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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re B.S. et al., Persons Coming Under the  
Juvenile Court Law.

MENDOCINO COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.D.,

Defendant and Appellant.

A142794

A143571

(Mendocino County  
Super. Ct. Nos. SCUK-JVSQ-  
12-16303, 12-16304, 12-16305,  
& 12-16306)

**I.**

**INTRODUCTION**

These consolidated appeals involve K.D.’s (mother) four children: B.S. (now age 9), N.S. (now age 8), Y.S. (now age 5), and D.S. (now age 4). After more than three years of family reunification and family maintenance, the juvenile court set a Welfare and Institutions Code section 366.26<sup>1</sup> hearing with the goal of legal guardianship with the children’s maternal aunt (aunt). Aunt filed a section 388 petition requesting a permanent plan of adoption. At the time of the scheduled hearing on both petitions, mother requested a bonding assessment, which was denied by the court. Mother appeals the

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

juvenile court's order denying her request for a bonding study and her subsequent motion for reconsideration. We affirm.

## **II.**

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### ***Initial Referral***

Mother's initial contact with the Mendocino County Health and Human Services Agency, Children and Family System of Care (the Agency) was in May 2011. Mother came to the Agency and requested her children be placed in foster care. At the time, she was a single mother with four children under age five. The whereabouts of the father were unknown. Mother was given welfare services and began participating in a voluntary family maintenance plan.

The Agency filed a juvenile dependency petition in August 2011. It alleged mother had failed to provide adequate medical care and failed to provide adequate supervision pursuant to section 300, subdivision (b), and neglected B.S. and N.S. under subdivision (j). Specifically, it alleged that D.S. was injured when mother allowed her four-year-old daughter to hold 10-month-old D.S. and she dropped him, causing a head injury. Mother had to be prompted by aunt to take the child to the hospital. In addition, 20-month old Y.S. had been allowed to ride in a "go cart" pulled by an all-terrain vehicle driven by a nine-year-old child and had fallen out, sustaining injuries to her face, head, and body. The social worker had to encourage mother to take Y.S. to the emergency room.

#### ***Initial Detention Hearing***

At a hearing held on August 18 and 19, 2011, Y.S. and D.S. were ordered detained and placed in the care of aunt. The two older children, B.S. and N.S., were returned to mother.

#### ***First Amended Petition***

The Agency filed a first amended petition on September 15, 2011, adding two additional allegations pursuant to section 300, subdivision (b). The amended petition alleged that on a visit to the home, the social worker found five-year-old B.S. and four-

year-old N.S. playing in front of the home unsupervised, and 22-month-old Y.S. walked out the front door naked and unsupervised into a driveway where cars were present. Mother was in the shower and did not return to supervise the children for 10 minutes. Mother was overwhelmed and stressed and had been verbally harsh with the children and exhibited inappropriate expectations for them. The amended petition removed the subdivision (j) allegations related to B.S. and N.S.

#### ***First Jurisdiction Report and Hearing***

The Agency filed a jurisdiction report recommending the court establish jurisdiction over all four children, with the two younger children placed with aunt, and the two older children with mother. The court held a hearing on September 22, 2011, and sustained the section 300, subdivision (b) allegations of the amended petition.

#### ***First Disposition Report and Hearing***

The Agency filed a disposition report on November 14, 2011, recommending the court establish dependency for the four children. It recommended Y.S. and D.S. remain with aunt, with reunification services and visitation by mother, and that B.S. and N.S. remain with mother and receive family maintenance services. The report noted mother requested that Y.S. and D.S. be placed with her, and the older children, B.S. and N.S., be placed with aunt. Mother stated she was prepared to care for her younger children, and it would be best for the two older children to be permanently placed with aunt.

In an addendum to the disposition report filed on November 30, 2011, the social worker expressed concern that mother was not making progress in her therapy and had cancelled numerous appointments.

The court held a hearing on December 12, 2011. The children's counsel requested a psychological evaluation of mother to better tailor services for her, and the court ordered the evaluation. The court adopted the recommendations in the disposition report.

#### ***Mother's Psychological Evaluation***

The Agency filed a report on February 14, 2012, addressing the results of mother's psychological evaluation and placement. The evaluation concluded mother needed parenting classes and help developing appropriate expectations for her children. Mother

reported both bipolar and obsessive/compulsive disorder and was taking medication. Mother stated that B.S. wanted to live with aunt, and he “doesn’t want anything to do with his mother.” She stated that she loved B.S., but “I don’t feel a bond with him or N[.S.]” Mother stated N.S. also wanted to live with aunt. She stated that she loved N.S., “but I don’t have that actual bond with her either.” Mother “feels because she was in an abusive relationship that she didn’t bond with either B[.S.] or N[.S.], but she does feel she has a bond with the babies.” The evaluation concluded that mother had difficulty taking responsibility for herself and others and possessed limited coping skills. It recommended “multi-modal” services including parenting classes, parental coaching, and therapy. It further suggested in-home coaching and parent/child interactive therapy to “develop a bond with her children.”

The report recommended B.S. and N.S. remain with mother, and Y.S. and D.S. stay with aunt until mother could resolve some of the issues that brought the family to the Agency’s attention, and could show consistent attendance and participation in services.

After reviewing the report and psychological evaluation, the court ordered mother to comply with the recommendations and updated case plan.

### ***Interview of Children***

The Agency filed a request for a hearing so that the children could be interviewed outside mother’s presence because the Agency had received an allegation of physical abuse. The court granted the request and issued an order. N.S. had stated mother’s boyfriend hit her on the thigh with a belt, leaving a large bruise. There were pictures documenting the injury. When N.S. was interviewed and asked who had injured her thigh, she said “mom.” Mother stated she had not used a belt and did not physically punish the children. B.S. also stated that he was spanked with a belt. The incidents were investigated but were closed as inconclusive for physical abuse but substantiated for general neglect. The case plan was updated to instruct that mother and her boyfriend not use corporal punishment.

### ***Six-Month Status Review***

The Agency filed a six-month status review report on May 15, 2012. The report recommended another six months of family reunification services to allow mother to focus on her parenting skills and mental health. The report noted that the two youngest children “easily transfer between mom and [aunt].” The two older children were more conflicted and had difficulty saying goodbye to aunt during visits. B.S. stated that he liked spending time with aunt because she did not spank him, and voiced a preference to live with aunt. For D.S. and Y.S. the report recommended continued placement with aunt with reunification services, and for B.S. and N.S. it recommended continued family maintenance and placement with mother.

### ***Section 387 Petition Detention Summary for B.S. and N.S. and Detention Hearing***

On June 12, 2012, the Agency filed a “Detention Summary in Support of 387 Supplemental Petition.” It stated that Mendocino County sheriff’s deputies had served a search warrant on mother and her new husband’s home and found 860 marijuana plants. There was also marijuana bud in the bedroom that was easily accessible to children. N.S., Y.S., and D.S. were present during the raid and when mother was arrested. All four children were taken into protective custody and placed with aunt.

A detention hearing on the supplemental section 387 petition alleging the marijuana grow was held on June 13, 2012. The court ordered all four children to remain with aunt.

### ***Six-Month Family Reunification Hearing for Y.S. and D.S.***

The court found “based on clear and convincing evidence that return of the children to the mother would create a substantial risk of detriment at this time.” The court heard argument from counsel and admitted a letter written by mother into evidence outlining her concerns about aunt’s care of Y.S. and D.S. Mother had not made significant progress toward mitigating the causes requiring placement.

***Section 387 Jurisdiction Report and Hearing for B.S. and N.S.***

The Agency filed a section 387 jurisdiction report for B.S. and N.S. on July 2, 2012. The report alleged that the illegal marijuana grow in the home placed the children's safety at risk. The report stated that the family maintenance plan had not been effective in rehabilitation and protection of the children.

A contested jurisdiction hearing for B.S. and N.S was held on July 12, 2012. Mother objected to the section 387 petition and requested the court continue placement of the children with her. The court found by a preponderance of the evidence that the allegation was true. "This is . . . a case that came in because of concerns about the judgment of the parent in terms of her parenting and putting the children at risk. [¶] The marijuana grow in [mother's] house shows a lack of judgment." The court further found that for a mother who already has children in family maintenance and reunification to engage in criminal activity "is evidence of a real lack of judgment."

***Disposition Report and Hearings for B.S. and N.S.***

In its disposition report for B.S. and N.S., the Agency recommended B.S. and N.S. continue to be placed with aunt. The report noted mother had problems complying with her case plan and had sporadic attendance at her therapy sessions. The report stated: "[M]other indeed loves her children, but seems to have somewhat distorted perception of how to succeed in this case." She continued to have problems "following through on important steps she must take to reunify with her children . . . ."

The court held a disposition hearing on the section 387 petition for B.S. and N.S. on August 2, 2012. Mother requested that the children be returned to her and that the case be transferred to her new county of residence as she had relocated to Stockton, California. The court concluded that it was not appropriate to return to the children to mother's care and that transfer was not in the best interests of the children.

In December 2012, the Agency filed a six-month status review report recommending the two older children be returned to mother. The report noted that mother had made "better progress" on her case plan goals. The children stated a desire to

return to their mother. The court adopted the recommendation and returned B.S. and N.S. to mother.

***Status Reports and Hearings for Y.S. and D.S.***

In the 18-month status review report, the Agency recommended Y.S. and D.S. be returned to mother. Mother had made progress in her case plan goals and had established a safe home for the children. The interaction between mother and the children was “very good” and the children reported they were happy with mother. The court adopted the recommendation and returned the younger children to mother.

***Section 387 Supplemental Petition for All Four Children***

On December 4, 2013, the Agency filed a section 387 supplemental petition regarding all four children. It stated that mother had failed to provide a safe and stable home for the children. In a short period of time, mother had moved from Mendocino County to Stockton, Clear Lake, Redding and then Santa Rosa, California. Mother was not meeting the children’s “immediate needs for supervision, food, clothing, and/or medical or mental health care.” When mother moved to Santa Rosa, she left all four children with aunt and they remained there for two months. The report recommended the children be detained and placed with aunt. At the hearing, the court ordered the children detained.

On January 8, 2014, the Agency filed an amended juvenile dependency petition for all four children. It alleged that mother had contacted the social worker to state she was unable to continue her court-ordered services. She requested that aunt be granted legal guardianship of the four children and that the children remain with aunt.

The Agency filed a disposition report on January 14, 2014, recommending the court terminate reunification services and set a section 366.26 hearing. Mother had failed to follow through with court-ordered services and stated that she no longer wanted reunification services. The court held a disposition hearing on January 21, 2014. Mother did not object to the termination of services or her sister (aunt) retaining guardianship of the children. The court found the allegations in the petition to be true and terminated the

family maintenance plan and reunification services. The court set a section 366.26 hearing.

***Section 366.26 Report, Section 388 Petition, and Combined Hearing***

The Agency filed a section 366.26 report on May 1, 2014. The report recommended aunt as the legal guardian for all four children.

Prior to the section 366.26 hearing, aunt filed a section 388 petition. The petition requested the court change the permanent plan from guardianship to adoption, and further requested no visitation by mother. The petition alleged that mother made false allegations of physical abuse and had secretly recorded statements by the children. It attached a series of social media postings that included a statement posted by mother: “You will never adopt my kids you back stabbing worthless scum! Over my dead body . . . !!!!!” (Original capitalization omitted.)

The court held a combined hearing on the section 388 petition and section 366.26 report on August 13, 2014. Aunt’s counsel stated that mother had made allegations that aunt and her partner had physically abused the children, and had been attacking aunt on social media. Mother’s counsel stated that mother had recorded the children talking about physical abuse by aunt. Aunt’s counsel objected to the recording and the court sustained the objection. The court stated it could not “receive a recording that was made in violation of California law particularly of children who are represented by a lawyer who is unaware of this and did not consent to it.” The court advised that mother should have contacted the Agency if she suspected abuse and allowed them to investigate. Counsel for the Agency stated that they did an investigation and did not “find anything substantial after talking to the children.”

The court advised the parties that the best course of action was to continue the section 366.26 hearing to allow the Agency to evaluate the options including adoption. Mother requested the court order a bonding study in light of the possible adoption. The court stated it did not “find bonding assessments to be all that helpful of evidence most of the time. But if you give me some good reasons why I should consider it in this case, I’ll

consider it.” Counsel argued that the bonding assessment could help the court determine whether it was more harmful or beneficial to end the relationship with mother.

The court responded that it found that “the people that know the children best and have observed them over a long period of time can provide substantial evidence on the issues for the exception to termination of parental rights.” The parent, social worker, and children can weigh in on whether a continued relationship would be beneficial. “[T]he problem I have with bonding assessments is that they’re done in a moment in time. Sometimes there’s one or two observed visits, sometimes there’s some psychological testing or something but they’re a moment in time. They’re not a long period of the child’s life.” Individuals who have ongoing contact can bring “more perspective and richness and fullness to the picture rather than . . . a two-hour visit.” The court noted that bonding assessments are “sometimes helpful but I just don’t think they’re the end all, be all of evidence in this case.”

Counsel for the children stated if the court ordered a bonding study for mother, she would also request a bonding study with aunt. The Agency stated that the bonding studies would likely create competing statements with minimal relevance. The court responded it was a hard decision because without the study, “the mother is deprived of this opportunity to present evidence on an issue that is very important to her whether she can prove the exception to the termination of parental rights. So with some reluctance I grant your request to have a bonding assessment done.”

After each counsel stated they would want to conduct their own bonding study, the court responded: “Think of the children, Counsel. I mean, how many of these evaluations are you going to subject them to?” The court granted a recess for counsel to discuss the issue. After the break, the children’s counsel stated again that if the bonding study was going to be done for mother, she would request one for aunt. The court asked aunt how long the children had been in her care and she said four years, with B.S. and N.S. returning to their mother for about eight months time. The court stated that it was a substantial period of time and she could show examples of a bond.

The court stated that it was considering the best interests of the children. “[A]t this juncture with the children having lived for most of the last four years with their current caretaker . . . I’m going to change my decision and, factually, I do not believe it would benefit the Court to have a Court appointed bonding expert. So I’m denying the mother’s request.” The court scheduled a continued section 366.26 hearing for December 2014.

On August 18, 2014, mother filed a notice of appeal.

***Motion for Reconsideration***

Mother filed a motion for reconsideration of the bonding assessment and admission of the audio recording of the children. Mother argued she needed a bonding study to present evidence that the children would benefit from a continuing relationship with her. Mother also requested the court reconsider exclusion of the audio recordings of the children. Mother’s counsel submitted a declaration that the social worker had told her that the girls reported they were spanked on the bottom and sometimes hit very lightly on the cheek by aunt and her partner.

The court held a hearing on the motion and found there were no new facts or law and no change in circumstances. The court cited *In re Richard C.* (1998) 68 Cal.App.4th 1191 (*Richard C.*) that there is no requirement for the court to order a bonding study. The type of parent-child bond that the court must consider at the section 366.26 hearing does not typically develop in the period between the termination of services and the section 366.26 hearing. When the court terminates reunification services, the parent and child have been in the system for at least 12 months and the nature and extent of their relationship should be apparent. The court stated that the original petition was filed in August 2011 when B.S. was five, N.S. was four, Y.S. was 22 months, and D.S. was 10 months, and it was now 2014 where B.S. was eight, N.S. was seven, Y.S. was four, and D.S. was three years old. Mother had 24 or 30 months of family maintenance with the older children, and 18 months of reunification and 12 months of maintenance with the younger children.

“The request for a bonding study on these facts is simply far too late and not as relevant as the evidence of the relationship that the mother could or should show at the [section 366.26] hearing based on the time that she was parenting the children.” The bonding study was not required.

The court denied the mother’s request to use the audio recordings of the children based on the potential lack of veracity and the fact the children had a social worker, lawyer, and therapist that could act as witnesses for them. The court stated that introducing a recording from outside the courtroom “is just fraught with difficulty and the evidence would not be reliable.”

Mother filed a second notice of appeal on November 10, 2014. The second appeal was consolidated with the first appeal by order of this court on December 15, 2014.

### III.

#### DISCUSSION

Mother argues the court abused its discretion in failing to order a bonding study for the four children. Mother contends she requested a bonding study at the first opportunity when she discovered the court was considering adoption. Although the court had already terminated reunification services and set a section 366.26 hearing, the original goal was legal guardianship, not adoption.

A juvenile court has no statutory obligation to order a bonding study before terminating parental rights. (*Richard C.*, *supra*, 68 Cal.App.4th at p. 1195; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339 (*Lorenzo C.*)) “The applicable standard of review is whether, under all the evidence viewed in a light most favorable to the juvenile court’s action, the juvenile court could have reasonably refrained from ordering a bonding study. [Citation.]” (*Lorenzo C.*, at p. 1341.) We reverse for an abuse of discretion only if the court’s decision is arbitrary, capricious, or exceeds the bounds of reason. (*Id.* at p. 1339.)

In denying mother’s request, the juvenile court relied on a decision from Division Three of this court, *Richard C.*, which raised arguments similar to mother’s arguments here. In *Richard C.*, the mother’s only claim was the juvenile court erred by denying her

motion to order a bonding study. (*Richard C., supra*, 68 Cal.App.4th at p. 1193.) The court had terminated her parental rights and declared her two sons candidates for adoption, and the mother sought a bonding study to show the boys would benefit from a continued parent-child relationship. (*Ibid.*) “There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order. . . . [A]lthough the preservation of a minor’s family ties is one of the goals of the dependency laws, it is of critical importance only at the point in the proceeding when the court removes a dependent child from parental custody (§ 202, subd. (a)). . . . Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to parental custody and the juvenile court terminates reunification services. Then, the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citation.]’ . . .” (*Id.* at p. 1195, quoting *Lorenzo C., supra*, 54 Cal.App.4th at pp. 1339–1340, fn. omitted.) The court noted the shift in emphasis at the section 366.26 hearing because by that point it has become clear the parent cannot provide a nurturing parent-child relationship. (*Richard C.*, at pp. 1339–1340, fn. omitted.)

A bonding study might allow a parent to make a stronger case to reconsider reinstating reunification services, but this evidence should be mustered before termination of reunification. (*Richard C., supra*, 68 Cal.App.4th at p. 1196.) “The kind of parent-child bond the court may rely on to avoid termination of parental rights under the exception provided in section 366.26, subdivision (c)(1)(A) does not arise in the short period between the termination of services and the section 366.26 hearing.”<sup>2</sup> The court also noted that bonding studies create a delay in permanency planning, ultimately

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<sup>2</sup> The exception in section 366.26, subdivision (c)(1)(A) applies “where ‘termination of parental rights would be detrimental to the child because ‘[t]he parents . . . have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.’ [Citation.]” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.)

concluding that the juvenile court did not abuse its discretion in denying the motion for a bonding study. (*Id.* at p. 1197.)

Here, mother has presented no compelling circumstances which required the court to authorize a bonding study at the time of the section 366.26 hearing. The Agency had filed numerous reports with extensive information about mother's relationship to the four children. The juvenile court carefully considered the issue before concluding that it would not be of assistance to the court. The court found that "the people [who] know the children best and have observed them over a long period of time can provide substantial evidence on the issues for the exception to termination of parental rights." The parent, social worker, and children can offer evidence on whether a continued relationship would be beneficial. "[T]he problem I have with bonding assessments is that they're done in a moment in time. Sometimes there's one or two observed visits, sometimes there's some psychological testing or something but they're a moment in time. They're not a long period of the child's life." Individuals who have ongoing contact can bring "more perspective and richness and fullness to the picture rather than . . . a two-hour visit." The court found: "[A]t this juncture with the children having lived for most of the last four years with their current caretaker, . . . I do not believe it would benefit the Court to have a Court appointed bonding expert."

Further, no one disputed the existence of a bond between mother and the children. Notwithstanding mother's love for her children, which was documented in numerous reports, she was unable to provide a safe and stable environment for them. Mother, herself, was the one who stated she did not feel bonded to her two older children, B.S. and N.S., but the children expressed love for their mother. As the court concluded, a bonding study based on a brief assessment would not likely provide additional information helpful to the court in determining at the section 366.26 hearing whether "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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

In this case, all four children were returned to mother in January 2013, but by October 2013, she had placed all of them in aunt's care. Shortly thereafter, Mother agreed to legal guardianship and had willingly returned the children to aunt. In January 2014, when the court held a disposition hearing, mother did not object to the termination of services and agreed to aunt's legal guardianship of the children. The court scheduled the section 366.26 hearing. Mother only objected when aunt requested adoption in August 2014.

Mother asserts her request for a bonding study was not untimely because until aunt filed the section 388 petition requesting adoption, she had no reason to request a bonding study. The juvenile court did not deny the request solely based on its timing; the court expressed its concern that multiple studies were not in the best interest of the children, but ultimately denied the request because it would not benefit the court in making its decision.

Mother argues the study would assist her in presenting evidence of a beneficial parent-child relationship as an exception to adoption by aunt. The purpose of a bonding study, however, is not to assist the parent in demonstrating a beneficial relationship, but rather to assist the juvenile court in resolving any issues underlying application of the beneficial relationship exception. (See *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1168 [the purpose of a bonding study is to obtain evidence of the existence and nature of the parent-child bond].) The court determined the bonding study was unnecessary given all the evidence in the record, and we find no abuse of discretion in reaching that conclusion.

Finally, although mother asserts that she is appealing the court's denial of her motion for reconsideration, she fails to make any specific arguments about the motion in her briefs on appeal. Mother also fails to set forth arguments regarding the court's denial of her request to introduce recordings of the children. Both issues are therefore waived for failing to provide any legal argument or citation to authority. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363 [if a party's briefs do not provide legal argument and citation to authority on each point raised, the court may treat it as waived].)

**IV.**

**DISPOSITION**

The order denying mother's request for a bonding study is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.

