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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Barry L., A Person Coming Under the
Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

BARNEY L.,

Defendant and Appellant.

A141749

(San Mateo County Super. Ct.
No. 69919)

In this ongoing juvenile dependency matter, the juvenile court terminated reunification services for Barney L. (father) and re-established a permanent plan of long-term foster care for his 16-year-old son, Barry. Father’s sole contention on appeal is that the juvenile court erred by failing to realize that it had the discretion— pursuant to section 352 of the Welfare and Institutions Code¹—to extend reunification services in this case past the usual statutory deadlines. Respondent San Mateo County Human Services Agency (Agency), in contrast, maintains that the juvenile court was fully aware that it had the discretion to extend services for father, but declined to do so under the facts of

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

this case. Having reviewed the record in these proceedings in some detail, we see no reversible error and therefore affirm.

I. BACKGROUND

The facts of this case are familiar to us, as we have issued six previous appellate opinions in the matter.² Appellant Barney L. is the father of Barry, who was born in December 1997. In September 2004, Barry came to the attention of child protective authorities, having displayed significant aggression and violence. As Barney was then incarcerated in state prison with an expected release date of July 2007,³ he was unable to protect or provide for his son. In November 2004, Barry was declared to be a dependent child and placed in a therapeutic group home. Barney was not offered reunification services because of his ongoing incarceration. (See § 361.5, subs. (b)(12), (e)(1).) By April 2005, seven-year-old Barry was being given psychotropic drugs to help him control his hyperactivity and explosive violent conduct. These drugs were given to him continuously, often over Barney's objection.

Issues of visitation and written communication between Barney and Barry arose frequently in the juvenile court proceedings. Initially, the juvenile court barred physical

² On October 22, 2014, we granted the Agency's request that we take judicial notice of these numerous earlier appeals, subject to a determination of relevance. We find the materials relevant and consider them here. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) Indeed, many of the preliminary facts set forth herein are taken from the unpublished opinions in these prior appeals. (*In re Barry L.* (March 9, 2010, A125970) [nonpub. opn.]; *In re Barry L.* (Sept. 29, 2009, A123662, A124130) [nonpub. opn.]; *In re Barry L.* (June 16, 2008, A119360) [nonpub. opn.]; *In re Barry L.* (Apr. 19, 2007, A114699) [nonpub. opn.]; *In re Barry L.* (Jan. 13, 2006, A111182) [nonpub. opn.]; *In re Barry L.* (Sept. 29, 2005, A109665) [nonpub. opn.].) As Barry's mother is not a party to this appeal, we refer to facts pertaining to her only as they relate to father's current argument.

³ Barney has an extensive and violent criminal history, and he has been in and out of state prison for nearly 30 years. In the past, he has been convicted of felony threats to a school official, rape, kidnapping, robbery, false imprisonment, and inflicting corporal injury on a spouse. In 2002, it appears that he was incarcerated for failing to register as a sex offender and for a parole violation. (See Pen. Code, § 290.) He was paroled in July 2008. In September 2010, he was convicted of driving under the influence causing bodily injury (DUI) and was sentenced to 115 days in jail.

visitation, but permitted written correspondence between Barry and Barney, if Barry's therapist found this to be in the minor's best interest.⁴ At the six-month review hearing in July 2005, the juvenile court continued to allow Barney to have screened letter contact with Barry, but denied the father's request to have contact visits with his son in prison.⁵ In September 2005, at Barney's request, the juvenile court ordered the social worker to provide monthly informal reports to him about Barry's educational and therapeutic progress.

At the 12-month review hearing in October 2005, Barney's request for visitation was again denied. At the 18-month review hearing in February 2006, the juvenile court again ordered that any written contact between Barney and Barry be screened by Barry's therapist. Supervised telephone contact between Barney and Barry was permitted only if Barry's therapist believed that it would be helpful to the minor and in his best interests. The juvenile court adopted long-term foster care as Barry's permanent plan.

In May 2006, Barney had verbal and written confrontations with the social worker about her handling of the case. In June 2006, he sought formal modification of the juvenile court's prior orders. (See § 388.) He complained that the social worker and Barry's therapist were not sending him the monthly reports that the juvenile court had ordered. Barney also asked the juvenile court to compel Barry's therapist to help the minor respond to Barney's letters. According to the therapist, Barry had been hesitant to or had refused to write letters to Barney for many months. At the hearing, the juvenile court denied Barney's request. It reduced the frequency of the social worker's informal reports from a monthly to a quarterly basis.⁶

⁴ We rejected Barney's appeal from this ruling in September 2005. (*In re Barry L., supra*, A109665.)

⁵ In January 2006, we rejected Barney's appeal from this ruling. (*In re Barry L., supra*, A111182.)

⁶ In April 2007, we rejected Barney's appeal from this decision. (*In re Barry L., supra*, A114699.)

In August 2006, the juvenile court approved Barry's continued placement after a subsequent postpermanency planning hearing.⁷ In January 2007, Barney petitioned the juvenile court for an order compelling Barry's therapist to read the father's letters to the minor, without success. (See § 388.) In the summer of 2007, Barry was transitioned from his group home to a therapeutic foster home for a few weeks, but his unmanageable behavior prompted a termination of this placement. By this time, the minor's medication was being monitored biweekly by a psychiatrist who was treating his mental health issues.

By August 2007, Barry had been placed back in a therapeutic group home. His therapist censored Barney's letters to Barry, finding them to be counterproductive to the minor's treatment. The therapist and the Agency asked the juvenile court to terminate this correspondence. The Agency also sought to end the requirement that it give informal quarterly reports to Barney. The juvenile court was advised that Barney was scheduled to be released from state prison in June 2008.

In September 2007, Barney filed an amended petition for modification, again seeking more stringent enforcement of the juvenile court's order requiring informal reports to be provided to him. The juvenile court denied this request. Later that month, the juvenile court conducted the third postpermanency planning hearing. It heard evidence that Barry did not want to communicate with Barney and that the father's letters were inappropriate. Barney testified that he wanted to reduce Barry's use of medication. At the conclusion of the hearing, the juvenile court ordered the Agency not to provide any further informal reports to Barney and precluded any further contact between him and Barry. It also approved the request for Barry's continued medication, over Barney's objections.⁸

⁷ Barney appealed the order after this hearing, but the appeal was dismissed after appellate counsel found no issues to raise, and father failed to file his own opening brief. (*In re Barry L.* (January 17, 2007, A115161) [order of dismissal].)

⁸ In June 2008, we rejected Barney's appeal of this decision. (*In re Barry L., supra*, A119360.)

Barry's next subsequent postpermanency planning hearing was conducted in February 2008. At that time, Barney was still incarcerated. The agency reported to the court that Barry did not wish to talk about his father because he did not know him. Although he knew he had the option to write to Barney, Barry had not asked to do so. Through counsel, Barney requested a contested hearing, but the juvenile court denied his request.

The fifth postpermanency planning hearing was conducted on July 21, 2008. Barney, who had been released from prison eight days earlier, did attend the hearing. Barry remained in the group home placement and continued to take psychotropic medication. When asked by Agency officials on July 9, 2008, he said that he was not interested in having contact with his father and did not want to appear at the hearing. The juvenile court ordered Barry's placement to continue.⁹

In November 2008, Barney petitioned the juvenile court to modify its visitation order and allow him contact with his son. (See § 388.) He also asked that Barry be transported to court to be queried in camera about whether or not he wanted to see his father. The juvenile court denied Barney's petition for modification without hearing, finding that the petition did not show that a change of order would be in the best interests of the child. It also denied the request to compel Barry to attend a hearing. Barney filed a timely notice of appeal from the juvenile court's order summarily denying his petition for modification.

In January 2009, the juvenile court held a sixth postpermanency planning hearing for Barry. Again, Barry was asked in advance of the hearing if he wanted to attend and if he wanted to be in contact with Barney. On both issues, the child said "No." The social worker reported that Barry was adamant about his desire to have no contact with Barney. Barney did not attend the hearing, but Barney's counsel objected to the lack of visitation

⁹ Barney appealed the juvenile court's failure to continue this hearing for another day in order to allow Barry to appear in court. We dismissed this appeal by order after counsel filed a no-issue letter and Barney failed to file any response. (*In re Barry L.* (Dec. 23, 2008, A122618) [order of dismissal].)

with Barry. Barney's counsel asked that the hearing be set for contest on the issue of visitation, without success. The juvenile court advised Barney to submit a petition for modification if he sought changes to court orders. Barney appealed from the juvenile court's order denying him a contested hearing on visitation.¹⁰

A seventh postpermanency planning hearing for Barry was held on July 20, 2009. Barry remained in his group home placement, where it was reported that his past defiance of authority, property destruction, and verbal outbursts had greatly decreased. He continued taking his daily psychotropic medication. He also continued to maintain that he did not want to attend court; nor did he wish to see Barney. The juvenile court again rejected Barney's request for a contested hearing on visitation—indicating that the Agency should facilitate visitation only at Barry's request—and Barney filed another notice of appeal contesting this decision.¹¹

As a result of Barney's successful appeals, a contested hearing on visitation was set for January 25, 2010, to be heard in conjunction with Barry's eighth postpermanency plan hearing. However, the matter was continued to April 13, 2010, as father was incarcerated on DUI charges and for violation of parole. Barry continued to state that he did not want to see his father. In particular, the minor was concerned that any such contact might cause a regression in his behavior. The Agency also continued to oppose communication between father and son, indicating that Barney had sent an inappropriate letter to Barry at the family home despite the juvenile court's no-contact order. The hearing was finally completed on June 29, 2010, at which time the juvenile court maintained its no-contact order after Barney failed to appear despite proper notice.

¹⁰ This appeal was consolidated with Barney's prior appeal challenging the juvenile court's summary denial of his November 2008 modification petition. In September 2009, we rejected Barney's appeal with respect to his petition for modification. However, we concluded that Barney was statutorily entitled to a contested postpermanency plan hearing and therefore remanded the matter for further proceedings. (*In re Barry L.*, *supra*, A123662, A124130.)

¹¹ Given our prior holding that Barney was statutorily entitled to a contested postpermanency plan hearing, the Agency conceded error and the matter was remanded so that a contested hearing could be held. (*In re Barry L.*, *supra*, A125970.)

Barry's ninth postpermanency plan hearing took place on December 20, 2010. Barry remained in a group home setting, after intensive efforts to place him back in the home of his mother were unsuccessful. Shortly before the hearing, Barry indicated to his therapist for the first time that he would be open to getting to know Barney. Barney submitted a modification request in conjunction with the review hearing indicating that Barry was now willing to participate in visitation with his father. The juvenile court continued Barry in long-term foster care and accepted a stipulation of the parties that therapeutic visitation could begin between Barry and Barney. Barney agreed to be assessed for individual therapy and to participate as recommended by the assessment.

In connection with Barry's tenth postpermanency planning hearing on June 13, 2011, it was reported that Barry had been moved from a group home setting to a foster family placement. Barry indicated that things were going well in the foster home and that he was also enjoying visitation with Barney. Given the success of the visitation between father and son, the Agency recommended that further visits be unsupervised and that reunification between Barry and Barney be explored. In July 2011, the court allowed overnight visitation between Barry and Barney.

In its report for Barry's 11th postpermanency plan hearing, the Agency indicated that Barry had been removed from his foster home on September 23, 2011, after increasing instances of aggressive behaviors and delusional thinking. Barry also reported conflict with his father, refusing to see him for a number of weeks. On October 17, 2011, Barry was placed back in a group home, where he continued to have significant struggles controlling his behavior. It was believed that medication changes contributed to Barry's emerging issues. Efforts at reunification were placed on hold so that Barry's mental health needs could be prioritized and his situation stabilized. On December 7, 2011, the juvenile court continued Barry in long-term foster care.

Barry, however, was unhappy in his group home and, On March 30, 2012, he was placed with his father under a plan of family maintenance. Family maintenance services were continued at a review hearing on June 6, 2012. Unfortunately, shortly thereafter, Barry was detained from his father's care on July 25, 2012. The Agency reported that

Barney had been “ ‘weaning’ ” Barry off his psychotropic medication and was using either a belt or a dog leash on Barry’s legs or bottom to enforce discipline. According to the Agency, Barney’s refusal to follow Barry’s court-ordered medication regimen and his use of corporal punishment placed Barry at substantial risk of harm.

At the detention hearing on July 27, 2012, the juvenile court ordered Barry to undergo a medication evaluation and further ordered that psychotropic medication be prescribed and administered, if necessary. At the combined jurisdiction and disposition hearing, the juvenile court ordered supervised visitation for Barney and Barry, with Barry’s step-mother approved as an appropriate supervisor. Barry indicated that he was not ready to see his father. After an attempt at a foster home placement was unsuccessful, Barry was returned to a group home. By October 2012, the minor indicated that he was willing to receive letters from his father. In its report for the six-month review hearing, however, the Agency stated that Barney was resistant to communication with Barry unless Barry initiated it. He asked that further contact with him regarding Barry be minimized unless Barry was open to communication. For his part, Barry was stabilized on his medication and having fewer incidents in the group home.

At the six-month review on February 6, 2013, the Agency, after changing its position several times, requested six more months of services for Barney due to Barry’s recent indication that he wanted to resume contact with his father and Barney’s willingness to do so. On March 6, 2013, the juvenile court agreed and ordered six more months of reunification for Barney, including family therapy with Barry, parenting classes, and visitation to be supervised by Barry’s step-mother. On April 4, 2013, supervised visitation was expanded to include overnight visitation of up to one week.

After a physical altercation with another group home resident in May 2013 led to involvement by the San Mateo County Probation Department (Probation), the juvenile court on June 3, 2013, concluded that, pursuant to section 241.1, Barry should remain a

juvenile court dependent, but be jointly supervised by both the Agency and Probation.¹² In its twelve-month review report, the Agency noted that family therapy between Barry and Barney had started and was initially progressing well. In addition, Father and son both reported that overnight visitation had initially gone well. The Agency also stated, however, that Barry was consistently refusing to take all of the psychotropic medications prescribed for him.

Then, on June 3, 2013, prior to Barry's 241.1 hearing, Barry and Barney had a heated argument due to Barney feeling that Barry was being disrespectful. Barney told Barry he was "done" with him, and Barry agreed that he was "done" with his father. Nevertheless, the two resumed contact about a week later and were able to continue with visitation. Unfortunately, another argument occurred during family therapy on July 22, 2013, after Barry indicated he did not want to extend his visitation with Barney. Given these events, Barry was no longer seeking return to his father's care, but was hoping to achieve a lower level of out-of-home placement. He wanted no further contact with his father. Barney also indicated that he was no longer interested in reunification with Barry.

The Agency, however, opined that there was still a likelihood of reunification within 18 months and recommended that services be continued. The family therapist also believed that reunification could be possible in the next six months with continued services. The juvenile court agreed and continued services at the twelve-month hearing on August 5, 2013.

During the next six months, however, Barry refused medication and would no longer participate in individual therapy. On August 27, 2013, he was placed on an involuntary psychiatric hold after his posturing with several peers led staff to believe he might act out violently. Despite encouragement by the Agency and the family therapist, neither Barry nor Barney was willing to return to family therapy. Father and son had no contact. Then, shortly before the 18-month hearing in this matter, on January 8, 2014,

¹² Section 241.1 provides a process for determining how a minor who meets the criteria for both wardship and dependency should be handled so that both the best interests of the child and the protection of society will best be served.

Barry called his father. He later indicated to the social worker that, while he does not want to be placed with Barney, he would like to try to have a relationship. Given that, in its opinion, the timeframes for reunification had run and Barry and Barney were not in a position to reunify, the Agency recommended termination of reunification services.

The matter was contested and continued to March 27, 2014. In the meantime, Barry's behavior continued to decline to the point that his group home felt it could no longer serve him. The social worker was looking for a new group home placement closer to Barney's home. At the March 27 hearing, Barney's counsel and counsel for the minor both argued that this was an extraordinary case in which further efforts at reunification were justified. The Agency maintained that the timelines had run and that continued reunification services were not appropriate under the facts of the case. The juvenile court continued the matter, asking for and receiving briefing on the issue of whether the court had the legal authority to order additional services in this context. At the continued hearing on April 29, 2014, the juvenile court terminated Barney's reunification services, finding that there was no statutory basis for continuing such services and that this was not an exceptional case in which continuation of services beyond the statutory timeframe was warranted. A timely notice of appeal from father again brings the matter before this Court.

II. DISCUSSION

Section 352, subdivision (a), provides in relevant part: "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. [¶] 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." We review a juvenile court's refusal to grant

a continuance pursuant to section 352 for abuse of discretion. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180 (*Karla C.*); see *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388 (*Andrea L.*)). Specifically, “[d]iscretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice.” (*Karla C.*, *supra*, 113 Cal.App.4th at p. 180.)

A number of courts have used section 352 as a vehicle for extending reunification services past the 18-month time limit prescribed by statute. (§§ 361.5, subd. (a), 366.22, subd. (a); see *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1798-1799 (*Elizabeth R.*) [court notes in the case of a special needs parent that section 352 “provides an emergency escape valve in those rare instances in which the juvenile court determines the best interests of the child would be served by a continuance of the 18-month review hearing”]; see also *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1465-1466; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1016 [“the Legislature never intended a strict enforcement of the 18-month limit to override all other concerns including preservation of the family when appropriate”], superseded by statute on another ground as stated in *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1504 (*Earl L.*)). In *Andrea L.*, *supra*, 64 Cal.App.4th 1377, 1388, the Second District similarly concluded that “[a] juvenile court may exercise its discretion to extend family reunification services beyond the statutory limit in a special needs case.” However, it noted that such cases uniformly involved “extraordinary circumstances” in which some “external factor” prevented the parent from participating in the case plan. (*Ibid.*)

While acknowledging that *Elizabeth R.*, *supra*, 35 Cal.App.4th 1774, stands for the proposition that “a special needs parent can receive more than 18 months of services,” at least one commentator finds “doubtful” that section 352 “was ever intended to allow hearings to be continued for a period of six months, particularly in light of the mandate to resolve dependency cases in a timely manner.” (Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2014) § 2.154[2][b] at pp. 2-519 & 2-520 (Seiser & Kumli).) Rather, the “more appropriate use” of section 352 is for “the normal continuances caused by missing or sick witnesses, calendar conflicts, and the like.” (*Id.* at p. 2-521.) Further,

whatever mechanism is used, it should be the “rare case in which services are ever ordered beyond the statutory time frames.” (*Ibid.*)

Barney’s sole argument on appeal is that the juvenile court erred by failing to recognize that it had the discretion to continue reunification services in this case under *Elizabeth R.* and section 352. In effect, he argues, the juvenile court abused its discretion in failing to recognize that it had any. A review of the relevant hearings, however, shows the fallacy of Barney’s position.

During the 18-month review hearing at which Barney contested the Agency’s recommendation that his reunification services be terminated, father’s counsel indicated that “exceptional circumstances” existed in the case which would justify the provision of six more months of services. Specifically, after months in which Barry had refused all contact with his father, the two had recently begun communicating again and appeared “open to engaging in therapy and furthering their relationship.” In addition, father’s counsel argued that it was in Barry’s best interests, given his continuing issues, to have a positive relationship with his father and that Barney had made significant progress in establishing a home which Barry could “come home to.”

Barry’s attorney also supported continuing services past the 18-month mark. Noting the length of time that Barry had been in out-of-home care and his impending 18th birthday, minor’s counsel argued that this “unusual situation” warranted additional services because there would otherwise be no placement option for Barry once he aged out of the dependency system. She further stated: “[I]t appears that there is not a bright line test here in the law, that the law does consider that there are circumstances under which continuing services, when it’s a benefit to the child and when it’s in the best interest of the child, it’s something that the court can consider.”

Agency counsel, in contrast, argued that the timelines for reunification had run and that there was no evidence presented which would support further provision of reunification services. Specifically, she asserted that such an extension is only available under “extenuating circumstances” and that Barry and Barney’s failure to make progress over the past six months—despite the availability of services—did not amount to

extenuating circumstances. The Agency, however, was open to allowing father and son to resume therapy and visitation in an attempt to improve their relationship. In addition, it was trying to find a residential treatment placement for Barry that was closer to his father's home.

During this hearing, the juvenile court indicated on several occasions that it was reviewing secondary sources—including Seiser and Kumli—discussing the circumstances under which reunification services could be continued beyond 18 months. The court was clearly concerned with understanding and applying the correct legal standards in the situation at hand, stating: “Legally tell me what the law is here. I am looking at this section [366.22(b)] . . . and . . . this isn't a case involving a substance abuse treatment program or institutionalization. *I am also looking at the limited circumstances for services beyond 18 months* and people—you need to argue the law for me here, please. . . . I want to know what the law is for making a record here, and I want to do it properly.” (Italics added.) In the end, the court continued the matter so that the issue could be briefed by the parties.

Subsequently, Barney's attorney filed a trial brief arguing explicitly that the case presented “exceptional circumstances in which the court should exercise its discretion to continue the [18 month] hearing pursuant to section 352.”¹³ In its own briefing, the Agency acknowledged that the juvenile court had the discretion to continue the case, but argued that continuances are disfavored under the juvenile dependency law and that section 352 should only be used by a party to continue a hearing “due to circumstances beyond their control.” In support of its position, the Agency cited Seiser & Kumli several times.

At the continued hearing on April 29, 2014, the juvenile court indicated that it believed that the Agency's briefing “clearly and succinctly” summarized the relevant law

¹³ Pages two through four of Barney's 18-Month Review Hearing Brief filed in the juvenile court on April 11, 2014, were inadvertently omitted from our record on appeal. On our own motion, we have augmented the record in this matter to include these missing pages. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

and pointed out why section 352 was “inapplicable at least in the Court’s view *based on the facts in the case.*” (Italics added.) Later, the juvenile court expanded on its reasoning as follows: “As it relates to father’s request in this case to continue this matter for six months, pursuant to 352, in the Court’s mind [] *352(a) is inapplicable to the facts of this case.* 352(a) is intended for parties who need a continuance of a hearing due to circumstances beyond their control. It is not a vehicle to circumvent the prescribed reunification time line by continuing the eighteen month hearing in order to de facto, if you will, obtain more services.” (Italics added.)

We are convinced, on this record, that the juvenile court was well aware that it had the discretion—based on *Elizabeth R.* and related case law—to extend reunification services beyond the statutory limits in an exceptional case. All three attorneys agreed that the juvenile court had such discretion, and the Seiser & Kumli text reviewed by the judge and relied on by the Agency in its briefing explicitly states as much. Here, the juvenile court simply concluded that, under the instant facts, no extraordinary circumstances existed sufficient to justify additional reunification efforts, a determination which we believe is well supported by the record in these proceedings.

In sum, we have no quarrel with the juvenile court’s refusal in this case to use section 352 as a vehicle to continue Barney’s reunification services at the April 2014 hearing. Before we leave this matter, however, we feel compelled to point out that the juvenile court appears to have been operating under the wrong statutory framework when it made its decision terminating reunification. As stated above, this case began back in 2004 when Barry was detained after displaying significant out-of-control behaviors. When Barry was declared to be a dependent child in November 2004, Barney was bypassed for reunification services due to his extended incarceration and conviction of a violent felony. (See § 361.5, subds. (b)(12), (e)(1).) The fact that Barry was placed with Barney eight years later for four months and subsequently removed via supplemental petition pursuant to section 387 did not return the case to “ ‘square one’ ” for reunification purposes. (*In re Steven A.* (1993) 15 Cal.App.4th 754, 765 (*Steven A.*); *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1459.) In short, Barney was not entitled to

any further mandatory reunification services pursuant to section 361.5 in 2012, and thus the 18-month statutory timeframe for such services was irrelevant. (Cf. *Steven A.*, *supra*, 15 Cal.App.4th at p.765 [“As the trial court admitted, this case somehow slipped through the cracks and was, in essence, allowed to take on a new life when the supplemental petition was filed. The trial court recognized that this was error, and appellant cannot be permitted to build on this mistake to demand a new series of services”].)

Instead, the statutory authority for the provision of additional reunification services for a child in a permanent plan of long-term foster care can be found in subdivision (f) of section 366.3. Pursuant to that statute, at 6-month postpermanency hearings, it is “presumed that continued care is in the best interests of the child.” (§ 366.3, subd. (f).) However, if a parent proves by a preponderance of the evidence that “further efforts at reunification are the best alternative for the child,” the juvenile court has the discretion to order that “further reunification services to return the child to a safe home environment be provided to the parent or parents up to a period of six months, and family maintenance services, as needed for an additional six months in order to return the child to a safe home environment.” Subdivision (e)(4) of section 366.3 further states that, at any postpermanency hearing for a minor in long-term foster care, “[i]f the reviewing body determines that a second period of reunification services is in the child’s best interests, and that there is a significant likelihood of the child’s return to a safe home due to changed circumstances of the parent, pursuant to subdivision (f), the specific reunification services required to effect the child’s return to a safe home shall be described.” (See *In re S.H.* (2011) 197 Cal.App.4th 1542, 1554 [even parent initially bypassed for reunification pursuant to section 361.5 is entitled to be considered for “further” efforts at reunification pursuant to section 366.3].)

Of course, here, despite the juvenile court’s diligent efforts to be properly informed regarding the correct legal standards to apply in this case, none of the parties raised the applicability of section 366.3 in the trial court; nor has its relevance been argued before us on appeal. Any argument based on the trial court’s failure to consider the statute is therefore forfeited. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502

[noting that the forfeiture (or waiver) doctrine has been applied in dependency proceedings in a “wide variety of contexts” and listing cases].) We therefore express no opinion on whether further services pursuant to section 366.3 were available to Barney at the April 2014 postpermanency review hearing. Nor do we reach the issue of whether such additional services may be available at future periodic reviews in this case.

We note only that—even if additional section 366.3 services had been a possibility for Barney at the April 2014 hearing—it seems extremely unlikely, on this record, that Barney would have been able to meet his burden, proving that further efforts at reunification would have been the “best alternative” for Barry at that point. (See § 366.3, subd. (f).) Similarly, it is difficult, if not impossible, to argue on these facts that there was a “significant likelihood” of Barry’s return to a safe parental home within the timeframes specified by the statute. (See § 366.3, subd. (e)(4).) Other than the four-month period that Barry resided with Barney in 2012, he had been in out-of-home care for ten years and continued to struggle with significant mental health and behavioral problems. Postpermanency efforts to reunify him with both his mother and his father had failed, and he was currently refusing to take his prescribed psychotropic medication. As a result, his behaviors had escalated to the point that he was asked to leave his group home. Further, he had become involved in the delinquency system in 2013 and, despite his best efforts to control his behavior, was being monitored by Probation. Moreover, the juvenile court properly recognized the volatility of the “up and down relationship” between Barry and Barney, and 16-year-old Barry himself acknowledged in January 2014 that he was not interested in reunification with his father. Rather, he just wanted “to try to have a relationship.” Finally, other than some possible funding benefits, it is hard to understand why formal reunification services were necessary at all, given the Agency’s willingness to continue both visitation and family therapy with Barney in the context of Barry’s long-term foster care placement. Under these circumstances, even if the correct statute had been considered, it is extremely doubtful that any other result could properly have been reached by the juvenile court.

III. DISPOSITION

The judgment is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.