevant part, that jurisdiction may be assumed if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

⁴ The court also found that Anna’s alleged father had had no contact with her since her birth and that, therefore, he was not a presumed father and no services for him were warranted.

⁵ On April 3, 2012, we ordered proceedings in the juvenile court temporarily stayed, pending determination of the petition.

A. *The Allegations in the Dependency Petition*

With respect to petitioner's claim that the allegations in the dependency petition failed to state a basis for jurisdiction under section 300, subdivision (b), the Agency argues that the issue is forfeited because petitioner did not raise it in the juvenile court. (See *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328-329 (*Shelley J.*) [finding such a claim forfeited due to failure to raise in juvenile court]; but see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 [concluding that such a claim could not be forfeited].) We agree with the reasoning in *Shelley J.*, as have most appellate courts that have considered the question. (See, e.g., *In re N.M.* (2011) 197 Cal.App.4th 159, 166; *In re David H.* (2008) 165 Cal.App.4th 1626, 1639.) We therefore conclude petitioner forfeited her challenge to the sufficiency of the allegations in the petition.⁶

B. *Sufficiency of the Evidence to Support Jurisdiction*

With respect to the claim that there was insufficient evidence to support the court's assumption of jurisdiction, petitioner contends no evidence was offered in support of jurisdiction showing that Anna had suffered or was at risk of suffering serious physical harm or illness due to petitioner's mental illness. (See § 300, subd. (b).) The Agency counters that petitioner waived this issue by submitting to jurisdiction. We agree.⁷

At the hearing on jurisdiction, the Agency's counsel told the court that its recommendation was "that the Court takes jurisdiction and orders two psychological evaluations of the mom. And we have come to an agreement with mom, with some amendments to language, that she is willing to take those two psychological evaluations." The court then amended the petition and asked petitioner if she understood that she was

⁶ In addition, even if petitioner had not forfeited this issue, "such a challenge before us would be moot. '[I]f the jurisdictional findings are supported by substantial evidence, the adequacy of the petition is irrelevant.' [Citation.]" (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 166; see also pt. I.B, *post*, where we conclude that the court's jurisdictional findings are supported by substantial evidence.)

⁷ We observe that this theory of waiver provides a second reason why petitioner's related claim that the allegations in the dependency petition failed to state a basis for jurisdiction is not reviewable on appeal. (See pt. I.A, *ante*.)

giving up, inter alia, her rights to a trial and to confront and cross-examine witnesses. She confirmed her understanding and further confirmed that she gave “up those rights in order to settle this matter today,” and that her attorney had explained what it meant for her to “submit to this petition” with the changes that had been made. The court then found that petitioner had “freely and voluntarily waived her rights” and found the amended allegations in the petition true. (See *In re N.M.*, *supra*, 197 Cal.App.4th at p. 167 [“An admission that the allegations of a section 300 petition are true, as well as a plea of no contest to a section 300 petition, bars the parent from bringing an appeal to challenge the sufficiency of the evidence supporting the jurisdictional allegations”].)

Moreover, even if petitioner had not waived the right to challenge the sufficiency of the evidence to support jurisdiction, the record contains sufficient evidence to sustain the dependency petition under subdivision (b) of section 300. Specifically, the social worker reported that, due to her mental illness, petitioner had impaired judgment that had resulted in her exposing Anna to harmful individuals and situations on an ongoing basis. Anna also had expressed fear that she would not be able to calm petitioner down when she became angry and had developed a “fairly serious anxiety disorder.” Finally, the court noted that, shortly after Anna was returned home following the previous dependency, the same issues had arisen, including, inter alia, petitioner’s involvement with people who posed a risk to Anna (including substance use and domestic violence) and a lack of food in the house. Based on this evidence, the court reasonably found that there was a substantial risk that Anna would suffer “serious physical harm or illness, as a result of the failure or inability of [petitioner] to adequately supervise or protect” her. (§ 300, subd. (b); compare *In re David M.* (2005) 134 Cal.App.4th 822, 830 [record lacked any evidence of a specific risk to child where uncontradicted evidence showed that child “was healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home”]; *In re Janet T.* (2001) 93 Cal.App.4th 377, 389-390 [petition provided no facts to suggest how mother’s mental health problems created a “substantial risk” her children would suffer “serious physical injury or illness” and none of the sustained allegations claimed that events “were a result of, or were *caused* by, mother’s

mental and emotional problems”]; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [“the fact that a child has been left with other caretakers will not warrant a finding of dependency if the child receives good care”].)⁸

II. Juvenile Court’s Decision to Bypass Reunification Services

Petitioner contends the juvenile court’s finding by clear and convincing evidence, pursuant to section 361.5, subdivision (b)(2), that reunification services should be bypassed is not supported by substantial evidence.

“There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section [361.5], subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96 (*Cheryl P.*))

Section 361.5, subdivision (b), provides in relevant part: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶]

“(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.”

Section 361.5, subdivision (c), provides in relevant part: “When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).”

⁸ Given this evidence, we disagree with petitioner’s statement that any future risk of harm was “pure speculation.”

We review an order denying reunification services under section 361.5, subdivision (b), for substantial evidence. (*Cheryl P., supra*, 139 Cal.App.4th at p. 96.)

In the present case, petitioner does not challenge the psychologists' findings that she suffers from a mental disability. Rather, she first argues that neither of the two psychologists who evaluated her opined that she could not learn from reunification services to adequately care for Anna. The evidence in the record belies this assertion. In the update to her 2007 evaluation report, Dr. Christmas stated that the findings from her earlier report "still appear to be in operation and relatively stable, suggesting there are deeply ingrained personality characteristics [petitioner] has been unable to impact significantly, even with regular, weekly psychotherapy." She concluded that petitioner's "mental health problems still cause her to be labile and impulsive and prevent her from thinking about Anna's needs in a way that is appropriate for a parent with regard to a child." At the disposition hearing, Dr. Christmas testified that she did not believe that petitioner had the capacity at that point to safely parent Anna, nor that she would be able to utilize services to learn how to parent Anna better.

Dr. Holden also concluded in her evaluation that petitioner was "for all of the reasons explained at length above incapable of benefiting from services to the extent that she could make enough therapeutic gains to be able to successfully and consistently parent her daughter and not regress." At the disposition hearing, Dr. Holden testified that she did not believe that petitioner was capable of utilizing family reunification services "[i]n a manner and to an extent where she could benefit sufficiently in order to successfully reunify." Dr. Holden further believed that petitioner's mental disabilities would make it "difficult for her to be able to integrate services and interventions into her personality and into every aspect of her functioning. [And] borderline personality disorder makes it very difficult for her to be able to affect change in the various areas of her life."

Thus, the record reflects that *both* experts concluded that petitioner would be incapable of utilizing reunification services so as to be able to adequately parent within the statutory period. (Compare *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470,

472, 475 [cited by petitioner, in which dissenting justice disagreed with majority's conclusion that one of two psychologist's finding that father could not benefit from reunification services was sufficient to support juvenile court's bypass of services].)

Petitioner also argues that the testimony of her expert, Dr. Weiss, at the disposition hearing demonstrated that Dr. Holden's evaluation was deficient and unreliable. Dr. Weiss opined that Dr. Holden failed to use the proper measures or fully score the tests given in her evaluation. The juvenile court considered the evidence presented by all of the experts, including Dr. Weiss. Dr. Weiss's opinion regarding the validity of the methodologies of Dr. Holden's evaluation was simply one piece of evidence for the court to consider in determining whether "competent evidence" established that, even with the provision of services, petitioner was unlikely to be able to care for Anna within the statutory period. (§ 361.5, subds. (b)(2), (c).) We find that the court reasonably relied on Dr. Holden's evaluation and testimony in making its decision. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [issues of fact and credibility are province of juvenile court]; compare *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1257 [court's order denying reunification services based on father's status as a pedophile was unsupported by testimony of two experts (as required by Civil Code, section 232, subdivision (a)(6)) where one of two psychologists rendering opinion was unlicensed].)

Accordingly, substantial evidence supports the juvenile court's finding by clear and convincing evidence that petitioner's mental disability made it unlikely that she would be able to care for Anna even with the provision of reunification services. (See § 361.2, subd. (b)(2); compare *In re Rebecca H.* (1991) 227 Cal.App.3d 825, 841-842 [where one of two experts disclaimed that father suffered from a mental disability, evidence was insufficient to support bypass under subdivision (b)(2)].)

III. Court's Alleged Violation of Petitioner's Statutory Right to Reunification Services

Petitioner contends the juvenile court violated her statutory right to reunification services by failing to order services in the period between the detention and disposition hearings.

As petitioner acknowledges, there is no authority supporting her claim that reunification services should have been provided until the court decided whether services should be bypassed, pursuant to section 361.5, subdivision (b)(2). Indeed, given the purpose of this statutory exception to the requirement that reunification services be provided, such an argument is not persuasive. In *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1079-1080, the appellate court upheld the constitutionality of subdivision (b) of section 361.5. In finding that the statute did not violate equal protection, the court explained: “The stated purpose of section 361.5, subdivision (b) is to exempt from reunification services those parents who are unlikely to benefit. This purpose is related to that of the juvenile law itself—to ensure the well-being of children whose parents are unable or incapable of caring for them by affording them another stable and permanent home within a definite time period. . . . [¶] ‘. . . It is reasonable for the state, before expending its limited resources for reunification services, to distinguish between those who would benefit from such services and those who would not.’ ” (Accord, *In re Joshua M.* (1998) 66 Cal.App.4th 458, 473-474.)

Here, the juvenile court did order and attempt to facilitate petitioner’s visitation with Anna in the period between detention and disposition. (See pt. IV, *post*, for further discussion of the visitation issue.) We find that petitioner’s assertion that the court was also required to provide reunification services during that interim period is without merit.

IV. Visitation Orders

Petitioner contends the juvenile court abused its discretion by failing to make specific visitation orders and impermissibly delegating visitation authority to the social worker, the therapist, and Anna.

We review an order setting the terms of visitation for an abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356 (*Brittany C.*)) “The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court.” (*In re J.N.* (2006) 138 Cal.App.4th 450, 459.)

In the juvenile court, “[t]he discretion to determine whether any visitation occurs at all ‘must remain with the court, not social workers and therapists, and certainly not with the children.’ [Citation.]” (*In re S.H.* (2003) 111 Cal.App.4th 310, 318.)

Section 362.1, subdivision (a) provides, in relevant part: “In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, *and ordering reunification services*, shall provide as follows:

“(1)(A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, *consistent with the well-being of the child.*” (Italics added.)

Here, assuming the visitation requirements contained in section 362.1, subdivision (a), were applicable in the period before the court issued its disposition orders, we do not agree that the juvenile court failed to make specific visitation orders and delegated visitation authority to the social worker, Anna’s therapist, or Anna. While the court plainly took into account the views and concerns of everyone involved, it attempted throughout the dependency proceedings to find ways to implement visitation between petitioner and Anna, despite Anna’s refusal to see petitioner.

“It is the juvenile court’s responsibility to ensure regular parent-child visitation occurs while at the same time providing for flexibility in response to the changing needs of the child and to dynamic family circumstances. [Citations.] To sustain this balance the child’s social worker may be given responsibility to manage the actual details of the visits, including the power to determine the time, place and manner in which visits should occur. [Citation.] In addition, the parents’ interest in the care, custody and companionship of their children is not to be maintained at the child’s expense; the child’s input and refusal and the possible adverse consequences if a visit is forced against the child’s will are factors to be considered in administering visitation. [Citation.]” (*In re S.H.*, *supra*, 111 Cal.App.4th at p. 317.) “In no event, however, may the child’s wishes be the *sole* factor in determining whether any visitation takes place, either as a formal

matter or . . . by effectively giving the children the power to veto all visits. [Citation.]” (*Id.* at p. 319.)

As the record reflects, when the court ordered Anna detained in May 2011, it also ordered supervised visitation pending the establishment of therapeutic visitation. Thereafter, petitioner attended two weekly supervised visits with Anna in May, but a third visit was cancelled when petitioner failed to call to confirm it. In addition, as the social worker testified at the disposition hearing, “the last visit with her mother was very distressing to [Anna], and she didn’t feel comfortable. And she was adamantly saying she didn’t want to go and that she wasn’t going to go.” ~ At the June 9, 2011 jurisdiction hearing, the Agency’s counsel said that Anna refused to visit petitioner and further stated: “I think her mom understands that and her mom is willing to wait.” Counsel said the Agency would keep the therapeutic visitation open and available. The court suggested that the Agency explain to Anna that “her mother’s working really hard . . . and that people will be there with her. And I would authorize her attorney, if that would help her, to go with her to the visits, or someone that she would feel comfortable with, and if they could have a visit at a playground or someplace less daunting, and I would be fine with that.” The court then ordered that visits with petitioner would be made available when Anna was ready.

At an August 23, 2011 hearing, visitation was again discussed. The Agency’s counsel informed the court that Anna had begun individual therapy, one of the goals of which was “to help further prepare Anna for visits with her mother. At this point Anna is so far from wanting to visit that we would have to physically restrain her in order to bring her to a visit, and obviously we can’t do that.” Petitioner’s counsel also stated that “everybody understands that we are going at the child’s pace,” with the aim that, “possibly with some intervention in the middle we might at some point be able to bring the mother and the child together.” The court declined to make any therapeutic visitation orders at that time, but stated that it “is my intention that she visit her mother, don’t get me wrong, I am absolutely going in that direction. But let’s give her a little more time so when she goes and starts therapy it’s going to be fruitful and she is ready to do it.”

Subsequently, at a September 20, 2011 hearing, when petitioner’s counsel said there was a need to engage Anna in therapeutic visitation, Anna’s attorney said that Anna was adamant that she did not want to visit with petitioner, and her therapist agreed that forcing Anna to engage in therapeutic visits or family therapy with petitioner would be detrimental to her. When petitioner’s counsel complained of the court’s deference to Anna, the court responded that Anna “is not making the decision on her own. The decision is being made by a team of people, including everyone I am looking at right now and her therapist.” Because of its concerns about the detriment to Anna of in-person visits, the court encouraged the parties to discuss family therapy and to encourage Anna to exchange notes and letters with petitioner to facilitate in-person visits.

The juvenile court concluded in its disposition order: “The allegation that the Agency fails to carry out the order for therapeutic visits with mother is negated by the testimony received. The Agency did not delegate the decision to hold or cancel visits to the child. Rather, the Agency took into account the significant level of distress the child experiences when confronted with visits with her mother and took all reasonable steps to ameliorate the child’s distress and to facilitate the visits.”

This evidence shows that the juvenile court was not delegating the issue of *whether* visitation would occur but, instead, considered input from the social worker, counsel, and Anna’s therapist—and also took into account Anna’s adamant refusal to visit her mother—as it determined when and in what form visitation could take place in a way that would not be harmful to Anna. (See *Brittany C.*, *supra*, 191 Cal.App.4th at p. 1357 [“[A] court has the power to suspend visits when continuing them would be harmful to a child’s emotional well-being. If that were not the case, a court would be required to sit idly by while a child suffered extreme emotional damage caused by ongoing visits”].) The court properly considered Anna’s well-being in fashioning a visitation plan that would foster a relationship between Anna and petitioner, an that worked toward in-person visits, without being emotionally detrimental to Anna. (See § 362.1, subd. (a)(1)(A); *In re S.H.*, *supra*, 111 Cal.App.4th at p. 317; *Brittany C.*, at p. 1357.)

Finally, we observe that, although petitioner’s expert witness, Dr. Weiss, believed lack of visitation “could greatly damage the parent-child relationship,” she agreed on cross-examination that, if a child refused to visit a parent and was then forced to visit, that could have some impact on the child. (Dr. Weiss described some measures that could be used to help a child overcome resistance to visitation due to feeling emotionally unsafe during visits, including “therapeutically supervised visitation. But of course it could start out with therapeutically supervised telephone calls, or letters. [¶] There’s all kinds of gradations of contact, that one could go along that spectrum as long as the child, again, you know, felt safe. It would be important for the child to feel safe and comfortable and to want to engage in this.” Dr. Weiss’s testimony demonstrates that even petitioner’s own expert did not believe a child should be forced to visit a parent with whom she felt emotionally unsafe and that she thought therapeutically supervised phone calls or letters could help a child overcome resistance to therapeutic visitation.

In sum, the record reflects that the court did what it could, with the assistance of the Agency, short of physically dragging Anna to visits, to implement visitation between her and petitioner that would not cause her harm.⁹ As already discussed, the court looked for creative ways to implement its visitation order by building up to visitation that would not emotionally harm Anna. Anna’s stated concerns were only one factor—along with the recommendations of the therapist and the social worker and the actions of petitioner—that the juvenile court considered in determining the type of visitation that should be offered and its pace. (See *Brittany C.*, *supra*, 191 Cal.App.4th at p. 1358 [Given family’s damaged relationships, “[t]here was nothing improper in the court taking a step back to consider the recommendations of a therapist and the desires of the children before attempting to fashion a visitation plan that has a hope of success”].) The court’s visitation orders were adequate in the circumstances, and no improper delegation of authority over visitation occurred.

⁹ This case is thus distinguishable from *In re S.H.*, *supra*, 111 Cal.App.4th at pages 317-319, in which the juvenile court improperly made a visitation order that allowed the children’s wishes alone to dictate whether visits would occur.

With respect to visitation *after* the juvenile court dispositional order bypassing reunification services, “[s]ection 361.5, subdivision (f), provides in relevant part that when the court does not order reunification, including pursuant to section 361.5, subdivision (b)(2),] the court “ ‘may continue to permit’ the parent to visit the child unless it finds that visitation would be detrimental to the child.” The word “may” has been construed “as permissive, i.e., as giving the juvenile court discretion to permit or deny visitation when reunification services are not ordered, unless of course it finds that visitation would be detrimental to the child, in which case it must deny visitation.” (*In re J.N.*, *supra*, 138 Cal.App.4th at p. 458 [affirming denial of the telephone visitation request of an incarcerated mother].) While visitation is “an essential part of a reunification plan,” it is “not integral to the overall plan when the parent is not participating in the reunification efforts. This reality is reflected in the permissive language of section 361.5, subdivision (f).” (*In re J.N.*, at pp. 458-459.)

Thus, once the court ordered bypass of reunification services after the disposition hearing, pursuant to section 361.5, subdivision (b)(2), it had no obligation to order visitation, particularly if it believed that such visitation would be harmful to Anna. (See § 361.5, subd. (f); *In re J.N.*, *supra*, 138 Cal.App.4th at pp. 458-459.)¹⁰ The record nonetheless reflects that ongoing efforts were still being made to facilitate visitation between Anna and petitioner. Indeed, at the disposition hearing, the social worker testified that even if the court did not offer reunification services to petitioner, she would recommend exploring some type of services that would help petitioner and Anna reach a goal of future visitation. She also testified that she was attempting to work out therapeutic visits between petitioner and Anna via Skype.

¹⁰ Moreover, even if section 366.21, subdivision (h), rather than section 361.5, subdivision (f), were applicable, the evidence of detriment to Anna would justify the court’s decision not to permit visitation. (See § 366.21, subd. (h) [after court terminates reunification services and orders a § 366.26 hearing, it “shall continue to permit the parent . . . to visit the child pending the hearing unless it finds that visitation would be detrimental to the child”].)

V. The Order for a Continuance

Petitioner contends the juvenile court abused its discretion by continuing disposition beyond the statutory six-month time limit.

The juvenile court ordered Anna detained on May 5, 2011. It issued its disposition order on January 25, 2012, some eight and one-half months later.

At a November 29, 2011 hearing, petitioner's counsel objected to the Agency's request for a continuance, pending receipt of Dr. Holden's psychological evaluation report. The juvenile court denied the Agency's continuance request.

At a hearing on December 1, 2011, the Agency again requested a continuance to obtain Dr. Holden's evaluation. Counsel for the Agency described petitioner's threats against the first evaluator, who refused to work with her, which delayed the process of obtaining the psychological evaluations. Counsel for petitioner also noted that the social worker had told her that the second evaluation would not be initiated until Dr. Christmas's report was received. Anna's counsel supported such a continuance as being in her best interests. The court reluctantly granted the Agency's request for a continuance, stating: "This is a case of exceptional circumstances and good cause is shown and it is in the interests of the child to continue this hearing. The second psychological report is necessary, and this dispositional hearing cannot be held without it. And in view of the extreme budget cut backs, waiting for the results of the first report before going forward with the second report is appropriate. The first report could clearly recommend that services be provided, and the second report and the expense of the report would not be necessary.

". . . Anna is now 11 years old and is in the 6th grade. She is in a stable home that she enjoys pursuant to voluntary guardianship that the mother set up. This is not a case of a prolonged temporary [placement]. The mother has an extensive history with CPS involvement. . . .

"So this indeed is an exceptional situation where we have a child who appears to want to remain where she is, and at this point does not want the reunification services and is in a placement the mother herself placed her in. So I can't think of any better situation

for the unfortunate result of having to continue the hearing. And I do not take this lightly.”

Section 352 provides in relevant part: “(a) Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minor’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.

¶¶ Continuanes 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. . . . ¶¶ . . . ¶¶

“(b) Notwithstanding any other provision of law, if a minor has been removed from the parents’ or guardians’ custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance. The facts supporting such a continuance shall be entered upon the minutes of the court. In no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after the hearing pursuant to Section 319.”

Here, the disposition hearing did not take place until some eight months after the detention hearing. Petitioner contributed to the initial delay by her threatening actions toward the psychologist first appointed to perform a psychological evaluation. Thereafter, due to budgetary constraints, the Agency wanted to ascertain whether Dr. Christmas would find that petitioner could benefit from reunification services before expending significant resources on a second evaluation. It was certainly in Anna’s best interests for the court to have both psychologists’ reports before deciding whether an attempt to reunify her with petitioner should be made. Moreover, Anna was in a stable, long-term placement—in which she hoped to remain—throughout this time period.

Thus, petitioner has not shown that the court abused its discretion by ordering a continuance. (See § 352, subd. (a).)

Nor does the court's failure to hold the disposition hearing within six months of Anna's detention change the result. In *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523, the appellate court explained that a failure to abide by the time requirements of section 352, subdivision (b), are not jurisdictional: "We agree with appellant that 'failing to complete a disposition hearing within six months in order to gather evidence to support [a bypass of reunification services] undermines the expedited policy underlying the bypass provisions.' However, we disagree that the remedy for a violation of the time limits of section 352, subdivision (b) in this case would be to reverse the dispositional order as to him. Section 352 does not supply a penalty for noncompliance. Although the delays in this case were regrettable, and perhaps to some extent avoidable, the record fully supports the bypass of services. Because appellant cannot demonstrate prejudice resulting from the unauthorized delay, we decline his invitation to order the court to provide him with reunification services."

Similarly, in the present case, the record supports the bypass of reunification services for all of the reasons previously discussed in this opinion. Petitioner plainly cannot show that any of the circumstances supporting the juvenile court's decision to bypass services would have been any more beneficial to her had the disposition hearing been held earlier. Given the lack of prejudice to petitioner and the exceptional circumstances—the need for time to conduct a second psychological evaluation—supporting the continuance, petitioner's claim cannot succeed. (See *In re Angelique C.*, *supra*, 113 Cal.App.4th 509, 523.)

VI. *Alleged Ineffective Assistance of Counsel*

Petitioner contends she received ineffective assistance of counsel. In particular, she asserts that "there is no rational explanation" for counsels' failure to (1) challenge the sufficiency of the petition and sufficiency of evidence of jurisdiction, (2) object to improper visitation orders, (3) object to the continuance of disposition, and (4) demand

reunification services prior to the court's decision under section 361.5, subdivision (b)(2), to bypass services.

“To establish ineffective assistance of counsel in dependency proceedings, a parent ‘must demonstrate both that: (1) his appointed counsel failed to act in a manner expected of reasonably competent attorneys acting as diligent advocates; and that (2) this failure made a determinative difference in the outcome, rendering the proceedings fundamentally unfair in that it is reasonably probable that but for such failure, a determination more favorable for [the parent’s] interests would have resulted.’ [Citations.] In short, appellant has the burden of proving both that his attorney’s representation was deficient and that this deficiency resulted in prejudice. [Citation.]” (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, citing, inter alia, *People v. Pope* (1979) 23 Cal.3d 412, 424-425.)

First, as to counsel’s failure to challenge the sufficiency of the evidence to support jurisdiction, as we have already explained in part I.B, *ante*, the evidence was sufficient for the court to assume jurisdiction. Moreover, since the jurisdiction findings were supported by substantial evidence, “ ‘the adequacy of the petition is irrelevant.’ ” (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 166.) Thus, petitioner cannot show either inadequate representation or prejudice. (See *In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98.)

Second, as to counsel’s failure to object to the visitation orders, we have already found in part IV, *ante*, that the court’s orders were appropriate in light of the challenging issues related to Anna’s anxiety and refusal to visit with petitioner. Moreover, any failure to object plainly did not affect the outcome of the case. (See *In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98.)

Third, we have already found, in part V, *ante*, that petitioner has not shown that the juvenile court’s decision to bypass reunification services would have been different had the court denied the continuance. Thus, her ineffective assistance of counsel claim on this point cannot succeed. (See *In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98.)

Fourth, given petitioner's acknowledgement that there is no authority for her argument that she should have been provided reunification services pending the court's decision whether to bypass such services (see pt. III, *ante*), she cannot show that counsel's representation was inadequate. (See *In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98.)

DISPOSITION

The petition for extraordinary writ is denied on the merits. Our decision is final as to this court immediately. (Rule 8.264(b)(3).)

Kline, P.J.

We concur:

Lambden, J.

Richman, J.