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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re S.S., a Person Coming Under the
Juvenile Court Law.

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

B.S. et al.,

Defendants and Appellants.

A138059

(Del Norte County
Super. Ct. No. JVSQ116077)

B.S. (father) and D.S. (mother) appeal from an order terminating their parental rights to their 12-year-old daughter S.S. (minor) and declaring adoption to be the permanent plan. (Welf. & Inst. Code, § 366.26.)¹ Mother argues her parental rights should not have been terminated because the “beneficial relationship” exception to adoption applied and her trial counsel was ineffective in failing to present evidence and argument on this exception. (§ 366.26, subd. (c)(1)(B)(i).) Father contends the trial court

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

abused its discretion in denying his request for a continuance of the hearing and argues he was deprived of effective assistance of counsel at that hearing. He additionally urges us to review issues pertaining to a prior order denying him reunification services and setting the case for a hearing under section 366.26. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

A. *Background*

Mother is married to father and gave birth to the minor in June of 2000. The minor is a very intelligent and imaginative child who has been diagnosed with Asperger syndrome, which is on the autism spectrum of disorders. Father is a highly intelligent person who also has Asperger syndrome, though his condition was not diagnosed until later in life and he did not receive the intervention that a person diagnosed during childhood would receive.² Mother has a history of depression.

During the minor's life, the family has had a number of contacts with child welfare services for issues ranging from the mental health of the parents, drug and alcohol use by the parents, and general neglect. When the minor was a baby, she was declared a dependent of the court and services were provided to the parents under a family maintenance plan until the dependency was terminated. Mother had lost custody

² According to an informational sheet from KidsHealth.org that was attached as an exhibit to the social worker's report for the dispositional hearing, "Asperger syndrome (AS) is a neurobiological disorder that is part of a group of conditions called autism spectrum disorders." The syndrome "is characterized by poor social interactions, obsessions, odd speech patterns, and other peculiar mannerisms. Kids with AS often have few facial expressions and have difficulty reading the body language of others; they might engage in obsessive routines and display an unusual sensitivity to sensory stimuli (for example, they may be bothered by a light that no one else notices; they may cover their ears to block out sounds in the environment; or they might prefer to wear clothing made only of a certain material). [¶] Overall, people with AS are capable of functioning in everyday life, but tend to be somewhat socially immature and may be seen by others as odd or eccentric. [¶] Other characteristics of AS include motor delays, clumsiness, limited interests, and peculiar preoccupations. Adults with AS have trouble demonstrating empathy for others, and social interactions continue to be difficult. [¶] Experts say that AS follows a continuous course and lasts a lifetime. However, symptoms can wax and wane over time, and early intervention services can be helpful."

of the minor's older half sibling in 1999, when her parental rights were terminated during a dependency proceeding due to her failure to reunify.

The current dependency arose in 2011, when the minor was 10 years old. At father's insistence, the family practiced a "nocturnal" lifestyle, going to sleep in the early morning hours (4:00 a.m. to 5:00 a.m.), waking in the afternoon (1:00 p.m. to 3:00 p.m.), and staying awake at night. Father directed the minor's home schooling during his waking hours, but the family's unavailability during the day made it difficult for them to utilize services offered to the minor through the State Department of Developmental Services Regional Center (Regional Center) or to make appointments relating to the home-schooling program. The minor, though very bright, had behavioral issues and impaired social skills as a result of her Asperger syndrome, and the family's isolation limited her exposure to experiences that would promote her development in these areas. The father's failure to address some of his own behaviors relating to Asperger syndrome contributed to the family's isolation from the larger society.

In addition to the scheduling and socialization issues arising from the family's nocturnal lifestyle, there were also concerns about the minor's physical health and safety. The parents could not provide immunization records for the minor, and she had repeatedly missed medical appointments. The parents used alcohol and marijuana in the home (neither one having a medical marijuana card), and although the father believed the minor, at 10, was old enough to care for herself when her parents were asleep, the minor on one occasion pulled a stranger into the home. The home where the family lived had mold, mildew and sewer issues, and the parents refused to use heat in the house. The minor's hygiene was poor, with the parents setting a bad example.

B. Dependency Proceeding—Jurisdiction and Disposition

On May 17, 2011, the Del Norte County Department of Health and Human Services (Department) filed a petition alleging the minor was a dependent child under section 300, subdivisions (b) and (j). The court found jurisdiction, sustaining the following allegations: (1) chronic marijuana abuse by the parents impaired their ability to care for the minor; (2) the minor was at risk of medical neglect based on the parents'

repeated failure to keep her medical appointments; (3) the minor had allowed strangers into the home while the parents were sleeping during the day, and had not received available Regional Center services due to the family's nocturnal lifestyle, the practice of which had left the minor socially isolated from peers and her community; (4) the home in which the family resided was unhealthy due to mold and mildew saturation, a broken sewer pipe under the floor that was emitting foul odors, and the parents' refusal to heat the interior; (5) the parents were aware of the conditions in which the minor was living but continued to allow the minor to live in those conditions; (6) the parents' history of involvement with child welfare services includes a prior adjudication of dependency for the minor and the termination of mother's parental rights to the minor's half sibling in 1999; and (7) preplacement preventive services had been offered to the family but had not been effective.

At the disposition hearing held in July 2011, the minor was removed from her parents' custody and placed with her paternal grandmother and step-grandfather, with whom she had been residing since the filing of the dependency petition. Reunification services were provided to the parents under a plan that included components of visitation, mental health counseling, and the maintenance of a healthy, stable home.

C. Six-Month Status Review

After moving to her grandparents' home, the minor began attending public school and seeing a counselor to help her deal with some of her behaviors and reactions to stress. Her problematic behaviors improved and she did quite well academically. Her grandparents were described as "very involved and devoted" by the court-appointed special advocate (CASA) assigned to the minor's case.

Meanwhile, the parents' primary concern was their residence. They had moved to a new apartment but claimed they were being harassed by neighbors who ran their dryers all night and had been told by the property manager they could only have one cat rather than the three they owned. The parents visited the minor regularly. Father and the grandmother had a contentious relationship, often disagreeing about what was best for the minor.

Tod A. Roy, Ph.D., conducted a psychological evaluation of the parents in preparation for the six-month status review hearing. His report states, “Their history, however, from the case’s inception . . . when [the minor] was born to the present has been notable for their lack of participation in any offered services from family service organizations. Their non-compliance and failure to participate was always explained due to one or the other’s health concerns, outright refusals, or rationalizations of their behavior. A final assessment identified unsatisfactory participation or progress gaining parenting skills, a risk of [the parents] isolating themselves from mainstream/conventional lifestyle experiences, and problems managing their resources. These issues are as relevant today as they were 11 years ago.” Dr. Roy noted the family’s nocturnal lifestyle and described parents’ relationship as involving a “co-dependent avoidant lifestyle centered on [father’s] needs. [Father] uses his intellect to resist and defend against any change to their routine. Of course this routine makes them unavailable to engage or attend appointments other than in the late afternoon when the business world is winding up their operations of the normal working day. [Father] feels strongly that any and all service agencies and their personnel should accommodate his schedule.”

At the six-month review hearing held in March 2012, the court continued the minor in her placement with her grandparents and set the case for a 12-month review hearing.

D. 12-Month Status Review

A new social worker was assigned to the case. The status report prepared by that worker for the 12-month review hearing advised the court the parents had been participating in services since March 2012, attending parenting classes and meetings with the Department and other interested parties to address safety issues. The parents were noted to have been on time for their visits with the minor (tardiness having been an issue in the past), and those visits were going well.

In an addendum report filed August 23, 2012, the social worker recommended the minor be returned to her parents’ custody under a family maintenance plan. According to

the report, the parents had continually engaged in counseling since March 2012; mother's affect had noticeably improved and she was able to vocalize her own needs; the parents had participated in counseling with the minor and the counselor was "pleasantly surprised" by the parents, of whom the grandmother had said negative things; the parents, according to the minor's counselor, were focused on the minor's needs, whereas the grandmother was more focused on the parents; and the parents had been utilizing Regional Center services with the minor and implementing the parenting skills they had learned.

The social worker recognized the grandmother had played a positive role in the minor's life, helping her to utilize community resources, enhancing her independence, and preparing her for adulthood; without the grandmother's influence, in the opinion of the social worker, the minor "would not be the young lady she is today." Notwithstanding this positive influence, the social worker believed reunification had been complicated by the poor relationship between the father and the grandmother: "[Parents] have demonstrated a behavior change and a willingness to put [the minor's] needs first. Unfortunately for this family there have been many obstacles to overcome and outside influences that have been a hindrance. . . . [¶] The most powerful hindrance is the relationship between [father] and his mother [grandmother]. There seems to be conflict between [father] and [grandmother] that goes back to [father's] childhood and is prevalent in his adulthood. [Father] and [grandmother] constantly have disagreements with raised voices in front of [the minor]. . . . The Department is truly concerned for [the minor] as this causes stress for her. . . . The Department believes [grandmother] has influenced service providers with unfounded accusations and deep seeded [*sic*] family dynamics to prevent reunification of [the minor] with her parents."

Other circumstances caused the social worker to be concerned about the parents' treatment during the dependency case. The CASA was recommending that the minor remain in her grandparents' home, but had not seen the parents' new home and had shared confidential information about the case with the grandmother. A special education teacher at the minor's school had contacted the social worker to tell her she had

received a call from the grandmother asking her to write a letter to the court asking to stop visitation with the parents due to the effect it was having on the minor's behavior. The teacher thought the minor had been acting out recently because she was stressed about the school year ending, and it was speculative to attribute her behavior to the parents. The social worker also believed a representative from the Regional Center had been confrontational with the parents and had been reluctant to provide services to the parents and the minor in the parents' home.

At the 12-month status review hearing held in August 2012, the Department and the parents asked the court to return the minor to the parents under a family maintenance plan. The attorney representing the minor was opposed, and cross-examined the social worker extensively about whether the parents had cured the problems leading to the dependency. In particular, counsel questioned the social worker about the parents' ability to follow through with their stated intention of continuing the minor's participation in school and the other activities everyone agreed were critical to her socialization. The social worker suggested the parents, who did not have a car, could rely on friends and public transportation. She indicated mother had been making progress in waking up earlier.

Mother did not testify at the hearing, but father took the stand and explained that if the minor were returned to them, they would try to get her into a routine involving her school and extracurricular activities, although they would probably give her more undirected time than she was receiving at her grandparents' home. He acknowledged they would have to make arrangements for her transportation to and from school and appointments, possibly from Dial-a-Ride, the school district itself, or public transportation. Father continued to have an unusual sleep cycle that would make it difficult for him to make early morning appointments, but mother was able to get up in the morning and do what would be necessary to get the minor to school. Father and the grandmother disagreed about the way in which a child should be raised, with the grandmother believing it was very important for a child to be in school. Father believed the CASA assigned to the case was biased because she had spent very little time with the

parents compared to the grandparents and had made little effort to understand them or their way of raising the minor.

The minor testified she wanted to continue living with her grandparents because she knew they would get her to school and she worried that her parents would not. She still wanted to see her parents, but not all the time: “I think that three days a week is definitely enough. [¶] . . . [¶] And not all day for those three days. I believe I should have about three hours of visitation on Monday, Wednesday and Friday.” When the minor lived with her parents, the home was “uninhabitable” and she had been very bored because her father was always on the computer and her mother did not understand the imagination games she liked to play. After the move to her grandparents’ house, she was able to attend school for the first time, and really enjoyed the interaction with other people. She also liked her bedroom at her grandparents’ house better than the room she would have at her parents’ house.

Dr. Kimberly Smalley, the autism specialist for the Regional Center, testified that in-home services had been provided before the minor was removed from her parents, but they did not adequately participate. She described the minor as “brilliant, gifted, talented,” but needing assistance with her socialization. If returned to her parents, it was likely the minor would have to attend a new school, which would not be a problem academically, but would erase a lot of the work that had been done to get a certain peer group to accept her. The father was eligible for services through the Regional Center due to his own autism, but he was responsible for devising his own program. His original plan was to continue studying Arabic so he could write for an Egyptian periodical; his most recent plan is to “live where I want my family and I to live, and to be healthy.” Dr. Smalley was concerned the minor, who was doing so well in her current situation, would lose the gains she had made if she were placed with her parents in a more isolated situation.

After considering the opinions of the social worker, the CASA and Dr. Roy, the court terminated reunification services and set the case for a hearing under section 366.26. It noted that Dr. Roy’s psychological evaluation had concluded the mother and

father were not able to adequately parent their special needs child, who would require continuing, serious work with respect to her socialization. The court observed that in her grandmother's care, the minor had progressed from "almost zero social skills" to "maybe a functioning 8 or 9 year old, although she's 12, and there's big changes coming including puberty and a whole raft of problems that have to be dealt with[;] Dr. Roy says the parents are incapable." It also noted, "Mother's passive. She didn't even testify in this hearing. She basically lets the father run the household. [¶] And the history, the evidence in this case shows, although they have had 11, 12 months of services, this is supposedly a 12-month review, there were services provided before the court took jurisdiction, so like what reason do we have to believe this is going to get any better?" The court found "return of the child to the parents would create a substantial risk of detriment to the safety, but more particularly the emotional and educational well-being of the child."

E. Writ Review of Order Setting a Section 366.26 Hearing

Father and mother each filed a notice of intent to file a writ petition challenging the order setting the case for a section 366.26 hearing. (Cal. Rules of Ct., rule 8.450.) Mother filed a timely petition arguing the juvenile court had abused its discretion in declining to order additional reunification services. This court issued an order to show cause and denied that petition in a decision filed December 19, 2012. (*D.S. v. Superior Court* (A136475) [nonpub. opn.].) A remittitur issued in that case on January 29, 2013.

Father did not file a timely writ petition. On November 28, 2012, this court issued an order stating his "failure to file a timely petition shall preclude any subsequent appellate review by him of the order setting a hearing under Welfare and Institutions Code section 366.26 (Welf. and Inst. Code, section 366.26, subd. (I))." On February 15, 2013, father's trial counsel submitted a writ petition to this court arguing the juvenile court should not have terminated reunification services at the 12-month review hearing and the minor should have been returned to the parents' custody at least on a trial basis. No further action was taken by this court on father's untimely petition.

F. Section 366.26 Hearing

In anticipation of the section 366.26 hearing, the social worker prepared a report recommending the court terminate parental rights and declare adoption to be the permanent plan. The report noted the minor's grandparents wanted to adopt the minor and had been "instrumental in [the minor's] life allowing [the minor] to flourish in her socialization skills." The minor, who was by then 12 years old, "ha[d] no reservation about being adopted" by her grandparents and stated she wanted to be adopted because "she would have all the legal rights as if she was their own biological child."

An assessment prepared by a social worker who specialized in adoptions reported the minor had been interviewed and indicated she wanted to be adopted. The minor understood adoption to be a process "when someone fully takes you in." When she was told her parents would no longer be her legal parents she said, "that is okay" and "I love my parents. I just don't want to live with them." The adoptions specialist attempted to meet with the parents, but was unable to do so due to the parents' illnesses and their failure to reschedule an appointment. The adoption assessment concluded the minor had a good relationship with her parents but would benefit from the establishment of a permanent parent/child relationship with her grandparents. The grandparents had decided to enter into a postadoption contact agreement with the parents. (Fam. Code, § 8616.5, formerly § 8714.7.)

The minor's CASA filed a report supporting adoption as the permanent plan. The CASA viewed the grandparents' home as "an enriching, satisfactory placement for [the minor]" and recommended an open adoption and continuing communication between the parents and grandparents.

The hearing under section 366.26 was originally set for January 4, 2013. Although both parents and their appointed counsel appeared in court on that date, the hearing was continued until March 1, 2013 because there was some confusion about the finality of the writ proceedings, including the pendency of father's writ petition and whether a remittitur had issued. Additionally, the parents, "given their lifestyles," had

not signed for their notices of the section 366.26 hearing until December 17, 2012, less than 45 days before the hearing date as required by statute.

The court encouraged counsel to confer and attempt to agree on a resolution of the case before the March 1 hearing, noting it believed the minor was doing well due to the grandmother's "Herculean efforts," and that it was inclined to select a plan that had grandmother "driving the bus." The court observed the minor had testified she wanted a relationship with her parents, and it wanted to give some weight to her wishes: "I know . . . adoption is the preference, and you can't do an adoption without terminating parental rights. But I don't know."

On March 1, 2013, both parents again appeared in court. Attorney Mark Bruce made a special appearance for father's appointed counsel, Michael Skudstad, who had, apparently, been hospitalized. Mother was also represented by an attorney making a special appearance for her appointed counsel. No details were given on the record about the reason for or duration of Skudstad's hospitalization. Bruce requested a continuance based on his unfamiliarity with the case.

The court denied a continuance: "I want to state for the record once again, when—the first time I saw this file last August, I read the entire file. It was three volumes. And the Department came in with the recommendation for returning the child to the home under a family maintenance. [¶] Having read the entire file, numerous psychological reports that were attached, various reports, I didn't think that was the right thing to do, so we had a very hotly-contested termination of reunification services. [¶] . . . [¶] We heard from a doctor who is probably as good as any expert, Dr. Smalley, on the issue of As[p]erger's and the autism and the like. [¶] Anyway, to make a long story short, I listened to a day and a half, maybe two days of evidence, and I terminated services. [¶] . . . [¶] Anyway, it seems to be that every time I come down here there's some reason why it can't go forward. And, again, we continued this from January the 3rd or the 4th to today. [¶] There [were] problems getting notice. The parents were avoiding getting notice. I had to actually have them served with a notice in open court, and so I am now in a position where, no matter who the lawyer is, no matter what is said, I'm

going to adopt the recommendation, and I'm going to do it today, because this is a .26 hearing. [¶] . . . [¶] It's about what's the best plan for the child. It's not about parental rights. It's not about, you know, this and that and the other thing. [¶] It's strictly—at a .26 hearing the issue is the best interests of the child. And I, again, having reviewed the file and having listened to the testimony, having been—the record should show that I'm a visiting judge who has made several trips up here to get this case on track, and there's always some reason why it can't—you know, it can't go. [¶] And the last time it was the remittitur. So this is it. The buck stops here. For better or worse, I'm going forward with it.”

The grandmother then advised the court that when the section 366.26 hearing had been continued in January, the minor “took it very hard. She felt somehow that she had caused something to go wrong, and it took a good week and a half to two weeks working with her to move past that point. So this is just—the delays and delays and delays that this case has had have had a pretty negative impact on the child, and if we're going to talk about the good, the welfare of the child and the best interests of her, I think this is a consideration, so I'm glad that you're going forward.”

The matter was submitted without the presentation of any evidence or argument on the part of the parents. The court terminated parental rights and declared adoption to be the permanent plan.

II. DISCUSSION

A. *Beneficial Relationship Exception/Ineffective Assistance of Counsel (Mother)*

Mother argues the juvenile court should have selected something less drastic than adoption as the permanent plan, citing the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a hearing under section 366.26, the court may order one of three alternative plans: adoption (necessitating the termination of parental rights), guardianship or long-term foster care. (§ 366.26, subd. (b)(1), (b)(3) & (5), (b)(6).) If the child is adoptable, there is a strong preference for adoption over the other alternatives. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297 (*S.B.*)) Once the court determines the child is adoptable, a

parent seeking a less restrictive plan has the burden of showing the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B). (*S.B.*, at p. 297.) Section 366.26, subdivision (c)(1)(B)(i) provides for one such exception when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

Case law is divided as to the correct standard for appellate review of an order determining the applicability of the beneficial relationship exception, with some courts applying a substantial evidence standard and others reviewing for abuse of discretion. (Compare *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*) with *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*)). The “practical differences between the two standards of review are not significant,” and as a reviewing court, we should interfere only if the facts, viewed in the light most favorable to the judgment, were such that no reasonable judge could have taken the challenged action. (*Jasmine D.*, at p. 1351.)

Mother observes the minor lived with the parents for most of her life and continued to have frequent contact after removal to the grandmother’s home. The evidence does indeed show that mother maintained regular visitation and contact with the minor, and that their relationship confers a benefit upon the minor. But, it is not enough to show that the parent and child have a friendly and loving relationship. (See *In re Brian R.* (1991) 2 Cal.App.4th 904, 924; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 (*Beatrice M.*)). The “benefit” necessary to overcome the presumption in favor of adoption has been judicially construed to mean “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for

adoption is overcome and the natural parent's rights are not terminated.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Mother suggests that when considering the beneficial relationship exception and the potential detriment of terminating parental rights, the juvenile court improperly assumed the grandparents would allow the parents to have continuing contact with the minor. She cites *In re Scott B.* (2010) 188 Cal.App.4th 452, 471, in which the court concluded an 11-year-old boy's strong bond to his mother made adoption by an unrelated family detrimental when the foster parent “would have the right to cut off his contacts with Mother if she adopted him.”

The instant case is distinguishable because the grandmother agreed to enter into a contract giving the parents postadoption contact under Family Code section 8616.5. “Agreements that provide for birth parents to continue visitation with their children following the termination of parental rights or adoption are . . . recognized by statute and enforceable” so long as they are in writing and found by the court to be in the child's best interests. (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1394.) While it is true a subsequent refusal of the grandmother to comply with the agreement would not affect the validity of the adoption (*In re C.B.* (2010) 190 Cal.App.4th 102, 128, fn. 7), the enforcement procedures in place made it reasonable for the court to assume the grandmother will comply with the terms of the visitation agreement, at least to the extent that visitation remains in the minor's best interests.

In a related vein, mother contends she was deprived of her due process right to effective assistance of counsel because the attorney specially appearing on her behalf did not argue the beneficial relationship exception applied. (*In re Arturo A.* (1992) 8 Cal.App.4th 229, 239-240 [when parent's right to counsel is of constitutional dimension, as when hearing has potential to result in termination of parental rights, parent has due process right to competent assistance]; see also § 317.5, subd. (a) [statutory right to competent counsel].) To prevail on this claim, mother must establish (1) her attorney's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) she was prejudiced, that is, a reasonable probability exists

that but for counsel's unprofessional errors, the result of the proceeding would have been different. (*In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711, citing *Strickland v. Washington* (1984) 466 U.S. 668, 688.) Here, the court was well aware of the mother's relationship with the minor. Absent additional evidence concerning that relationship, it is not reasonably probable the court would have ordered a plan of guardianship or long-term foster care instead of adoption.³

B. Motion for Continuance/Ineffective Assistance of Counsel (Father)

Father argues the juvenile court should have continued the section 366.26 hearing at the request of the attorney who specially appeared on his behalf. He contends the court's ruling deprived him of effective assistance of counsel, because the lawyer who represented him was unfamiliar with the case and did not present evidence or argument that exceptions to the statutory presumption in favor of adoption applied. We disagree.

Continuances in a dependency proceeding are governed by section 352, which provides in relevant part, "(a) Upon request of counsel for the parent . . . , 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. [¶] Continuances 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. . . . [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations

³ As mother notes, claims of ineffective assistance are more typically raised via petitions for writ of habeas corpus. (See *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.) Mother has not filed a companion habeas petition, and we are presented with no facts outside the appellate record concerning her relationship with the minor.

detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.”

Continuances are not favored in dependency cases. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) “The dependency system seeks to keep to a minimum the amount of potential detriment to a minor resulting from court delay. [Citation.] ‘[D]elay disserves the interests of the minor, the parents, and the courts, and is clearly inconsistent with intent of the Legislature.’ [Citation.]” (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 193.) A trial court’s ruling on a motion to continue is reviewed for abuse of discretion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143-144.)

Father did not file a written motion to continue the section 366.26 hearing two days before the hearing date, as required by section 352, subdivision (a). The attorney who specially appeared did not state facts establishing good cause for this omission. Although counsel advised the court in general terms that father’s appointed attorney had been hospitalized, no details were provided about the date counsel was hospitalized or the reasons for the hospitalization. Similarly, no information was provided as to why the attorney who specially appeared could not have filed a written motion to continue two days earlier.

Even if we assume the court implicitly found good cause to entertain father’s untimely oral motion, it did not abuse its discretion in denying a continuance. The court had thoroughly reviewed the files in the case and had presided over a two-day contested hearing at the 12-month review that took place in August 2012. The section 366.26 hearing had already been continued for two months, due in part to confusion about the finality of the writ proceedings following the 12-month review, which in turn arose, in part, from father’s failure to file a timely writ. The grandmother advised the court the minor had been upset by the previous two-month continuance. Under the circumstances, it was reasonable for the trial court to conclude a further continuance would not be in the minor’s best interest.

Moreover, the denial of a continuance requires reversal only if it is prejudicial to the moving party, that is, if it is reasonably probable a different result would have

occurred if the continuance had been granted. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *In re J.I.* (2003) 108 Cal.App.4th 903, 913; *In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) Father asserts that if the continuance had been granted, an attorney familiar with his case could have urged the application of two statutory exceptions to the presumption in favor of the adoption as the permanent plan: (1) the beneficial relationship exception of section 366.26, subdivision (c)(1)(B)(i); and (2) the objection of a minor 12 years or older to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(ii).

We discussed the beneficial relationship exception in connection with mother's arguments, concluding that in light of the record, mother was not prejudiced by her specially appearing attorney's failure to argue that the exception applied. So too with father. As the court was well aware, father and the minor were close in many respects and enjoyed each other's company. But the minor had thrived since her removal from her parents and wanted to be adopted by her grandparents. Father has not directed us to any new information that would have persuaded the court to conclude adoption would be detrimental to the minor or would "greatly harm[]" her. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1316-1317; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) We also reject out of hand father's claim that a better prepared attorney could have convinced the court the exception under section 366.26, subdivision (c)(1)(B)(ii) applied when the minor had consistently stated she wanted the adoption to go forward.

For the same reasons, we reject father's claim he was deprived of effective assistance of counsel at the section 366.26 hearing. To prove this claim, father must show prejudice, meaning a " 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 261 (*Jackson W.*)). Father has failed to demonstrate any probability that a better prepared attorney would have been able to change the outcome.

C. *Issues Pertaining to 12-Month Review Hearing (Father)*

As already noted, father did not file a timely writ from the 12-month review hearing at which reunification services were terminated and the case was set for a hearing under section 366.26. Recognizing that a parent generally forfeits the right to challenge such an order by failing to file a timely writ (see § 366.26, subd. (l); *In re Rashad B.* (1999) 76 Cal.App.4th 442, 447-448), father urges us to find his attorney provided ineffective assistance of counsel in failing to file the writ petition in a timely fashion. Assuming father is correct that the late filing “fell below an objective standard of reasonableness under prevailing professional norms” (*Jackson W.*, *supra*, 184 Cal.App.4th at p. 261), he has not demonstrated prejudice because he would not have prevailed on the challenges the writ petition raised to the order setting the case for a section 366.26 hearing.

In the writ petition belatedly submitted to this court on February 15, 2013, as well as in his opening brief, father presents two arguments: (1) the court’s finding it would be detrimental to return the minor to his care was not supported by substantial evidence (§ 366.21, subd. (f)), and (2) the Department did not provide the father with reasonable reunification services (§ 366.21, subd. (g)). Both of these findings must be upheld if supported by substantial evidence. (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 529 [detriment]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010 [reasonable services].)

At the 12-month review hearing, the court is required to return a minor to the physical custody of her parents “unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (e).) Substantial evidence supports the juvenile court’s determination that returning the minor to father’s physical custody would have created a risk of emotional detriment to the minor. Though father obviously loves his daughter and shares some of her interests, he had not demonstrated the type of consistency and awareness necessary to assist someone with her special needs. As we noted in our prior

opinion on the writ: “The record shows the minor to be a bright and unusual child with many strengths and talents. She also has a disorder that significantly impairs her ability to socialize with others. This is not simply a matter of optimizing peer popularity; without adequate intervention, her disorder could interfere with her ability to engage in major life activities such as attending college, getting a job, and forming friendships. The [juvenile] court could reasonably conclude that the parents, who have their own mental health issues and preoccupations, would be unable to ensure that the minor receives the help she needs to thrive and mature” (*D.S. v. Superior Court* (Dec. 19, 2012, A136475) [nonpub. opn.])

Father argues that if the court’s detriment finding was based on the likelihood the minor would have to attend a new school if returned to her parents’ custody, the reunification services were inadequate to the extent they did not assist him with her school transportation. Additionally, he suggests reunification services were inadequate because the Department should have helped him mend his strained relationship with the grandmother. We are not persuaded.

Since the minor was not in father’s custody, the Department was not required to provide her with transportation to and from school as part of the reunification plan. As to father’s larger point that she could have returned to his care if the Department had been willing to assist her in traveling from his house to school, such assistance would not address the larger issues of father’s nocturnal lifestyle, his inability or unwillingness to avail himself of Regional Center services available to him, or Dr. Roy’s concerns that the parents were unable to adequately care for the minor due to their “co-dependent avoidant lifestyle centered on [father’s] needs.” Father’s difficult relationship with the grandmother, in which he himself played a part, did not render the reunification services offered by the Department unreasonable.

III. DISPOSITION

The judgment terminating parental rights under section 366.26 is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.