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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.H. et al.,

Defendants and Appellants.

E060610

(Super.Ct.No. RIJ1200260)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and
Appellant L.H.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant T.P.

Pamela J. Walls, County Counsel, and Anna M. Marchand and Carole A. Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

At a hearing held pursuant to Welfare and Institutions Code section 366.26,¹ the trial court terminated the parental rights of defendants and appellants L.H. (Mother) and T.P. (Father) with respect to their daughter K.P. The court also denied Father's request for change of court order, or section 388 petition.

Mother contends she was denied due process because the social worker did not send the section 366.26 report to the mailing address she had on file with the court. She also argues that the court erred in denying a request for a continuance to prepare for the hearing. We conclude that Mother was not deprived of her due process right to notice; although the social worker did not comply with rule 5.534(m) of the California Rules of Court² regarding the mailing of documents, Mother was nevertheless provided with notice reasonably calculated under all the circumstances to provide her with the report. The noncompliance with the rule of court was harmless. We further hold that the trial court did not abuse its discretion in denying Mother's request for a continuance.

Father contends the court erred by: (1) denying his request for a continuance to prepare for the hearing; (2) denying his request for a continuance to obtain a bonding

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

² All further references to rules are to the California Rules of Court.

study; (3) refusing to allow him to cross-examine the social worker with respect to his section 388 petition; (4) denying his section 388 petition; and (5) terminating parental rights when the adoption assessment was inadequate.³ We hold that the court did not abuse its discretion in denying Father's requests for continuances or err in refusing to allow Father to cross-examine the social worker regarding Father's section 388 petition. Nor did the court abuse its discretion in denying the section 388 petition. Finally, we conclude that Father waived or forfeited his claim that the adoption assessment was inadequate because he did not raise the issue below, and that the evidence was sufficient to support the court's adoptability finding.

We affirm.

II. FACTUAL AND PROCEDURAL SUMMARY

A. *Background*⁴

Mother gave birth to K.P. in October 2011. At that time, Mother was taking methadone for treatment of a heroin addiction. K.P. was born addicted to methadone and hospitalized for the first four months of her life. After K.P. was discharged from the

³ Mother and Father join in the arguments of the other insofar as they inure to their benefits. (See rule 8.200(a)(5).)

⁴ This case has been the subject of numerous appeals, a petition for extraordinary writ, and four prior unpublished opinions. (See *In re K.P.* (Aug. 20, 2014, E059361) [nonpub. opn.]; *In re K.P.* (Aug. 20, 2014, E058922) [nonpub. opn.]; *T.P. v. Superior Court* (Sept. 13, 2013, E058904) [nonpub. opn.]; *In re K.P.* (Aug. 20, 2014, E057591) [nonpub. opn.].) More detailed factual and procedural histories regarding the case are set forth in those opinions. We take judicial notice of this court's records in the prior appeals and writ petition. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

hospital on February 20, 2012, Mother and K.P. moved in with Father at the paternal grandmother's house.

In March 2012, Mother and Father were involved in a domestic violence incident in which each inflicted injuries on the other. The parents were arrested and K.P. was taken into protective custody and placed with a foster family. The parents disclosed another domestic violence incident between them that took place about one year earlier.

Plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), filed a petition concerning K.P. under section 300, subdivisions (b) and (g). At a contested jurisdictional/dispositional hearing, the court found true allegations of domestic violence, child endangerment, and Mother's use of controlled substances. K.P. was declared a dependent of the court and removed from the parents' physical custody. The court authorized visits to take place at the discretion of DPSS and to make any appropriate placement.

Mother filed a "notification of mailing address" on Judicial Council form JV-140 (JV-140) stating an address in Lake Elsinore as her mailing address (the Lake Elsinore address). Father filed a JV-140 form listing an address in Norco as his mailing address (the Norco address).

DPSS was ordered to provide, and the parents ordered to participate in, reunification services. Mother's and Father's case plans called for participation in domestic violence/anger management programs and counseling. In addition, Mother was required to participate in a substance abuse program and random drug testing.

One-hour visits between the parents and K.P. initially took place twice per week. The social worker reported that during the initial six-month review period, Father had “the ability to have appropriate, loving, and attentive contact with his daughter”; Mother’s visits were likewise “appropriate and pleasant” and K.P. “appeared to be happy and well bonded to [Mother].” However, social workers described Father’s behavior toward DPSS staff in terms such as “irate,” “irrational,” “verbally abusi[ve],” “volatile,” “agitated,” “dangerous,” “abrasive, aggressive, disrespectful, and erratic.” Because of Father’s behavior, DPSS requested the court to terminate Father’s visits and order him to undergo a psychological evaluation. The court reduced Father’s visits to one-half hour, once each week, and ordered the requested psychological evaluation.

After the six-month review hearing in November 2012, the court reinstated Father’s regular visits with K.P. It also repeated its order that Father undergo a psychological evaluation.

In December 2012, the court ordered that K.P. have an extended visit with the paternal grandmother and authorized Father to reside in the paternal grandmother’s house. After the social worker received reports about Father’s hostile behavior toward the paternal and maternal grandmothers, DPSS applied for an order removing K.P. from the house. At the time for the hearing on the application, Father left the courthouse. When he was reached by telephone, he was driving a car with K.P. inside and on his way to a freeway. He initially refused to return to court, but relented when the court indicated

he would be arrested if he did not. The court then removed K.P. from the paternal grandmother's home and placed her in DPSS's custody.⁵

In a report prepared for the 12-month review hearing, the social worker stated that Mother and Father "appear to be spiraling out of control." Mother had "admittedly been abusing drugs throughout this reporting period" and "no showed" for random testing on five dates in the preceding three months. Father "continues to be volatile, unstable, and defiant instead of following through with the services that could possibly get his child returned to his custody." He informed the social worker that he was not going to complete the court-ordered psychological evaluation because the psychologist "is a friend of the Judge."

A contested 12-month review hearing took place over several days in May and June 2012. At the conclusion of the hearing, the court terminated reunification services for the parents, and set a hearing to be held pursuant to section 366.26 on October 3, 2013.⁶

⁵ Father appealed from the orders made at the six-month review hearing and from the order removing K.P. from the paternal grandmother's home. Those appeals are addressed in our nonpublished opinion in case No. E057591.

⁶ Father filed a petition for extraordinary writ pursuant to rule 8.452 concerning these orders. In denying the petition, we stated: "It is abundantly clear that father's failure to reunify was not due to the inadequacy of services provided by the department, but by the fact that father set himself up as the final arbiter of what he reasonably should or should not be required to do. He was mistaken, and in persisting in this attitude, he sabotaged his efforts to reunify with his child." (*T.P. v. Superior Court* (Sept. 13, 2013, E058904) [nonpub. opn.], p. 12.)

On July 24, 2013, approximately seven weeks after the termination of services, DPSS applied ex parte for an order to reduce the parents' visitation to one hour once per month. The application was based, in part, on the fact that Father had not visited K.P. since March 2013 except to attend a doctor's appointment for K.P.'s immunizations in July 2013. Following a hearing, the court granted the application.

B. Proceedings After the Termination of Services and Prior to the Section 366.26 Hearing

In September 2013, DPSS filed its first section 366.26 report. K.P. was reportedly in good health and meeting her developmental milestones. She was living in a foster home and had overnight and weekend visits with a maternal aunt, who had been identified as a prospective adoptive parent. At the time the report was filed, the maternal aunt's home was being assessed by DPSS's relative assessment unit.

Neither parent had visited K.P. or seen her since her immunization appointment on July 12, 2013. Nor had they contacted DPSS to schedule a visit. According to the social worker, "[f]uture contact between [K.P.] and her biological parents may be detrimental to her overall development. This is due to both parents['] consistent erratic and confrontational behaviors with all parties involved in this case. Additionally, both parents have severely neglected issues with substance abuse and their mental health."

In the section 366.26 report, DPSS requested a 120-day continuance to prepare a "home study" regarding the maternal aunt's home.

On October 3, 2013, the court continued the section 366.26 hearing to February 3, 2014, to allow DPSS time to complete an adoption assessment. Mother and Father, who were present in court, were explicitly ordered to appear at the date and time of the continued hearing.

On October 10, 2013, Father filed a section 388 petition requesting that K.P. be placed in his care and that the court either terminate its jurisdiction or make placement with him conditioned upon his cooperation “with law enforcement welfare checks or in-home checks by a different social services agency.” He filed another section 388 petition in December 2013 requesting K.P. be returned to his custody. The court summarily denied the petitions on the grounds they did not state new evidence or change of circumstances.

On November 20, 2013, K.P. was placed with the maternal aunt and uncle.

On January 17, 2014, DPSS filed its second section 366.26 report, along with a preliminary assessment of the prospective adoptive parents. DPSS recommended that the court terminate the parents’ parental rights and place K.P. for adoption.

The section 366.26 report states that K.P. is “in good health with no medical problems” and “meeting her developmental milestones.” The social worker stated that “[t]here are no concerns regarding [K.P.’s] mental or emotional status.” She “is thriving greatly in the home of [the prospective adoptive parents],” and “benefitting from the stability” the caregivers were providing. “She and her older cousin have become like

sisters,” and the prospective adoptive parents “are committed to providing a safe, stable, and loving home for [K.P.]”

C. The Section 366.26 Hearing

On February 3, 2014, the date set for the continued section 366.26 hearing, Father filed another section 388 petition. This time, he sought reinstatement of family reunification services. In support of the petition, he identified the following changed circumstances: “The father has maintained a stable residence, the father has maintained visitations with his daughter, father has submitted to drug tests for DPSS which have been negative, and father has initiated counseling with a licensed therapist . . . at his own expense.” Regarding the benefit to K.P. from the change, Father stated that he “has been consistent with seeing [K.P.] the last several months and his bond with her and the quality of care he demonstrates towards her is undeniable. [K.P.] has only been placed with a relative recently. Father is in a position to nurture and care for [K.P.]” There is no supporting documentary evidence attached to the petition.

At the outset of the section 366.26 hearing, Father requested that the matter be continued so he could obtain a bonding study at his expense. The court denied the request, stating it did “not find good cause for a continuance.” Father’s counsel then requested a one-day continuance to assist Father in preparation for the case. The court denied the request.

Mother’s counsel also requested a continuance. She stated that Mother did not receive a copy of the section 366.26 report until that day. After the social worker

testified on the issue of notice, the court found that there had been “good notice” and denied the continuance.

The court then asked for argument on Father’s section 388 petition. Father’s attorney requested that he be allowed to question the social worker. The court listened to his offer of proof, then denied the request, stating that the social worker’s “testimony is [not] necessary for me to make a decision” Following argument, the court denied the petition.

The court then turned to the section 366.26 hearing. The evidence on most factual issues was generally undisputed. Father and Mother were with K.P. during a doctor’s visit on July 12, 2013, and visited with her on October 17, 2013, December 5, 2013, and December 23, 2013. Prior to the three most recent visits, the parents tested negative for drugs.⁷

The recent visits were described by the social worker as “positive,” and both parents were reportedly loving and attentive towards K.P. Although it usually took K.P. a few minutes to “warm up” to the parents, she would refer to Father as “Daddy” and Mother as “Mommy.” K.P. enjoyed the visits and showed affection toward the parents. Father testified that K.P. wanted them to stay at the end of visits. The social worker testified that K.P. did not cry or seem stressed after visits with the parents, and K.P.’s caregiver did not notice any postvisit problems.

⁷ The social worker testified that Mother tested negative prior to the December 5, 2013, visit. However, the social worker’s notes regarding the visit state that “Mother’s test appeared to be positive for Amphetamines and Methamphetamines.”

The social worker testified that Father and Mother have a “loving bond” with K.P., and that he has never “doubted [the parents’] care and love for [K.P.]” Father testified that he has an “emotional attachment” to K.P. and a “loving, caring” bond with her, despite it being “[i]nterrupted by ignorant, incompetent, uneducated so-called professionals.” He further stated that Mother has a “[r]eal good, loving, caring [bond]” with K.P.

Mother, however, was more equivocal. She testified that she has been nurturing, caring, loving, attentive, and affectionate toward K.P., but K.P. does not reciprocate. She said K.P. “didn’t seem to recognize” her at the December 5, 2013, visit. Mother explained that K.P. does not know her because DPSS limited the frequency of visits. She said that K.P. does reciprocate Father’s affection because “she knows her father.” When asked whether she knows Father “as her daddy or just as a person,” Mother said: “Person.”

The social worker and the parents disagreed as to whether K.P. would suffer detriment if parental rights were terminated; the social worker testified she would not, the parents said she would.

The social worker testified that the prospective adoptive parents wanted the parents to have postadoption contact with K.P. so long as the parents were “appropriate.”

III. DISCUSSION

A. *Issues Regarding Service of the Section 366.26 Report*

Mother contends she was deprived of her right to due process because the social worker did not send the second section 366.26 report to her at the Lake Elsinore address she had designated for her mailing address at the outset of the case. We conclude there was no violation of due process. Although the social worker did not comply with a rule of court regarding the mailing of documents, the noncompliance does not require reversal.

1. Additional Relevant Facts

Mother filed her JV-140 designating the Lake Elsinore address in March 2012. She did not file another JV-140 prior to the date of the section 366.26 hearing.

In April 2013, about one year after the dependency case began, Mother informed the social worker that she was living with Father at his Norco residence, and that she was planning to leave his home soon. Later that month, she told the social worker she had ““escaped”” Father’s residence.

In August 2013, Mother filed a section 388 petition. In the space for her address, she wrote: “Non Applicable due to CPS’ unreasonable services.” She set forth Father’s address as the Norco address.

In September 2013, the social worker filed the first section 366.26 report. In it, he lists Mother’s address as “Transient,” and Father’s address as the Norco address.

On October 3, 2013, at the date initially set for the section 366.26 hearing, the court ordered the hearing continued to February 3, 2014. Mother and Father were present in court at the time.

On October 10, 2013, Father's counsel filed, on behalf of Father, a section 388 petition. He listed the Norco address as his address and, in the space for Mother's address, stated "address unknown."

On December 23, 2013, DPSS sent notice of the date and time of the section 366.26 hearing to Mother at both the Lake Elsinore address and the Norco address. Each notice stated that "[a] hearing under Welfare and Institutions Code section 366.26 has been set for the date and time below. At the hearing the court may terminate parental rights and free the child for adoption, . . . establish legal guardianship, or place the child in a planned permanent living arrangement. You have the right to be present at this hearing and have an attorney represent you." There is no dispute as to the timeliness and adequacy of this service and notice; the problem is with the service of the social worker's final section 366.26 report.

On December 27, 2013, Father filed another section 388 petition. On one space provided for the address of a parent, he checked a box indicating the address was unknown. On another line, he listed his Norco address.

The social worker's final section 366.26 report, filed on January 17, 2014, again states that Mother is "[t]ransient" and that Father lives at the Norco address.

On the date of the section 366.26 hearing, Father's counsel filed another section 388 petition on behalf of Father. He listed Mother's address as "unknown" and Father's address as the Norco address. On the same day, Mother filed a new JV-140 form listing the Norco address as her mailing address. According to Mother's counsel, the filing of the JV-140 indicates that Mother changed her address as of that date.

At the section 366.26 hearing, Mother and Father were present, represented by counsel. Mother's counsel asserted that Mother did not receive a copy of the section 366.26 report until that day and, on that basis, requested a continuance. The social worker was called to testify on the issues regarding service of the section 366.26 report.

The social worker said he mailed a copy of the report to the parents at Father's address on January 16, 2014. He did not send a copy of the report "to the address listed on [Mother's] JV[-]140," i.e., the Lake Elsinore address. According to the social worker, the last address he had for Mother was an address in Murrieta, but she had not been at that address "in months" and had "been receiving mail at [Father's] address." When questioned about how he knew Mother had been receiving mail at Father's address, the social worker said he had sent letters regarding visits to Mother at the Norco address, and that Mother came to the visits and never said she did not receive the notices.

The court stated that it needed "to note for the record" that the court's notices sent to the Lake Elsinore address were "being returned for that address," and that it is Mother's "obligation to keep this Court updated with her address."

Following argument, the court found that there had been “good notice,” and denied Mother’s request for a continuance.

The next day, while the section 366.26 hearing was ongoing, DPSS filed the return receipt indicating that the section 366.26 report was addressed to both parents at the Norco address. The receipt indicates Father’s signature and a delivery date of January 23, 2014.

2. Analysis

At the first appearance by a parent in a dependency proceeding, “the court must order each parent or guardian to provide a mailing address.” (Rule 5.534(m).) The court must also advise the parents that the mailing address they provide will be used by the court and the social services agency for the purposes of notice of hearing and the mailing of all documents related to the proceedings. (Rule 5.534(m)(1).) The court must also advise the parents “that until and unless the parent . . . submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.” (Rule 5.534(m)(2).) Form JV-140 is specified as “the preferred method of informing the court and the social services agency of the mailing address of the parent” (Rule 5.534(m)(3).)

Prior to a section 366.26 hearing, DPSS is required to prepare “an assessment” that includes, among other matters, a review of the child’s contacts with his or her parents and other members of his or her extended family, an evaluation of the child’s medical, developmental, and emotional status, a preliminary assessment of any prospective

adoptive parent; and an analysis of the likelihood that the child will be adopted.

(§§ 366.21, subd. (i)(1), 366.22, subd. (c)(1).) This assessment is included in what we have referred to as the section 366.26 report.

Under rule 5.725(c), the social services agency must file the assessment report and “provide copies to each parent or guardian and all counsel of record” “[a]t least 10 calendar days before the [section 366.26] hearing.” This rule does not specify the manner in which the adoption assessment is “provide[d]” to the parents. Read together with rule 5.534, however, it appears that this requirement can be met by mailing the report to the address the parent specified on the most recent JV-140. In this case, the social worker did not do so.

It does not necessarily follow, however, that the failure to comply with these rules necessarily constitutes a deprivation of due process. (Cf. *In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1419.) As one court stated: ““A failure to comply with state or local procedural requirements does not necessarily constitute a denial of due process; the alleged violation must result in a procedure which itself falls short of standards derived from the Due Process Clause. [Citations.]’ [Citation.]” (*Tyler v. Children’s Home Society* (1994) 29 Cal.App.4th 511, 546; accord, *In re Axsana S.* (2000) 78 Cal.App.4th 262, 271, disapproved on another point in *In re Jesusa V.* (2004) 32 Cal.4th 588, 624, fn. 12.)

““An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” (*In re A.S.* (2012) 205 Cal.App.4th 1332, 1342, quoting *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (*Mullane*).

We first clarify the issue. There is no question that the parents were apprised of the date, time, and place of the section 366.26 hearing, informed of the nature of the hearing, and of the possibility that parental rights would be terminated and K.P. placed for adoption. Nor is there any issue concerning the service of the section 366.26 report as to the parents’ counsel or the timeliness of the social worker’s mailing of the report to the Norco address. The question is whether Mother’s right to due process was violated when the social worker failed to also send the section 366.26 report to the Lake Elsinore address listed on Mother’s initial JV-140. We conclude it was not.

As noted above, due process, in the context of notice, is evaluated in light of “all the circumstances.” (See *Mullane, supra*, 339 U.S. at p. 314.) “[W]hen notice is a person’s due,” the *Mullane* court explained further, “process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” (*Id.* at p. 315.) Here, under all the circumstances, the court could have reasonably concluded that sending the report to the Lake Elsinore address would have been “a mere gesture” and that “one desirous of actually informing” Mother of the report would send it to her at Father’s Norco address.

First, the court observed that its own mailings sent to the Lake Elsinore address were being returned to the court, indicating Mother was no longer receiving mail at that address. Although the social worker was not asked whether DPSS's attempts to mail were similarly returned, it is reasonable to infer from the return of mail sent by the court that other mail sent to Mother at that address was also being returned undelivered. Sending the section 366.26 report to the same address would thus appear to be "a mere gesture." (See *Mullane, supra*, 339 U.S. at p. 314.)

Second, the social worker reported in each section 366.26 report that Mother was "transient" at the time the reports were prepared, and there was no evidence to the contrary. The social worker's statement is consistent with Mother's statement to the social worker in April 2013 that she was living with Father, planning to leave, and, later, had "escaped." The statement is further supported by Mother's and Father's section 388 petitions filed during the six months preceding the section 366.26 hearing. In her August 2013 petition, for example, Mother refused to state an address for herself "due to CPS' unreasonable services." This statement suggests that Mother is either refusing to disclose her address as a way of protesting DPSS's "unreasonable services," or simply had no residential address to report. If it was a protest, the act suggests that she was no longer at the Lake Elsinore address; refusing to disclose her address would make little sense if she was still living at the address she had previously designated on the JV-140. If she did not state an address because she had no address, she was probably, as the social worker

stated, transient. This probability is further supported by the several section 388 petitions filed by or on behalf of Father indicating that Mother's address was unknown.

Third, the social worker sent letters to Mother and Father at the Norco address regarding visits, and both parents responded to the letters by showing up at visits. Because Mother had presumably received the communications regarding visits, the social worker, as "one desirous of actually informing" Mother with the report, could reasonably conclude that the report should be sent to Mother in the same manner.

In light of the circumstances facing the social worker at the time he served the final section 366.26 report, the social worker could reasonably conclude that Mother no longer resided or received mail at the Lake Elsinore address, and that sending the report to that address would, as a practical matter, accomplish nothing. Furthermore, because Mother had responded to correspondence sent to the Norco address, sending the section 366.26 report to that address, as well as to Mother's attorney, was reasonably calculated to provide Mother with the report. Therefore, Mother was not deprived of due process.

Mother relies on *In re Crystal J.* (1993) 12 Cal.App.4th 407. In that case, the court stated: "Due process requirements in the context of child dependency litigation have similarly focused principally on the right to a hearing and the right to notice. [Citation.] A meaningful hearing requires an opportunity to examine evidence and cross-examine witnesses, and hence a failure to provide parents with a copy of the social worker's report, upon which the court will rely in coming to a decision, is a denial of due process. [Citation.] Where an investigative report is required prior to the making of a

dependency decision, and it is *completely* omitted, due process may be implicated because a cornerstone of the evidentiary structure upon which both the court and parents are entitled to rely has been omitted.” (*Id.* at pp. 412-413.) *In re Crystal J.* is not controlling. That case was concerned with whether deficiencies in an adoption assessment report rose to the level of a due process violation. It did not address the issue presented here: whether service of the report was made in a manner that comported with due process.

Although we conclude that Mother was not deprived of due process, we must still determine whether the failure to comply with the rule that mail be sent to the address on the most recent JV-140 requires reversal. There being no violation of Mother’s federal due process rights, the failure is evaluated under our state law harmless error standard. (See *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1381.) Under this standard, “[r]eversal is appropriate ‘only if we conclude “. . . it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” [Citations.]’ [Citations.]” (*Ibid.*; see also *People v. Watson* (1956) 46 Cal.2d 818, 836.) Mother must affirmatively demonstrate such prejudice. (*In re Noreen G.*, *supra*, at p. 1381.)

Mother argues that because of the error, she and her attorney “had no reasonable opportunity to investigate the contentions set forth in the report, contact or subpoena any potential witnesses identified therein or prepare a meaningful cross-examination of [the social worker].” This is unpersuasive because it is Mother’s attorney, not Mother, who

would presumably be investigating the contentions in the report, subpoenaing witnesses, and preparing cross-examination. There is no dispute, however, that Mother's attorney was timely and properly served with the report. More importantly, Mother does not explain how mailing the report to the Lake Elsinore address would have led to such opportunities. Mother did not testify or offer any evidence that she actually lived at the Lake Elsinore address or would have received mail if the report had been sent there. Indeed, it appears from the court's observation about its own mailings that the consequence of mailing anything to Mother at the Lake Elsinore address was to have the item returned to the sender. Mother has, therefore, failed to establish any prejudice resulting from the failure to send the section 366.26 report to the Lake Elsinore address.

B. Denial of Requests for Continuances

At the outset of the section 366.26 hearing, Mother and Father requested continuances on different grounds. Mother sought a continuance of unspecified duration because she did not receive the section 366.26 report until the day of the hearing. Father's counsel sought a one-day continuance for additional time to "file some additional documents" and confer with Father and prepare him for testifying. He also sought a continuance to obtain a bonding study, at Father's expense. Although he did not indicate to the trial court how much time would be needed to obtain the study, he states on appeal that it would require "a few additional weeks." The court denied the requests. The parents contend the denials are abuses of discretion.

Requests for continuances in dependency proceedings are governed by section 352. Subdivision (a) of that statute provides, in part: “Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. . . . [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” A written notice for a continuance must be filed at least two court days before the hearing “unless the court for good cause entertains an oral motion for continuance.” (§ 352, subd. (a) (last sent.)) Courts have interpreted section 352 as a policy of “express discouragement of continuances.” (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585; *In re Karla C.* (2003) 113 Cal.App.4th 166, 179.)

The denial of a request for a continuance is reviewed for an abuse of discretion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143-144.) In this context, “[d]iscretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice.” (*In re Karla C., supra*, 113 Cal.App.4th at p. 180.)

We now turn to the specific requests for continuances.

1. Mother’s Request for a Continuance

Mother’s argument is based upon the assertion that DPSS failed to timely provide Mother with a copy of its section 366.26 report resulting “in a denial of [her] due process

right to a fair hearing.” “This error and the resulting prejudice to mother,” she argues, “constituted ‘good cause’ to warrant a continuance”

As discussed in the preceding part, we reject Mother’s premise that the manner of serving the section 366.26 report deprived her of due process or resulted in prejudice to her. Accordingly, the court did not abuse its discretion in denying Mother’s request for a continuance.

2. Father’s Request for a Continuance to Prepare for the Hearing

At the hearing, Father’s counsel requested a continuance because he needed “additional time to work with [his] client, file some additional documents,” and prepare Father in case he needed to testify. On appeal, Father explains that the denial of his request for “additional time made it difficult for him to present evidence and prepare his own testimony.” He was, he contends, “effectively robbed of an opportunity to prepare a meaningful . . . defense.” We reject his argument.

Father was informed of the date of the section 366.26 hearing four months before it occurred. Approximately six weeks before the hearing he was served with notice that the social worker was recommending that his parental rights be terminated and that K.P. be placed for adoption. He concedes that there is no issue as to the timeliness of service on him of the section 366.26 report. Yet he offered no explanation as to why he did not have enough time to meet and confer with counsel to prepare for the hearing. Nor does he specify what “additional documents” his counsel would have filed before the hearing or explain why they could not have been filed prior to the hearing. In light of Father’s

failure to explain and specify such matters, the court did not abuse its discretion in denying the continuance.

3. Father's Request for a Continuance to Obtain a Bonding Study

Father also requested a continuance to obtain a bonding study. A court has discretion to grant a request for such a study. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1011-1012.) Father devotes a substantial portion of his opening brief explaining the purpose, relevance, and potential significance of a bonding study. He does not, however, offer any explanation as to why he did not request such a study during the months that preceded the hearing or file a written motion for a continuance at least two days before the hearing as is generally required. (See § 352, subd. (a) (last sent.)) In light of the absence of any showing of good cause for the late request and the policy of discouraging continuances in dependency cases, we cannot find that the court abused its discretion in denying the request.

C. *Denial of Request to Cross-examine Social Worker Regarding Section 388 Petition*

At the hearing on Father's section 388 petition, Father's counsel requested that he be allowed to examine the social worker. DPSS's counsel requested an offer of proof as to the social worker's anticipated testimony. Father's counsel identified the facts that Father has maintained his residence at the Norco address, he has been visiting K.P., he has drug tested negative, he has initiated therapy with a licensed therapist, and that K.P. has been in her current home for two months. The court noted that these facts are "all in the reports," and concluded that it did not need the social worker's testimony.

Although Father was permitted to testify in support of his petition, he refused to do so. As his counsel explained, he was “still challenging the jurisdiction of the Court and won’t consent to the Court hearing the case.”

Following argument, the court denied the section 388 petition, stating: “Based on the [JV-180] that’s been filed, there is no documentation attached to it. I’ve had no testimony by Father. The Court cannot make a finding of change of circumstances. It does appear, based on what he’s indicating here, he’s got some changing circumstances, but I have no evidence to support that. I just have what is typed in this JV[-]180. And . . . even if I got past the first prong, I could not find that it would be in the best interest of the minor child”

Father contends the denial of his request to question the social worker was error and deprived him of due process. We reject this argument.

The conduct of a hearing on a section 388 petition is governed by rule 5.570(h). (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1339 [Fourth Dist., Div. Two]; *In re Lesly G.* (2008) 162 Cal.App.4th 904, 913.) That rule specifies three situations in which the court is required to conduct the hearing on a section 388 petition “as a dispositional hearing”—i.e., a hearing at which (among other requirements) the “court must receive in evidence and consider . . . any relevant evidence offered by . . . the parent or guardian.” (Rules 5.570(h)(2), 5.690(b).) These situations arise when: “(A) The request is for removal from the home of the parent or guardian or to a more restrictive level of placement; [¶] (B) The request is for termination of court-ordered reunification services; or [¶] (C)

There is a due process right to confront and cross-examine witnesses.” (Rule 5.570(h)(2).) Only the last of these is arguably implicated here.

“Even where due process rights are triggered, it must be determined ‘what process is due.’ [Citations.] A party in dependency proceedings who has a due process right to a meaningful hearing with a right to present evidence does not necessarily enjoy full rights to confrontation and cross-examination. [Citation.] Due process is not synonymous with full-fledged cross-examination rights. [Citation.]” (*In re E.S.*, *supra*, 196 Cal.App.4th at p. 1340; see also *In re Lesly G.*, *supra*, 162 Cal.App.4th at p. 914 [“juvenile proceedings need not be ‘conducted with all the strict formality of a criminal proceeding.’ [Citations.]”])

In re C.J.W. (2007) 157 Cal.App.4th 1075 [Fourth Dist., Div. Two], is instructive. In that case, the juvenile court held a hearing on the parents’ section 388 petitions, but did not allow the parents to testify or to cross-examine the social workers. (*In re C.J.W.*, *supra*, at pp. 1080-1081.) It did, however, “receive written evidence and heard substantial argument from counsel for the parties.” (*Ibid.*, fn. omitted.) On appeal, this court held that the hearing “comported with due process,” citing the failure of the parents to identify what further evidence they wanted to present and the fact that the juvenile court appeared to base its ruling “on the paucity of evidence submitted by parents in their petitions,” not on the social workers’ reports. (*Id.* at p. 1081.)

Here, as in *In re C.J.W.*, it does not appear that the court relied on the social worker’s reports in ruling on the section 388 petition. Instead, the court pointed to the

absence of any documentation attached to the petition and Father's failure to testify in support of the petition. Moreover, the court in the present case not only allowed Father to testify (although Father declined to do so), but also considered Father's counsel's offer of proof as to his proposed examination of the social worker. The court observed that the proffered facts were known to the court and indicated that calling the social worker to testify to those facts was unnecessary. Under all these circumstances, the proceeding comported with due process.

D. The Merits of Father's Section 388 Petition

Father next contends the court erred in denying his section 388 petition on the merits. We disagree.

Section 388 allows the parent of a dependent child to petition the juvenile court to change, modify, or set aside a previous order of the court. Under the statute, the parent has the burden of establishing by a preponderance of the evidence that (1) there is new evidence or changed circumstances justifying the proposed change of order, and (2) the change would promote the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; § 388, subs. (a), (b).) The decision to grant or deny the petition is addressed to the sound discretion of the juvenile court, and its denial of the petition will not be overturned on appeal unless an abuse of discretion is shown. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959-960 [Fourth Dist., Div. Two].)

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point

‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Still, “[s]ection 388 plays a critical role in the dependency scheme. Even after family reunification services are terminated and the focus has shifted from returning the child to his parent’s custody, section 388 serves as an ‘escape mechanism’ to ensure that new evidence may be considered before the actual, final termination of parental rights. [Citation.] It ‘provides a means for the court to address a legitimate change of circumstances’ and affords a parent her final opportunity to reinstate reunification services before the issue of custody is finally resolved.” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1506.)

Here, the court denied Father’s section 388 petition due to lack of evidence supporting the allegation of changed circumstances and because Father failed to establish that the proposed change would be in K.P.’s best interest. The ruling is not an abuse of discretion. There was no documentation supporting the section 388 petition and Father declined to testify in support of it. Although it was undisputed that Father had recently maintained visits with K.P. and consistently tested negative for drugs, there was no evidence whatsoever as to the status or nature of his therapy and the extent, if any, of any progress or benefit resulting from the therapy; nor is there any mention in his petition of whether he was willing to comply with the court’s order to undergo a psychological

evaluation.⁸ The petition states only that Father has “initiated counseling” At most, this indicates, as the trial court stated, “changing circumstances,” not *changed* circumstances. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615 [“the petitioner must show *changed*, not changing, circumstances”].)

In light of the child’s interest in the permanency and stability provided by adoption and the court’s conclusion that Father’s circumstances were changing, but not changed, the court did not abuse its discretion in further concluding that the request for reunification services was not in K.P.’s best interest. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 49.)

E. Adequacy of the Adoption Assessment and the Sufficiency of the Evidence Supporting the Adoptability Finding

Father argues that the adoption assessment submitted by DPSS was inadequate because it failed to report on the amount and nature of contact with the paternal grandmother. He relies on section 366.22, subdivision (c)(1)(B), which requires that the assessment report include a “review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement.” “[E]xtended family” includes the child’s grandparents. (*Ibid.*)

⁸ As we stated in a prior opinion in this case concerning another section 388 petition by Father, “the fundamental reason why the court terminated services and set the section 366.26 hearing [was because] Father stopped participating in his case plan and refused to undergo a psychological evaluation.” (*In re K.P.* (Aug. 20, 2014, E059822) [nonpub. opn.], p. 12.) The section 388 petition that is the subject of this appeal, like the prior petition, fails to address Father’s refusal to comply with the court’s psychological evaluation order.

As DPSS points out, Father did not object to the adoption assessment on the ground he now asserts and has therefore waived or forfeited that particular claim on appeal.⁹ (See *In re Brian P.* (2002) 99 Cal.App.4th 616, 623; *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.) However, to the extent that he is challenging the sufficiency of the evidence to support the court’s adoptability finding, the claim is not waived or forfeited. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560-1561; *In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400.)

The distinction between challenging the adequacy of the adoption assessment, which is waived or forfeited if not raised below, and challenging the court’s adoptability finding, which is not, is explained in *In re Brian P, supra*, 99 Cal.App.4th at page 623: “When the merits are contested, a parent is not required to object to the social service agency’s failure to carry its burden of proof on the question of adoptability. [Citations.] ‘Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.’ [Citations.] Thus, while a parent may waive the objection that an adoption assessment does not comply with the [statutory] requirements . . . , a

⁹ Father asserts that he did preserve his claim by pointing out that the adoption assessment did not include a “home study.” The “home” that would be the subject of the “study” was the home of the maternal aunt and prospective adoptive parent. Regardless of whether such a home study was required as part of the adoption assessment, there is no reason to believe that it would include any information about K.P.’s relationship with her paternal grandmother; it is thus unrelated to the issue Father raises on appeal. Moreover, the absence of a home study was raised in support of Father’s request for a continuance, not as an objection to the adoption assessment.

claim that there was insufficient evidence of the child’s adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court.”

Therefore, while Father has waived or forfeited his claim that the adoption assessment was deficient because it did not include an adequate report on the amount and nature of contact with the paternal grandmother, we will consider his arguments in the context of evaluating whether the evidence was sufficient to support the court’s adoptability finding. We now turn to that question.

“The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time.” (*In re Jerome D.* (2000) 84 Cal.App.4th 1200 1204; § 366.26, subd. (c)(1).) The focus is on the child, “and whether the child’s age, physical condition, and emotional state may make it difficult to find an adoptive family.” (*In re Erik P., supra*, 104 Cal.App.4th at p. 400.) “Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

“Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is

‘likely’ that the child will be adopted within a reasonable time.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292 [Fourth Dist., Div. Two].)

On appeal, we review an adoptability finding “only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion.” (*In re K.B., supra*, 173 Cal.App.4th at p. 1292.) We do not “reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court.” (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

There is ample support for the court’s adoptability finding. According to the social worker’s report, K.P. was two years old and “in good health with no medical problems.” “There are no concerns regarding [K.P.’s] mental or emotional status.” She is “meeting her developmental milestones,” “very smart and observant,” and “an overall happy and expressive child that is always smiling.”

K.P. “is well adjusted and strongly bonded to her [prospective adoptive parents].” She and the prospective adoptive parent’s daughter “have become like sisters.” The prospective adoptive parents “are committed to providing a safe, stable, and loving home for [K.P.]” and “are ready to move forward with [a]doption.”

The failure to discuss the relationship between K.P. and the paternal grandmother in the social worker’s report is not a sufficient basis for rejecting the court’s adoptability finding. “[E]ven if the assessment is incomplete in some respects, the court will look to the totality of the evidence; deficiencies will go to the weight of the evidence and may ultimately prove insignificant. [Citation.] Substantial compliance with the assessment

provisions has been deemed enough. [Citation.]” (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) Based on the totality of the evidence, the court’s adoptability findings are amply supported in the record.

IV. DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.