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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

E054095

(Super.Ct.No. SWJ006058)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, Julie Koons Jarvi, Deputy County Counsel, for
Plaintiff and Respondent.

No appearance for Minor.

K.L. (minor) (born February 2008) came to the attention of plaintiff and respondent Riverside County Department of Public Social Services (the department) on January 25, 2010, after paramedics brought him to the hospital in response to the 911 call of defendant and appellant T.H. (mother). Minor was reportedly nonresponsive at the time the paramedics arrived. Minor was diagnosed with a hematoma (bruise) incurred from bumps sustained to his head; he was ordered hospitalized.¹ Mother was on probation for a conviction of child endangerment with regard to her first child, A.H. The juvenile court had previously terminated mother's parental rights with respect to A.H. on January 17, 2008.²

The department sought formal removal of minor and recommended reunification services not be offered to mother. On April 26, 2010, the juvenile court removed minor from mother's custody and declined to offer her reunification services due to mother's failure to reunify with A.H. On December 6, 2010, mother filed a Welfare and Institutions Code section 388 petition seeking six months of reunification services.³ The juvenile court denied the petition. Mother filed additional section 388 petitions on May 16, 2011, and June 2, 2011. On July 7, 2011, the juvenile court denied mother's petitions

¹ The latter allegation is repeated in the social worker's reports, but there is no evidence in this record that minor actually was admitted to the hospital, rather than merely seen in the emergency room.

² We previously affirmed the juvenile court's order granting mother reunification services as to D.H. (mother's third child) from minor's appeal in case No. E053573. By order dated October 26, 2011, we took judicial notice of the record in that case.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and terminated her parental rights. Mother appeals, contending the juvenile court abused its discretion in denying her latter two section 388 petitions, the juvenile court was biased against her, the social worker failed to conduct a proper investigation for the hearings, and insufficient evidence supports the juvenile court's determination that termination of mother's parental rights would not be detrimental to minor. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Mother and J.H.⁴ initially gave what the social worker described as conflicting information regarding the circumstances under which minor became hospitalized. Both basically said they were attempting to get minor to go to sleep, but that minor was throwing a tantrum. Minor had reportedly spoken with his father that evening and had since become uncontrollable.⁵ J.H. became frustrated and began to yell. Minor banged on the door and knocked over a television. Mother left the room to smoke, leaving J.H. in the room alone with minor. When she returned, minor had sustained a bruise to his head. Mother believed minor had sustained the injury by hitting the door or floor while in a fit of temper. J.H. admitted he “tapped” minor on the arm.

Mother wanted to take minor to the hospital, fearing the injury might be serious. J.H. believed minor's bump on the head was not serious enough to warrant a hospital visit. Mother did not have transportation herself, so she called a number of her friends

⁴ On the date in question, J.H. was mother's live-in boyfriend. Mother and J.H. got married on October 1, 2010. J.H. is the father of mother's third child, D.H.

⁵ Minor's father, who was granted reunification services with minor, is not a party to this appeal.

and relatives seeking a ride to the hospital. After apparently exhausting all alternatives, mother called 911. The paramedics who arrived at the scene reported minor appeared to be okay, but mother insisted that he be taken to the hospital.⁶ The paramedics believed J.H. was “tweaking.”

Mother had reportedly been diagnosed with several mental health conditions and had stopped taking her medication. J.H. purportedly had a mental health disability incurred at the age of 13, as a result of an accident, which might explain the paramedics’ belief that he was under the influence of methamphetamine. He agreed to take a drug test that day.⁷ The social worker reported that “[a]fter interviewing the mother it was still unknown what had caused the injury to the child.” Minor was too young to provide any discernible answer.

The department received its referral regarding A.H. on June 20, 2006, when it was discovered she had five or six bruises on her head and cheek that resembled finger prints, as if the child’s face had been squeezed; she “sustained a subdural hematoma in her occipital lobe, a healing bruise on the back of her head”; she also had a broken leg. Her injuries were consistent with “Shaken Baby Syndrome.” The juvenile court detained A.H. at the age of three months on allegations of physical abuse and general neglect.

⁶ This would appear to be at least one item in which mother gave conflicting statements, as the social worker reported the paramedics indicated minor was unresponsive when they arrived. No more definitive description of minor’s condition on the arrival of the paramedics was given other than he was “okay” or “unresponsive.”

⁷ In the department’s jurisdiction and disposition report, it was noted J.H. tested positive for marijuana on January 25, 2010.

A.H.'s father dissolved his relationship with mother on June 25, 2006, after refusing a polygraph test proffered by the Hemet Police Department. A.H.'s father thereafter absconded to Mexico. On February 4, 2007, mother pled guilty to willful harm or injury to a child (Pen. Code § 273a, subd. (a)).⁸ Mother was placed on probation scheduled to end on February 26, 2011. As an apparent condition of her probation, the court ordered mother to complete a parenting program by March 1, 2008. Nevertheless, hearings on alleged violations of probation for mother's apparent failure to timely complete the program occurred on April 1, 23, and August 25, 2008; mother failed to appear at the first hearing. The court apparently revoked and reinstated mother's probation with a condition that she complete the parenting program; mother completed the course on October 23, 2009. The juvenile court offered mother reunification services as to A.H., but mother failed to reunify; the juvenile court terminated mother's parental rights with respect to A.H. on January 17, 2008.

⁸ Penal Code section 273a, subdivision (a) provides: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years." We have nothing in this record to indicate the factual basis for mother's plea; thus, we have no definitive way of knowing whether mother was alleged to have inflicted the injuries herself or had otherwise permitted A.H. to be placed in a situation where such injuries could be inflicted. Nonetheless, the record is replete with mother's continued assertions that A.H.'s father was the perpetrator of the abuse against A.H. Indeed, mother's conviction was later reduced to a misdemeanor and expunged.

The department filed a juvenile dependency petition on January 27, 2008, alleging, as pertains to mother, that minor had suffered serious physical harm and that mother had no reasonable explanation for the injury (A-1), mother had been convicted of willful injury to minor's sibling and was currently on probation for that offense (B-2), mother had unresolved mental health issues (B-3), mother had a significant history with the department in that her parental rights as to A.H. had been terminated (B-3), minor had sustained severe physical abuse (E-1), and minor's sibling had suffered abuse (J-1). The facts stated in support of the E-1 allegation were that the minor "has suffered serious physical harm including bruising and a hematoma on his forehead and the mother has no reasonable explanation for these injuries." On January 28, 2010, the juvenile court ordered minor formally detained and granted mother supervised in-person visitation with minor for one hour twice a week.

In the department's February 18, 2010, jurisdiction and disposition report, the social worker reported she was unable to obtain a copy of the Sheriff's report based on the incident. The social worker recommended denying mother services concluding that "[t]he risk . . . present[ed] to the child is that both children [minor and A.H.] were injured while in the care of the mother. She failed to take appropriate steps to ensure the safety of her children either through accidental injury, or failure to recognize the risk to the children by leaving them alone with her male companions. Two children have sustained head injuries in the mother's care and she has been unable to provide a reasonable explanation in both situations." "Even if the injuries are determined to be accidental in

nature, the fact that she was unable to control her son during his outbursts, and dealt with the situation by shutting him in his room and holding the door closed is disturbing.”⁹

Although results of minor’s examination at the hospital indicated no overt evidence of abuse, the social worker noted “[i]t is also important to note that the findings of the . . . exam in no way dilute the relevance of the a-1 allegation. [Minor] did suffer from serious physical harm, and [mother] has no reasonable explanation as to how the injuries occurred. Further, when she removed herself from the situation, she left her child with [J.H.], [whom] she had known for less than six months.” An attached report of the forensic pediatric consult of the Riverside County Child Assessment Team at the hospital reported minor had been presented to the emergency room on January 24, 2010, at 10:05 p.m. after “multiple reported falls that day”; during transport he became unconscious, responding only to pain, for four minutes. Minor was diagnosed with a hematoma (small bruise) to the forehead sustained while throwing a temper. The physician concluded there was “no overt evidence of abuse” and that minor showed “appropriate development.”

Visits between minor and mother and father were described as occurring and ongoing, but initially hampered due to parents’ transportation issues. The matter was continued on February 23, 2010; at mother’s request the juvenile court set the matter for a contested hearing.

⁹ This is another apparent “conflicting” report given by the mother, i.e., that she shut minor alone in his room rather than left him in the room with J.H.

In an addendum report filed March 18, 2010, the social worker noted that “[d]ue to the suspicious injuries to the child, the mother’s mental health issues, prior termination of parental rights as to her daughter . . . under similar circumstances, and questions as to her ability to protect her son from further harm, the decision was made to place [minor] in protective custody on January 25, 2010.” The department immediately placed minor with a foster care provider (FCP) who worked at minor’s daycare facility. “According to the [FCP], [minor] is very attached to her and she has adapted her routine to accommodate him. She reported that [minor] needs to have her in visual contact throughout the day, and mundane tasks such as putting gas in her car generates cries of ‘no, no, no,’ or ‘I need you. I need you,’ whenever she is out of sight. She needs to be present when he bathes or goes into another room.”

The social worker observed that minor was closely bonded with father, but not so much with mother. She observed that mother occupied a passive role during visitation with minor. Mother had missed ““four or five”” scheduled visits. Mother was random drug testing; she tested negative on March 10, 2010.¹⁰ Mother had enrolled in a series of parenting classes with Catholic Charities; a weekly psychiatric therapy and medication services program called “Brand New Day,” and a recreational type program called “Day Program” for persons with persistent or severe mental health challenges. Mother had gone off her psychotropic medications because she was pregnant. On March 22, 2010,

¹⁰ Random drug testing necessarily implies numerous tests; however, the record is devoid of the results of any other drug tests occurring between March 10, 2010, and April, 2011.

the contested jurisdictional and dispositional hearing was continued at the request of the department.

In an addendum report filed March 22, 2010, the social worker noted that a “medical evaluation [of minor] was inconclusive as to non-accidental injury.” On April 22, 2010, the department filed a first amended juvenile dependency petition in which, as pertains to mother, the A-1 allegation was stricken in its entirety, the B-1 allegation was stricken in its entirety, and the B-2 allegation requirement that mother take prescribed psychotropic medication was stricken.

On April 26, 2010, the juvenile court held the contested jurisdiction and dispositional hearing. Mother had signed a waiver of her rights on a JV-190 form.¹¹ Mother indicated that she submitted on the allegations in the petition based on the social worker’s reports and other submitted documents, waived the right to trial, to see and hear witnesses testify, to cross-examine witnesses whose statements were contained in the reports, to testify on her own behalf, to present her own evidence and witnesses, and to compel witnesses to testify and produce evidence. Mother indicated she understood submission on the reports would likely result in the juvenile court’s determination the allegations in the petition were true.

Nonetheless, mother expressed an interest in speaking with the court. The court asked whether mother wished to testify under oath; mother expressed an interest in testifying despite her counsel’s advisement that she not do so. Off the record, mother’s

¹¹ The filled-in and signed form is not contained in the record; we rely on the form contents available at <http://www.courts.ca.gov/documents/jv190.pdf>.

counsel discussed with mother his advice not to testify and to have a guardian ad litem appointed for her; mother rejected counsel's advice and chose to testify. Mother testified, during which she conceded she had another child who had suffered very serious injuries and that minor had suffered similar injuries. The court took judicial notice of the entire case file including all documentation regarding minor's sibling.

The juvenile court found the allegations in the first amended petition true and sustained the petition. "The child is described by [s]ection 300(b), (e), and (j)." The department sought denial of reunification services as to mother under section 361.5, subdivisions (b)(6), because minor had suffered severe physical abuse, (b)(10) because reunification services for mother had been terminated as to minor's sibling, and (b)(11) because mother's parental rights had been terminated as to minor's sibling. Mother's counsel argued that as to the E-1 allegation, "it appears that the child must suffer severe physical abuse by the parent. Although mother is submitting it to the Court, the allegation under (e)(1) doesn't indicate that the minor has suffered a severe injury as outlined in that section, your Honor. It only indicates basically a bruise to the forehead."

The juvenile court observed: "I'm going to have a hard time finding that those injuries qualify under [section 361.5, subdivision] (b)(6) based on the proof that they were deliberate and serious injuries inflicted on the child. They talk about—and I read under, I think, the third paragraph of (b)(6), a finding of the infliction of severe physical harm for the purpose of this subdivision may be based on but is not limited to deliberate and serious injury inflicted to or on a child's body or on the body of a sibling by an act or omission of the parent or guardian or of another individual with the consent of the parent

or guardian. [¶] So you believe the injuries here constitute injuries that would be defined as severe physical harm?” Mother’s counsel requested the court find the E-1 allegation not true and not deny mother services under section 361.5, subdivision (b)(6).¹²

The juvenile court found “[a]t this point in time, I am going to find, as I did indicate, all of the allegations in the petition to be true, including the (e)(1). [¶] However, I am not going to deny services to the mother under either the (b)(5) or (b)(6). I don’t believe there’s sufficient evidence regarding the serious nature of the injury.” The court denied mother reunification services pursuant to section 361.5, subdivisions (b)(10) and (11). The court concluded “[l]et me indicate for the record so that it doesn’t appear that there is an inconsistency in my ruling today, the parties submitted to the Court an amended petition. In that amended petition, it appears to the Court that the Department agreed to strike (b)(1), which also alleged the physical injuries that the child . . . suffered and left (e)(1) in the petition, which I can only understand to be pursuant to some form of negotiation. [¶] I do believe that the child was injured while in the care of the mother and, therefore, find that (e)(1) is appropriately found true. I do not, however, believe—and I think it’s important to note—that those injuries are very similar in substance and form to what the prior child of the mother suffered, and I think that the record in this matter does need to reflect that this child did suffer bruising and hematomas to the forehead without a reasonable explanation while in the care and custody of the mother.

¹² It is interesting that only after mother’s counsel submitted the matter and after the juvenile court found the allegations true did mother’s counsel attempt to argue the issue.

[¶] However, I do not believe that the injuries in and of themselves rise to a level that they would justify a denial of services”

On October 21, 2010, the department filed its six-month review report. The social worker noted that mother had given birth to a baby girl, D.H., in October 2010. The social worker noted minor “appears to be bonding well with the foster mother and extended family members. The foster mother reported, “[minor] used profanity when he was first placed in the home. She also said there were times he was overly aggressive at her home and at the child development center he is enrolled in. It is reported that [minor] no longer uses any profanity and his aggressive tendencies have subsided.”

Mother had been granted two hours of supervised visitation per week, but had missed visits on February 25, March 2, 4, and 9, April 27 and 28, 2010. She had also been late to several visits in April 2010. The social worker continued to describe mother’s interaction with minor as passive, but appropriate. Mother reportedly stated she would do anything to reunify with minor.

Attached to the department’s November 1, 2010, jurisdiction and disposition report with regard to D.H., was an incident report dated February 3, 2010, prepared by a Detective Salisbury regarding minor’s case. In it, the detective noted “on the medical opinion of [the] Forensic Pediatrician[, the social worker] was closing her CPS investigation [of the] case. [The social worker] explained [the doctor] ‘downgraded’ [minor’s] injury and there were no physical findings consistent with abusive head trauma. [The social worker] was going to document the case as ‘general neglect’ . . . for not immediately calling 911.” The detective concluded, “[b]ased on the totality of the

circumstances, statements and medical information there is no reason to suspect [minor's] injuries were the result of physical abuse or intentional neglect. Due to no further information, this case will be closed unfounded.”

On December 6, 2010, mother filed a section 388 petition requesting six months of reunification services as to minor. Mother alleged completion of a parenting class, an anger management class, and a child batterer's program. Mother indicated she was participating in counseling, tested negative for drugs, and was currently on medication prescribed by a physician.

The juvenile court scheduled a combined JV-180, as to minor, and contested jurisdictional and dispositional hearing, as to D.H., for December 16, 2010. At the hearing, mother testified she had completed one anger management class and was currently in the ninth week of a second, 16-week anger management program. She completed a parenting class in June or July.¹³ Mother had been going to a mental health clinic where she was under the care of a psychiatrist who had prescribed medications for her condition, bipolar disorder; she had been on the medication since December 2, 2010. She completed a child batterer's program in October 2009, and a substance abuse program after her reunification services as to A.H. were terminated. Mother admitted on cross-examination that she had no documentation supporting completion of the services

¹³ It is unclear from the record whether this was the parenting class that was required as a condition of mother's probation. However, mother testified she had “taken a lot of parenting classes . . . and I learned a lot of new things that I didn't learn in my previous class.”

she testified to having completed.¹⁴ Mother admitted that A.H. had suffered “pretty severe injuries” including broken bones, which were consistent with Shaken Baby Syndrome. Mother denied inflicting injuries upon minor; she contended he injured himself when he fell against a doorknob.

The juvenile court determined that there had been no change in mother’s circumstances and that it would not be in minor’s interest to offer mother reunification services. Thus, the court denied mother’s JV-180 petition. The court noted that any contention minor’s injuries were self-inflicted “flies in the face of the evidence.” The court then set the selection and implementation hearing as to minor.

The court ordered several documents into evidence including: (1) a December 7, 2010, notification that mother had completed 12 hours in eight sessions of a 24-hour, 16-session anger management course run by Catholic Charities; (2) a notification from Catholic Charities dated December 7, 2010, that mother had completed five, one-hour joint therapy sessions with father occurring between October 19, 2010, and December 7, 2010; and later (3) a December 14, 2010, notification that mother had completed 13.5 hours in nine sessions of the aforementioned anger management course. The court scheduled the section 366.26 hearing with regard to minor for April 14, 2011.

On March 9 and 10, 2011, the juvenile court held a contested dispositional hearing with regard to D.H. Prior to argument the court noted “at the outset that [mother] has

¹⁴ Later questioning contradicted this testimony, when mother agreed the documentation attached to the JV-180 petition regarding the first anger management program mother completed established it was an eight-hour online program.

made a pretty tremendous effort here, and notwithstanding her deficits, has made much more of an effort than we typically see people make who aren't being offered services.”

After argument, the court reasoned “the language in [the statute] is not . . . focused on the outcome of the efforts but on the amount of effort that has been made. Has the person made subsequent reasonable efforts to treat the problems? [¶] I think it is apparent that neither parent is in a position to receive the child today, but when I look at the work that . . . mother has done in an effort to treat the problem, I do believe that [those] efforts have been reasonable” The juvenile court recognized the department’s argument that mother would have been better off participating in individual therapy and a batterer’s program, but observed, “[t]hose are some things that mother is going to need to do and has not done yet.” Nevertheless, the court noted “These other efforts that she has made, I do believe they satisfy the requirements of [the statute] so that these code sections do not prevent her from receiving services as to this latest child.” The court further reasoned: “The allegations, in that [previous] case, which were found true by the judge do not label mother as the abuser, but put her as an involved party, percipient witness. She should have done more than she did.”¹⁵ Ultimately, the court concluded that mother had “made subsequent reasonable efforts to treat these problems.” It ordered six months of services for both parents as to D.H.. and ordered mother to remain compliant with her medications.

¹⁵ It is unclear from the record to which case the court was referring.

In a selection and implementation, and postpermanency status review report dated March 30, 2011, the social worker noted mother consistently visited with minor for two supervised hours, twice a month; the visits were deemed appropriate and minor appeared to enjoy the time he spent with mother.¹⁶ The social worker noted the FCP, with whom D.H. had also been placed, “provided a safe, loving, and supportive home to [minor].” Minor reportedly referred to the FCP as his mother. In an addendum report dated May 10, 2011, the social worker recounted that minor reported he was happy living in the home and really liked his prospective adoptive parent (PAP).¹⁷

On May 16, 2011, mother filed a second section 388 petition, again requesting six months of reunification services as to minor. Mother asserted a change of circumstances with respect to her previous completion of parenting and anger management courses and her continuing participation in counseling, psychiatric services, and an additional child batterer’s program.¹⁸

On May 25, 2011, the court observed: “I was hoping the Department would prepare a report to discuss the progress that . . . mother . . . ha[s] made since the time I granted [her] services as to [her] other child.” “I would like to have an update regarding her progress. I have [mother’s counsel’s] version of it. If the Department doesn’t have

¹⁶ After denying mother reunification services as to minor, the juvenile court reduced mother’s visitation from the original two visits per week to two visits per month.

¹⁷ The FCP now wished to adopt both minor and D.H.

¹⁸ Mother attached documentation supporting her continued participation in the latter three programs.

anything to the contrary, I'm likely to find that there are changed circumstances."¹⁹ The court further expressed its chagrin at the lack of such a report: "I guess I was surprised at the lack of evidence contained in the report prepared for the last hearing date. I would have expected that the Department would have come fully armed with all of the evidence regarding past visitation, thorough notes regarding the quality or lack thereof of visitation, frequency of mother's visitation, things like that, and that information wasn't there, so I basically assumed as true . . . [mother's counsel's] report . . . mom has been making all her visits."²⁰ The juvenile court ordered a bonding study and a report regarding mother's visitation with minor: "So will you please have the Department prepare a report addressing her progress as to her related child?"²¹

On May 27, 2011, the PAP requested de facto parent status. On June 2, 2011, mother filed a third section 388 petition requesting six months reunification services as to minor. Mother alleged a change in circumstances in her continued participation in

¹⁹ Mother's counsel's version was that mother had been "a hundred percent compliant with her case plan."

²⁰ The case log attached to the report filed March 30, 2011, is predominantly, if not exclusively, directed at observations of *father's* interactions with minor during visitation. There are no case log observations in the record regarding mother's interactions with minor during visitation for the entire period between October 16, 2010, and May 25, 2011.

²¹ The report of mother's progress with minor ordered by the court on May 25, 2011, was apparently never produced. Neither the parties nor the court ever mentioned the report again.

weekly counseling sessions, psychiatric treatment, and a batterers' program.²² Mother asserted she had undergone a substance abuse assessment in which it was determined she had no need to participate in a substance abuse program; she had successfully completed a 16-week outpatient drug and alcohol treatment program on October 4, 2007. She averred she now had a lease on a three bedroom home.²³ Her felony conviction for child endangerment had been reduced to a misdemeanor and expunged. She completed a 16-session anger management program on February 8, 2011, and had participated in 12 sessions of a 13-session conjoint counseling program with J.H. as of February 13, 2011. Mother also averred she had visited consistently and appropriately with minor.

On June 10, 2011, the department filed another addendum report. Attached to the report were three psychological evaluations. In the first written on August 8, 2007, the psychologist noted that mother had come to the attention of the department when A.H. was treated at the hospital for "a number of physical injuries believed to be the consequence of abuse including facial bruises, oxygen deprivation, a brain injury, fractured femurs[,] and fractured ribs." Mother admitted to the use and abuse of marijuana and methamphetamine. The psychologist observed that mother's "attempt to hide the nature/circumstances of injury to her child and her utter apparent failure to . . . affirmatively . . . protect her child are extremely troubling." He further expressed

²² Mother attached documentation supporting her continued participation in these programs.

²³ Mother attached the lease agreement and pictures of the home with bedrooms decorated and furnished for minor and D.H.

concern regarding mother's "unwillingness to protect her child and her lack of interest in the punishment of other wrongdoers." He concluded that mother's "resistance to gaining a clearer understanding of the circumstances, refusal to accept responsibility, lack of genuine remorse or even normal concern and refusal to seek assistance foreclose improvement and render it unlikely she could safely parent without extraordinary and regrettably, unexpected change."

In the second report, based on evaluations conducted on August 7 and 18, 2007, the psychologist noted that mother reported it was a good thing a neighbor had reported the abuse because otherwise she never would have realized that A.H.'s father was the source of the abuse; she would have continued to believe that A.H. was just banging her own head on the ground.²⁴ He concluded that mother's "presentation did not reflect any appreciable acceptance of the seriousness [of] the level of abuse of her daughter. Nor did her presentation reflect that she had any appreciable remorse or regret for what had happened, or that she felt any level of responsibility for the abuse of her daughter or that she did not intervene."

In a report of a psychological evaluation of mother dated April 6, 2010, Dr. Edward Ryan noted that mother reported being diagnosed with schizophrenia and having a prior history of methamphetamine use and abuse. A.H.'s father had apparently returned from Mexico and was incarcerated for child abuse. Dr. Ryan observed mother "[h]as been in denial regarding the severity of the abuse and is not accepting responsibility for

²⁴ Mother reported she left A.H.'s father due to his abuse of A.H.

what happened to [minor].” Mother continued to assert minor’s injuries were self-inflicted.

Dr. Ryan noted mother “tends to avoid solving problems by ‘looking the other way’ so to speak, and maintaining a minimal awareness of the issues that she has in her life. She is poorly grounded in reality, with a tenuous grasp of the dynamics of her life.” Mother reported not being on medication due to her pregnancy; at the time of her evaluation she was only three months pregnant but admitted being off her medication for 18 months. Dr. Ryan noted minor’s injuries were the result of mother’s inability “to cope with or control a temper tantrum by a young child.” He ultimately agreed “with the [department’s] recommendation to not provide services in this case. [Mother] has had many years to address the issues outlined above and has not benefitted from the services that have been provided from multiple agencies/providers in the past. She has been non-compliant with a medication regimen. She shows significant issues in terms of judgment with regard to relationships, as well as, and most importantly, how to handle issues with a young child.” However, at the dispositional hearing as to D.H., Dr. Ryan testified that if mother had completed various services including a parenting class; an anger management class; conjoint counseling with father; and had been on medication for several months, it would change his conclusion regarding whether mother had made reasonable efforts at treating the underlying problems that led to removal of D.H.’s siblings.

The social worker noted minor no longer used profanity, was calmer, and referred to the PAP as “mother,” but called mother by her first name. The social worker contended mother was not in compliance with her case plan as to D.H.; mother had tested

negative for use of controlled substances on April 7, 26, and May 4, 2011; however, she failed to show for testing scheduled for May 20, 2011. Mother had not been assessed for the necessity of drug treatment.

On June 15, 2011, the court continued the matter to July 7, 2011, for a combined section 388 and section 366.26 hearing. The department filed another addendum report on June 30, 2011, in which the social worker noted mother continued to deny abusing minor. The social worker also attached documentation of mother's completion of nine sessions of individual counseling between April 2, 2011, and June 25, 2011. The department contemporaneously filed a memorandum of points and authorities in opposition to mother's section 388 petitions.

On July 5, 2011, Dr. Araceli Cabarcas filed two respective bonding studies; one between minor and the PAP and another between minor and mother. As a caveat, Dr. Cabarcas noted that she "does not make recommendation[s] as to which individual is the ideal caregiver since the study is not a full scale custody evaluation." With respect to the PAP, Dr. Cabarcas noted that the PAP answered defensively with regard to the parental stress index, scoring below normal in all areas except mood, i.e., "Adaptability, Acceptability, Demandingness, Competence, Depression, Health, and Attachment."

On the Child Abuse Potential Inventory, the PAP tested as "Faking Good," i.e., she attempted to present herself in a positive manner rendering interpretation of the test useless. Minor reported not being with his mother because his parents hit him on the head, however "[g]iven his age, it seemed initially unlikely that he would recall this but

he was able to recall other novel information readily.” Minor referred to the PAP as “Momma Sharon” and mother as “Momma Trista.”

Dr. Cabarcas reported that “[t]he child does not appear conflicted over changing placement as his statements indicate ambivalence (‘nobody loves me’).” Dr. Cabarcas concluded that minor “appears to have an insecure attachment style with this caregiver with either resistance or avoidance traits.” Minor “is aware that he was harmed while in . . . mother’s care and this has impacted his perception of caregivers. It appears he wants to get close to [the PAP] but is conflicted since he has formulated an idea of family in his mind that includes returning to his mother. On several occasions he has expressed that he wanted to stay in his current placement but often added ‘with my sister’. It is difficult to clearly delineate if his attachment is more to his sister and remaining with her than a genuine desire to be closer to his foster mother but he readily accepts her affection.”

Dr. Cabarcas’s report on mother reflected that her responses on the parent-child relationship inventory were all in the normal range. Mother’s responses on the parental stress index were all normal except on the Life Stress scale “which indicates that she finds herself in a stressful situation that is beyond her control. This scale identifies stress that is beyond the parent-child relationship.” Mother’s “results did not indicate that she had the potential for Child Abuse,” albeit, the conclusion was based on mother’s self-reporting.

At the combined hearing on mother’s section 388 petitions and the section 366.26 determination held on July 6 and 7, 2011, Dr. Cabarcas testified that though psychological testing is typically conducted as part of a bonding study, she did not

conduct such tests as to either mother or the PAP because the social worker directed her not to do so. She testified such testing would have allowed her to compare earlier versions of the same tests taken by mother to demonstrate “if there is any improvement as far as [mother’s] capacity right now.” It could potentially have highlighted mother’s progress and developing capacity to care for minor. Nevertheless, she did not believe it would have affected her perception of minor’s needs. Minor appeared to wish to stay with whomever, mother or the PAP, he had last spent time. Nonetheless, Dr. Cabarcas did not believe minor would do well transitioning from the PAP’s home to mother’s home. Removal from the PAP would “be really disorienting for him. [¶] I think he likes where he is right now. I get the impression that he enjoys it even though there is a desire to be part of a family unit. I think long-term it might end up disorganizing him. He may have more problems with attention or close relationships.”

Although minor was bonded to the PAP and the quality of that bond was better than with mother, minor was hesitant to get closer to her because his relationship with mother still existed. If minor stopped having visits with mother, it would strengthen his bond with the PAP. She “was concerned about him having some stability right now and not having continued contact” with mother. However, she testified it would be possible that if placed with mother he would develop the same quality of bond he had with the PAP if not torn between visits with both. Nevertheless, she was not sure if minor would ever be able to attain a secure attachment with mother due to the duration of time he spent away from her. Moreover, if mother ever had subsequent periods of psychological unavailability “that would be really damaging to” minor.

In role playing, minor drew a picture of his family which included D.H. and mother, but not the PAP. When playing with puppets, he placed a puppet of his mother in jail; Dr. Cabarcas testified children do not usually behave in that manner unless they have been abused by that parent. Minor also drew a picture of mother in jail.

Maternal grandmother testified she participated in visits between mother and minor. Minor would run to mother exclaiming ““Mommy, Mommy.”” He would kiss and hug mother. Minor played independently, preferring to be watched rather than engaged with when he played; nevertheless, mother would frequently engage with minor.

Mother testified regarding her completion and continued participation in the numerous programs and services discussed *ante*. She visited consistently with minor as much as allowed; she cuddled and played with minor during those visits. Mother testified that because she was out of the room when minor became injured she could not definitively explain what happened to him; while it was possible her husband had injured minor, she believed minor had injured himself.

The juvenile court then expositied: “Mom, you came to this courtroom. [Minor] was removed from you. You weren’t offered services. You knew that either you inflicted injuries upon him or the person you were with inflicted injuries upon him identical to the situation with [A.H.] You did it or the other guy did it. [¶] I’ve made findings in this case already that are sufficient at this point in time to show that these injuries were not self-inflicted. That was nothing the Court considered. These injuries were inflicted by someone. Ultimately, there are only two candidates, you or [J.H.]. [¶] Instead of separating yourself from him, going off on your own, you could have done

that, you married him, which is basically to flee to the other extreme of where you should have gone. Separation? No. Marriage, a lifetime union, that's what you went for."

The court observed, "[y]ou come off on the witness stand as a person who is immature, naïve. You appear to be very genuine."

The court identified two big underlying issues: "Number 1, you let your babies get hurt. That's the big one. You either do it or the guy that you are with does it. That's huge." While mother was good at participating in services, she "benefited very little from that." Although mother continued to stay on her medications, the court noted it "does not rectify the biggest problem of all here, which is you let your babies get hurt or you hurt your babies, and the circumstances which you are now living in with [J.H.] is identical to the circumstance in which your child was victimized, and so I cannot find by a preponderance of the evidence that there are changed circumstances."

The court observed that Dr. Cabarcas's reports looked better for mother on paper than they did once she testified. The court noted that minor had a stronger bond with the PAP;²⁵ it found that removal from the PAP would endanger minor's ability to ever bond with anyone. "Right now, the serious, serious problem here, which is she poses a risk to her children and the guys she is with pose a risk to her children, that is an extremely serious problem that led to the dependency, and it has not been resolved." The court denied mother's section 388 petition.

²⁵ The court granted the PAP's request for de facto parent status prior to issuing its ruling.

The court went on to advise mother with respect to D.H.: “Now, I would just indicate, because you have this other baby here that’s in the system, that you take into your heart the things I’ve said to you today, and I’m not telling you what actions you should take. I’m not telling you to get divorced from [J.H.], but I’m telling you that these are the concerns that the Court has, and you are in a time frame of reunification with that child. I think it would be wise to consider the direction that you’ve heard today.” The court terminated mother’s parental rights reasoning that mother’s continued relations with minor were “inhibiting the child from developing appropriate bonds”

DISCUSSION

A. SECTION 388 PETITION

Mother contends the court abused its discretion in denying her section 388 petitions. She notes much if not all of the juvenile court’s reasoning for denying the petitions was its previous jurisdictional ruling that minor had suffered serious physical abuse at the hands of either mother or husband. She maintains since insufficient evidence supports such a conclusion, the court’s ruling was an abuse of discretion. The department argues that even if the court’s previous ruling was unsupported by substantial evidence, mother forfeited any attack upon that ruling by failing to appeal from the disposition order or file a petition for extraordinary writ from the order setting the section 366.26 hearing. We agree with the Department that we cannot reevaluate the juvenile court’s jurisdictional ruling at this juncture. Thus, based solely upon the evidence presented by mother in her petition when viewed through the prism of the juvenile court’s

jurisdictional order, we cannot find it abused its discretion in denying mother's request for services.

“The juvenile court may modify an order if a parent shows, by a preponderance of the evidence, changed circumstance or new evidence and that modification would promote the child's best interests. [Citations.] This is determined by the seriousness of the problem leading to the dependency and the reason for its continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner. [Citation.] After termination of services, the focus shifts from the parent's custodial interest to the child's need for permanency and stability. [Citation.] ‘Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Section 388 can provide “an ‘escape mechanism’ when parents complete a reformation in the short, final period after the termination of reunification services but before the actual termination of parental rights.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528.) “Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) However, the best interests of the child are of paramount

consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

As noted above, mother's argument hinges in large degree on what she deems the conflicting nature of the juvenile court's factual findings at the jurisdictional hearing, and its ultimate ruling. In other words, mother argues that the court's true finding on the E-1 allegation was unsupported by sufficient evidence because the court expressly found the injury minor sustained was not severe, and implicitly found that minor had not suffered abuse. Thus, she maintains, its ruling contradicted its factual findings. The department contends mother forfeited this issue by failing to appeal the disposition order.

Where there has been no due process violation, "authorizing parents to attack final appealable orders by means of an appeal from a subsequent appealable order would sabotage the apparent legislative intention to expedite dependency cases and subordinate, to the extent consistent with fundamental fairness, the parent's right of appeal to the interests of the child and the state. [Citation.]" (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1155-1156, fn. omitted.) Indeed, here, mother even signed a waiver of her rights on a JV-190 form prior to the jurisdictional hearing indicating she submitted on the allegations in the petition based on the social worker's reports and other submitted documents, waived the right to trial, to see and hear witnesses testify, to cross-examine witnesses whose statements were contained in the reports, to present her own evidence and witnesses, and to compel witnesses to testify and produce evidence.

Mother further indicated she understood submission on the reports would likely result in the juvenile court's determination that the allegations in the petition were true.

Thus, by failing to challenge the allegation of serious physical abuse at the hearing, and failing to appeal or file a petition for writ from a previous order where such appellate review was available, mother forfeited her right to attack the findings supporting the previous order. (*In re Meranda P.*, *supra*, 56 Cal.App.4th at pp. 1155-1158.) Indeed, even indulging mother's argument for the moment, the best construction of the juvenile court's factual findings as pertains to mother would be that the injury minor sustained was serious, but simply not serious enough, in and of itself, to justify denial of services; not that it was not serious enough to support a true finding on the allegation. Therefore, we limit our review of the denial of mother's section 388 petition to the evidence presented by mother with the assumption that minor sustained serious physical abuse as found true by the juvenile court at the jurisdictional hearing.

First, mother was denied reunification services as to minor because she had failed to reunify with, and had her parental rights terminated, as to A.H. A.H. had come to the attention of the department when it was discovered she had five to six bruises on her head and cheek that looked like finger prints, as if her face had been squeezed; she "sustained a subdural hematoma in her occipital lobe, a healing bruise on the back of her head;" she also had a broken leg. Her injuries were consistent with Shaken Baby Syndrome. A.H. was treated at hospital for "a number of physical injuries believed to be the consequence of abuse including facial bruises, oxygen deprivation, a brain injury, fractured femurs[,] and fractured ribs." Although A.H.'s father had apparently been the abuser, mother reported it was a good thing a neighbor had reported the abuse because otherwise she never would have realized that A.H.'s father was the source of the abuse; she would have

continued to believe that A.H. was just banging her own head on the ground. Mother had admitted to the use and abuse of marijuana and methamphetamine when A.H. was detained. Thus, the lens through which the juvenile court had to view minor's situation included a mother whose previous child had been severely abused while drugs were apparently being used in the home, and who admitted that she never would have recognized the injuries as abuse had someone else not reported it.

Here, mother initially gave conflicting stories regarding minor's injury. At one point, she stated she had locked minor in his room alone while he was throwing temper tantrum. At another, she reported leaving him alone with J.H. J.H. admitted he "tapped" minor on the arm. Mother apparently called 911 after some delay. When the paramedics arrived, minor was non-responsive; during transport he became unconscious, responding only to pain, for four minutes. Minor was ordered hospitalized. J.H. tested positive for marijuana that day.

Thus, there were substantial similarities between the incidents occurring to both A.H. and minor; both were injured while in the care of a man with whom mother was in a relationship and while drugs were being used in the home. Indeed, mother conceded in her testimony at the jurisdictional hearing that A.H. had suffered very serious injuries and minor had suffered similar injuries. Moreover, the characterization of minor's injury as merely a small bruise simply does not correspond with the reports of his unconsciousness, unresponsiveness, and ordered admission to the hospital. Therefore, any genuine change of circumstances would have to demonstrate that mother had gained

insight into the causes of the injuries sustained by her children, and steps she had taken to prevent such occurrences in the future.

Although mother's participation in the numerous services detailed above was commendable, mother failed to demonstrate she had garnered a true understanding of how to prevent abuse to her children in the future. Indeed, throughout the entirety of the proceedings below, mother denied any possibility J.H. could have been responsible for the injuries to minor; only at the last hearing did mother admit it was possible J.H. had injured minor, though she still believed minor had injured himself; this, despite J.H.'s apparent admission that he had physically assaulted minor.

Moreover, the social worker contended mother was not in compliance with her case plan as to D.H.; mother had tested negative for use of controlled substances on April 7, 26, and May 4, 2011; however, she failed to show for testing scheduled for May 20, 2011. Mother had failed to be assessed for the necessity of drug treatment. This, despite the fact that drugs were being used in the home when both A.H. and minor were hurt.

Furthermore, the first three psychologists to evaluate mother gave very long odds on mother's ability to transcend the problems leading to removal of her children. Dr. Ryan, the most recent of the three to evaluate her and the only one of the three who did so with respect to the proceedings regarding minor, noted mother "tends to avoid solving problems by 'looking the other way' so to speak, and maintaining a minimal awareness of the issues that she has in her life. She is poorly grounded in reality, with a tenuous grasp of the dynamics of her life." As the juvenile court observed, such minimal awareness bodes poorly for any of her children whom she chose to leave alone with her

male companions. Moreover, Dr. Ryan ultimately agreed “with the [department’s] recommendation to not provide services in this case. [Mother] has had many years to address the issues outlined above and has not benefitted from the services that have been provided from multiple agencies/providers in the past. . . . She shows significant issues in terms of judgment with regard to relationships, as well as, and most importantly, how to handle issues with a young child.” We cannot say the juvenile court abused its discretion to the extent it found mother’s circumstances had not changed despite her participation in multiple programs.

Finally, the juvenile court acted within its discretion in determining that denying mother services as to minor was in minor’s best interest. The department immediately placed minor upon initial temporary detention with the PAP on January 27, 2010, who worked at minor’s daycare facility; minor’s sister, D.H., had also later been placed with the PAP. The social worker noted that the PAP “provided a safe, loving, and supportive home to [minor].” “According to the [FCP], [minor] is very attached to her and she has adapted her routine to accommodate him.” Minor reportedly needed constant contact with the PAP in order to feel secure. The social worker noted that as a consequence of minor’s placement with the PAP minor no longer used profanity, was calmer, referred to the PAP as “mom,” but called mother by her first name. Minor reported he was happy living in the home and really liked his PAP. The PAP wished to adopt both minor and D.H.

Meanwhile, mother had been granted two hours of supervised visitation per week, but had missed visits on February 25, March 2, 4, and 9, April 27 and 28, 2010. She had

also been late to several visits in April 2010. The social worker continually described mother's interaction with minor as passive.

Dr. Cabarcas did not believe minor would do well transitioning from PAP's home to mother's home. Removal from PAP would "be really disorienting for him. [¶] I think he likes where he is right now. I get the impression that he enjoys it even though there is a desire to be part of a family unit. I think long-term it might end up disorganizing him. He may have more problems with attention or close relationships." The quality of minor's bond with the PAP was better than with mother. Dr. Cabarcas was concerned about the need for minor to have stability. She was not sure if minor would ever be able to attain a secure attachment with mother due to the duration of time he spent away from her. Moreover, if mother ever had subsequent periods of psychological unavailability "that would be really damaging to [minor]." Thus, the juvenile court acted within its discretion in determining that minor's best interest was more appropriately met by denying mother services.

B. DUE PROCESS

Without any real citation to pertinent authority, mother apparently contends her due process rights were violated by the juvenile court's alleged bias against her and the social worker's purported failure to conduct a proper investigation for the hearing. We agree with the department that mother has alleged insufficient evidence of bias or unpreparedness to support a successful due process challenge to the court's orders.

"Parents have a fundamental interest in the care, companionship, and custody of their children. [Citation.] [M]inimal due process requirements [apply] in the context of

state dependency proceedings. ‘Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.’ [Citation.] ‘After the State has established parental unfitness at that initial proceeding, the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge.’ [Citation.]” (*In re Gladys L.* (2006) 141 Cal.App.4th 845, 848)

“‘The number and quality of the judicial findings that are necessary preconditions to termination convey very powerfully to the fact finder the subjective certainty about parental unfitness and detriment required before the court may even consider ending the relationship between natural parent and child.’ [Citation.] The linchpin to the constitutionality of the section 366.26 hearing is that prior determinations ensure “the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must align itself.’ [Citation.]” (*In re Gladys, supra*, 141 Cal.App.4th at p. 848.)

Mother maintains the juvenile court erroneously based its ruling on the notion that minor had sustained a serious injury as a result of physical abuse. However, as discussed above, mother has forfeited any challenge to the factual basis for the juvenile court’s jurisdictional ruling that minor did sustain serious injury as a result of abuse. Moreover, contrary to mother’s contention, there was sufficient evidence of serious injury. Minor sustained a serious enough injury that mother herself believed it necessary to call 911 in order to obtain an ambulance to transport minor to the hospital. Reports indicated that minor was unresponsive and unconscious both at the time of the paramedics’ arrival and

during transport to the hospital. The paramedics obviously believed the injury was serious enough to warrant minor's transport to the hospital. The doctor ordered minor hospitalized. J.H. admitted he "tapped" minor on the arm. Mother conceded it was possible J.H. had inflicted the injury.

Moreover, the juvenile court did not appear biased against mother. The same juvenile court judge that denied mother's section 388 petition here, stated prior to argument on mother's section 388 petition as to D.H. that mother "has made a pretty tremendous effort here, and notwithstanding her deficits, has made much more of an effort than we typically see people make who aren't being offered services." The court granted mother's section 388 petition giving her six months of services as to D.H.

The court later observed it would like a report from the department on mother's progress with D.H with the understanding that, at that point, it had a favorable view of mother: "If the Department doesn't have anything to the contrary, I'm likely to find that there are changed circumstances."²⁶ The juvenile court ordered a bonding study and a report regarding mother's visitation with minor: Although the juvenile court's statements regarding mother's marriage to J.H. appear somewhat intemperate, they basically reflect the status of the case up to that point. In other words, mother had previously left a child in the care of a significant other who severely abused that child. Mother failed to prevent or even recognize that abuse. Here, mother similarly left minor with a significant other

²⁶ Though no detailed report of mother's progress with D.H. appears in the record, we note the social worker later reported mother was noncompliant with her services as to D.H. Moreover, to the extent mother would now complain about the absence of a more detailed report, we observe that mother did not object below.

during which he sustained a serious injury. Mother continually refused to acknowledge the parallels between the two situations. The court's remarks were not so egregious as to establish judicial bias, which deprived mother of due process.

Mother likewise complains the social worker failed to properly investigate the matter before the hearing. Mother complains the social worker failed to evaluate the bonding study prior to recommending the court deny mother's petition; told Dr. Cabarcas not to conduct more thorough psychological testing that is typically done as part of a bonding study, and would have proven helpful in making a determination of mother's progress over the years; reported mother was on probation, when her conviction had been expunged; reported mother failed to benefit from services because she continued to insist minor's injuries were self-inflicted; reported A.H. and minor's injuries were similar; and failed to include Detective Salisbury's report in the jurisdictional report of February 23, 2010. First, it is unclear why, but Dr. Cabarcas's evaluations were not filed until July 5, 2011, the day before the hearings were held. Thus, it was unlikely the social worker would have had the time to review the evaluation and prepare an additional report. Mother could have requested a continuance for such a report, or could have called the social worker to the stand to cross-examine her regarding Dr. Cabarcas's evaluation, but failed to do so.

Second, mother fails to cite any authority requiring the juvenile court order a bonding study, let alone one with a thorough psychological component. The court already had before it three previous psychological profiles of mother. Third, the juvenile court had before it at least all the documentation we have. Therefore, in all likelihood,

like us, it understood mother's conviction had been reduced and expunged. Moreover, mother could have argued the point below. Fourth, the circumstances of minor's detention were thoroughly documented below. The juvenile court had more than sufficient information before it with which to make factual determinations. Finally, the social worker, early on, noted she was unable to obtain a copy of the police report based on the incident. Mother could have objected then or attempted to obtain the report herself. Again, much of mother's complaints could have been rectified by appealing the dispositional order or making timely objections below. Nonetheless, the juvenile court had before it sufficiently voluminous and detailed information regarding the circumstances of the department's involvement with mother's three children, such that it could render factually accurate findings and rulings. We conclude mother was not deprived of due process.

C. BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

Mother contends insufficient evidence supports the juvenile court's finding the beneficial parental relationship exception did not apply. We disagree.

Once reunification services have been terminated and a minor has been found adoptable, "adoption should be ordered unless exceptional circumstances exist" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Under section 366.26, subdivision (c)(1)(B)(i) one such exception exists where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The parent has the burden of proving termination would be detrimental to

the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

“[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; see also *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) “We determine whether there is substantial evidence to support the trial court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] If the court’s ruling is supported by substantial evidence, the reviewing court must affirm the court’s rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c). [Citation.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

“[T]here is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child, particularly when such placement is leading to adoption by the long-term caretakers. [Citation.] To rebut that presumption, a parent must make some factual showing that the best interests of the child would be served by modification.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 465.)

Here, we have very little information regarding mother’s visitation with minor. As noted *ante*, the case logs fail to include any information regarding the quantity or quality of mother’s visits with minor between October 16, 2010, and May 25, 2011. In her March 30, 2011, report, the social worker noted mother visited consistently with minor for two supervised hours, twice a month; she observed that minor enjoyed the visits.

Mother testified she visited as consistently as allowed and played with minor during those visits. Maternal grandmother testified she participated in visits and watched mother and minor play with one another; she testified they were affectionate with one another.

Nevertheless, minor had been living with the PAP since January 27, 2010, nearly one and a half years at the time of the hearing. His sister had been subsequently placed with the PAP. Minor had stopped using profanity, was calmer, and called the PAP “mom,” but called mother by her first name. Minor had a stronger quality bond with PAP than with mother. Dr. Cabarcas was concerned about the need for minor to have stability. She testified a cessation of visits between minor and mother would strengthen his bond with the PAP. Thus, mother failed her burden to demonstrate that minor would suffer any detriment from termination of her parental rights. Rather, sufficient evidence supported the juvenile court’s order.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.