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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re J.V. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

E062481

(Super.Ct.No. J239496)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Richard D. Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, Dawn M. Messer, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court terminated the parental rights of defendant and appellant A.P. (Mother) and M.V. (Father)<sup>1</sup> to their two daughters, J.V. and N.V. (collectively, “the children”). (Welf. & Inst. Code, § 366.26.)<sup>2</sup> Mother raises three issues on appeal. First, Mother contends the children’s attorney failed to express the children’s wishes at the termination hearing. (§ 317., subd. (e).) Second, Mother asserts the proceedings were adversarial in nature, which is improper in a dependency case. Third, Mother contends the juvenile court erred by finding the parent-child bond exception to termination to be inapplicable in this case. (§ 366.26, subd. (c)(1)(B)(i).) We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. FIRST DETENTION**

J.V. is female and was born in 2010. N.V. is female and was born in 2011. J.V. and N.V. are developmentally delayed. In 2011, Mother and Father (collectively, “Parents”) were boyfriend and girlfriend. On June 17, 2011, San Bernardino County Sheriff’s Deputy Struebing went to Parents’ residence due to a report of the two fighting. Struebing could hear verbal arguing coming from the residence and saw, through the window, Mother striking Father with her fists. Mother appeared drunk. Mother was arrested, and remained detained following her arrest.

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<sup>1</sup> Father is not a party to the appeal.

<sup>2</sup> All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

On June 20, Deputy Moore (Moore) received a report that Father and the children had been evicted from their apartment. Moore spoke to Father in the parking lot of the apartment complex. Father appeared to be under the influence of methamphetamine. Upon looking at the apartment, Moore saw the cupboards were “pretty bare,” a trashcan was overflowing, there was glass on the floor from broken windows, and an extension cord was running to the apartment from a neighboring apartment because the electricity had been shut off in Parents’ unit. Moore arrested Father for being under the influence of a controlled substance and for child endangerment, due to the condition of the apartment. The Department detained the children.

The Department filed a petition alleging a failure to protect. (§ 300, subd. (b).) In particular, the Department alleged: (1) Parents suffered from substance abuse and were unable to care for the children; (2) Parents engaged in domestic violence in the children’s presence, thus placing the children at substantial risk of physical and emotional harm; and (3) Parents’ home was unfit for human occupancy. (§ 300, subd. (b).) The Department further alleged Parents left the children without any provision for support due to being incarcerated. (§ 300, subd. (j).)

The juvenile court found a prima facie case had been made for detaining the children. The court granted Parents visits with the children a minimum of once per week for two hours.

B. FIRST JURISDICTION AND DISPOSITION

The children's foster mother informed the Department that the children were not wearing diapers when they arrived and they were dirty with "packed dirt behind their ears." The children's paternal aunt (A.V.) and uncle (collectively, "the caregivers") were approved to have the children placed with them. Parents did not contact the Department and did not visit the children.

Mother and the Department attended mediation regarding jurisdiction. Mother submitted on the allegations concerning substance abuse and domestic violence. The Department agreed to dismiss the allegations concerning (1) the home being unfit, and (2) lack of provisions for support. Mother agreed to complete domestic violence classes, parenting classes, outpatient drug treatment, random drug testing, and individual counseling. Mother was granted one hour visits twice per week, supervised by the caregivers.

The juvenile court found Father was the children's presumed father. The court found true the substance abuse and domestic violence allegations. The court dismissed the allegations concerning the unfit home and lack of provisions for support.

C. SIX-MONTH STATUS REVIEW

In October 2011, Mother was arrested for and convicted of burglary (Pen. Code, § 459) and granted three years of summary probation. In November 2011, Father was arrested for taking a vehicle without the owner's permission (Veh. Code, § 10851), receiving a stolen vehicle (Pen. Code, § 496d, subd. (a)), and being under the influence

of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). Father remained incarcerated. Parents regularly missed visits.

In November 2011, Mother was admitted into an inpatient drug treatment program. Mother participated in her case plan. Upon entering the drug treatment program, Mother attended her visits with the children and was “extremely appropriate” during the visits. The visits were changed to one two-hour visit per week, rather than two one-hour visits per week. The juvenile court ordered the children remain placed outside Parents’ custody.

D. 12-MONTH STATUS REVIEW

Mother completed a 90-day inpatient drug treatment program and her domestic violence and parenting classes. Mother participated in an outpatient drug treatment program and resided in a sober living facility. Mother maintained her sobriety for seven months. Mother’s primary obstacle to regaining custody of the children was housing. Mother resided in a shared room in the sober living facility, so she was looking for other housing options.

Visitation with the children was difficult because the children were residing in Victorville, while Mother lived in Upland; however, Mother took a bus once per week to visit the children in Victorville. The visits were supervised in the Department’s offices. Mother played on the floor with the children, changed their diapers, and gave them snacks. The children appeared to enjoy visiting with Mother. J.V. regularly hugged Mother during visits.

The children were bonded with the caregivers, with whom they were residing, as well as their eight cousins who also lived in the home. The children suffered from Post Traumatic Stress Disorder, but were receiving services. In August 2012, the juvenile court ordered the children remain outside Parents' custody. The court terminated Father's reunification services, but ordered Mother's services be continued. The court granted Mother six-hour unsupervised visits with the children, with the option for the Department to change the schedule to overnight visits.

E. VISITATION

On October 26, A.V. took J.V. to a hospital emergency room due to the child's condition following an unsupervised visit with Mother. J.V. suffered two small hematomas on her forehead and one larger hematoma on the top of her head. Mother told the Department that J.V. did not have any bruises on her forehead when she left Mother's care. Mother asserted J.V. sustained the bruises while in the care of the caregivers. A.V. told the Department that when the children return from weekend visits with Mother they return with bite marks, bruises, and diaper rashes.

The Department requested the children's visits with Mother be changed to supervised visits for two hours twice per week. The juvenile court granted the Department's request to change the visitation schedule.

F. 18-MONTH STATUS REVIEW

Father was incarcerated in prison. In December 2012, Mother was participating in a substance abuse treatment aftercare/transitional living program through the Dependency Drug Court. Mother maintained her sobriety for one year and completed

all her other reunification services. The primary obstacle facing Mother was that she would need to start paying rent at the sober living residence when her Drug Court program ended, but Mother was unemployed and lacked income.

Mother attended all of her visits with the children. Mother interacted well with the children during the visits—giving them snacks and changing their diapers. The children appeared to enjoy their visits with Mother.

The children were receiving “numerous services that require a number of appointments,” and “will need to be involved in services long-term.” J.V. suffered gross and fine motor skill delays; she was “at the low end of average in language and experiences sensory processing difficulties.” N.V. had language and gross motor skill delays. N.V. also had issues with her hips, choking while eating, and was referred to “Neurology and Craniofacial for her head shape.” The children were not in school—J.V. was two years old, and N.V. was one year old.

In December 2012, the Department concluded Mother had made “vast improvement[s]” in her life during the course of the dependency case, but that she was “still a long way from being ready to have the children returned to her care.” The Department gave reasons for its conclusion, such as (1) Mother’s unstable housing situation; (2) Mother’s lack of income; (3) the children’s need to attend multiple appointments that are not accessible via public transportation; (4) Mother’s visits with the children were changed from unsupervised to supervised; (5) when the children returned from unsupervised visits they were dirty, hungry, and suffering diaper rashes from not having their diapers changed often enough; and (6) the physician’s assistant

who examined J.V.'s bruises estimated the bruises were sustained during the timeframe that the children were in Mother's care, but Mother denied the injuries occurred while the children were with her.

In January 2013, Mother moved into a home she shared with a woman and the woman's three children. The Department found the home was appropriate for small children. Mother began cleaning houses in order to earn money while she looked for a more permanent job. The Department recommended the children be returned to Mother's care. On January 17, the juvenile court ordered the children placed with Mother for an extended visit—until the next scheduled hearing on February 13. On February 13, the juvenile court continued the children as dependents of the court, and ordered the children placed in Mother's custody on a plan of family maintenance.

G. 24-MONTH STATUS REVIEW

Mother obtained her own apartment and purchased a car. The children's speech "improved considerably" while in Mother's care. Mother tested positive for amphetamines in June 2013. Mother stopped attending narcotics' anonymous meetings and did not finish her aftercare program. A drug treatment center determined Mother did not need to go through a treatment program again, but encouraged Mother to attend 90 consecutive days of narcotics' anonymous meetings. Mother began attending the meetings and tested negative for drugs in July, August, and September. In September 2013, the juvenile court ordered the children continue to be placed in Mother's custody.

#### H. 30-MONTH STATUS REVIEW

In February 2014, Mother tested positive for amphetamines. Mother permitted her 13-year old daughter, A.D., to live with her; A.D. had previously been residing with her grandmother. A.D. had behavioral issues and Mother became “very stressed out” due to A.D. The Department observed that, while Mother was “using drugs on and off again,” J.V. and N.V. were “thriving” in Mother’s care. The Department encouraged Mother to enroll J.V. in a Headstart program. J.V. was accepted by Headstart, but Mother failed to obtain the required tuberculosis test for J.V., so J.V. could not start the program. J.V. and N.V. appeared to be “extremely attached” to Mother.

#### I. REQUEST TO CHANGE A COURT ORDER

In March 2014, the children’s attorney (Wollard) filed a request to change a court order. Wollard asserted Mother tested positive for methamphetamines two times in February, Mother was not attending counseling to address her issues, the children had not seen doctors or dentists, and A.D. was “run[ning] the house.” Wollard requested the children be removed from Mother’s care. Wollard asserted the change would be in the children’s best interests because they were four and three years old, could not care for themselves, and should not be in the care of a person who was abusing drugs.

#### J. SECOND DETENTION

In April 2014, the Department filed a report recommending family maintenance services be terminated and the children be removed from Mother’s care. Mother provided verification of a dental exam for J.V. The children were terminated from their services at the Desert/Mountain Children’s Center due to “frequent cancellations and

lack of follow through' by [M]other.” Mother admitted she stopped taking her psychotropic medication, which was prescribed early in the dependency case. During visits to the home, a Department social worker noticed the children were dirty and there was “very little food in the home.” Additionally, Mother was leaving the children “with known felons and drug users.”

The Department filed a supplemental petition. (§ 387.) The Department alleged Mother failed to protect the children (§ 300, subd. (b)), in particular: (1) Mother suffered a substance abuse problem that interfered with her ability to care for the children; (2) Mother failed to provide medical and dental care for the children; (3) Mother failed to follow through with services for the children’s developmental issues; and (4) Mother failed to follow through with her own mental health treatment, which affected her ability to care for the children.

The Department filed a separate detention report. The gas and electric utilities were shut-off at different times at Mother’s home, due to Mother failing to pay the bills. The Department removed the children from Mother’s care on April 23, 2014. The juvenile court found the Department established a prima facie case and ordered the children remain detained. The court granted Mother supervised visits with the children once per week for two hours.

**K. SECOND JURISDICTION AND DISPOSITION**

The Department noted Mother received 18 months of reunification services and 12 months of family maintenance services. A Department social worker observed that despite receiving 30 months of services, Mother had regressed into past behaviors, such

as drug use, causing the case to return “almost to the point of where it was when [the Department] first became involved.”

The juvenile court found the prior disposition was not effective in protecting the children. (§ 387.) The court ordered the children removed from Mother’s care and terminated Mother’s reunification services. The court granted Mother supervised visitation with the children twice per month for one hour. The juvenile court authorized the Department to place the children in the care of A.V.

L. TERMINATION

The Department required Mother to confirm she would attend the visitation appointments 24 hours prior to the appointments. Mother visited with the children on June 17, July 1, July 15, and August 5. During the visits on June 17, July 15, and August 5, Mother was attentive and affectionate with the children. During the visit on July 1, Mother was “nodding off” while reading to the children, she slurred her speech, and was nonsensical when speaking. Mother canceled her visit on August 19 due to illness. Mother did not appear for her visit on September 2. Mother did appear for her visit on September 16, but did not call 24 hours in advance, so the visit was canceled. Mother informed the visitation coach that she was homeless was planned to admit herself into an inpatient treatment program.

The caregivers wanted to adopt the children. J.V. was four years old, and N.V. was three years old. In regard to the children’s feelings about the possibility of being adopted, the Department’s report reflects, “The children are too young to verbalize her [*sic*] feelings about the Adoption but they appear to have a strong emotional bond with

prospective adoptive parents/paternal relatives. The children were previously placed in this home during the reunification process with mother.”

Mother was not present at the termination hearing. The children were present at the hearing with their attorney (Wollard). Wollard said to the juvenile court, “And on behalf of the minors, we are in agreement with the [Department’s] recommendation”; the Department recommended parental rights be terminated. Mother’s attorney objected to the Department’s recommendation, but did not have any affirmative evidence to offer. The juvenile court said it “considered the wishes of the children consistent with their ages.” The court found clear and convincing evidence that the children would be adopted. The juvenile court terminated Mother’s and Father’s parental rights. The court ordered adoption be the children’s permanent plan.

After the hearing ended, Mother arrived at the juvenile court. Mother’s attorney informed the court that Mother was present, Mother disagreed with her parental rights being terminated, and Mother preferred a plan of legal guardianship. The juvenile court explained that Mother’s parental rights had already been terminated and adoption had been selected as the children’s permanent plan.

## **DISCUSSION**

### **A. MINOR’S COUNSEL**

Mother contends the children’s attorney (Wollard) erred by not advising the juvenile court of the children’s wishes. The Department contends Mother forfeited this issue for appeal by failing to raise it in the juvenile court. We choose to address the merits of the issue because it is easily resolved.

Section 317, subdivision (e)(2), provides, “If the child is four years of age or older, counsel shall interview the child to determine the child’s wishes and assess the child’s well-being, and shall advise the court of the child’s wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.”

We understand Mother’s argument as asserting minor’s counsel rendered ineffective assistance. Therefore, Mother must show: (1) Wollard’s “representation fell below an objective standard of reasonableness under prevailing professional norms”; and (2) prejudice occurred, “meaning a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 261.)

The record reflects the children were “too young to verbalize [their] feelings about the [a]doption.” J.V., who was four years old, was diagnosed as being “on the low end of average in language.” J.V. attended speech therapy two times per week. J.V.’s special education records reflect (1) she “speaks in mostly one-two word phrases”; and (2) “[t]he disability affects her ability to communicate her wants and needs effectively due to decreased language abilities.” This evidence reflects that Wollard’s performance fell within the prevailing professional norms because the evidence shows J.V. had difficulty communicating her wishes, and therefore, it could not be expected that Wollard would be able to express J.V.’s wishes to the juvenile court. In other words, if J.V. could not express her wishes, it was reasonable that

Wollard did not inform the court of J.V.'s wishes. Therefore, we conclude Wollard did not render ineffective assistance.<sup>3</sup>

Mother asserts that if the children were unable to express their wishes, then that information should have been given to the juvenile court, but it was not given. Mother is incorrect. The Department shared the information with the juvenile court. In the Department's report, the social worker wrote, "The children are too young to verbalize [their] feelings about the [a]doption but they appear to have a strong emotional bond with [the caregivers]." Therefore, while Wollard did not share the information, no prejudice would result because the juvenile court received the information from the Department. (See *In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [judgment cannot be reversed unless the error resulted in a miscarriage of justice].)

Next, Mother contends the information in the record concerning the children's language skills is inconsistent. Mother asserts there are portions of the record in which the Department reported N.V. (the younger child) expressed her desire to stay with Mother. We agree the Department's reporting of the children's language abilities is confusing at times, which is why we have relied on J.V.'s special education records in addition to the Department's reports. As set forth *ante*, J.V.'s special education records reflect "[t]he disability affects her ability to communicate her wants and needs effectively due to decreased language abilities." Given that a separate entity, i.e., the special education unit, also found J.V. had language difficulties, there is credible

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<sup>3</sup> We focus on J.V. because the statute applies to children four years and older. J.V. was four years old, so the statute applied to her, but N.V. was only three years old.

support for the conclusion that Wollard was unable to inform the juvenile court of J.V.'s wishes because J.V. was unable to express her wishes to Wollard.

B. ADVERSARIAL PROCEEDINGS

Mother contends the proceedings were conducted in an adversarial manner, which is improper for a dependency case. For example, when Mother's older child, A.D., came to live with Mother, the Department did not assist Mother or A.D. despite Mother being overwhelmed by A.D.'s behaviors. Mother implies the Department was not motivated to help her because the "Department gets federal funds for every adoption completed through the dependency proceedings."

Mother's argument is unclear, in that it appears Mother is asserting the Department should have filed a petition concerning A.D. so as to help Mother manage. In Mother's appellant's reply brief, her appellate counsel explains that he located A.D., who has an active dependency case in Los Angeles County. Mother asserts the "Department needs to learn its role in the dependency scheme." This court cannot decipher exactly what error Mother is asserting occurred. Mother could be asserting a due process error resulting from the adversarial nature of the proceedings, or she could be requesting the Department file a petition related to A.D. Due to the lack of clarity in Mother's argument, we deem it to be forfeited. (*In re Marriage of Falcone* (2008) 164

Cal.App.4th 814, 830 [the absence of a cogent legal argument allows this court to treat the contention as forfeited].)<sup>4</sup>

C. PARENT-CHILD BOND

Mother contends the juvenile court erred by finding the parent-child bond exception to termination to be inapplicable in this case. (§ 366.26, subd. (c)(1)(B)(i).)

If a juvenile court finds a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights shall not be terminated if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

There is a split of authority as to which standard of review is applicable to a decision to not apply the parent-child bond exception: (1) substantial evidence; (2) abuse of discretion; or (3) a hybrid of substantial evidence and abuse of discretion. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [Fourth Dist., Div. Three applied the substantial evidence standard]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [Fourth Dist., Div. One applied the substantial evidence standard]; *In re Jasmine D.*

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<sup>4</sup> In a separate motion, Mother “request[s] this Court remand this matter for an evidentiary hearing to discover what really occurred” in relation to A.D.’s connection with the instant case. Mother’s motion is based upon Code of Civil Procedure section 909, which permits an appellate court to “make factual determinations contrary to or in addition to those made by the trial court.” Mother’s motion is denied. As explained, *ante*, it is unclear what precise error Mother is asserting occurred, and therefore, an evidentiary hearing is unnecessary.

(2000) 78 Cal.App.4th 1339, 1351 [First Dist., Div. Three applying the abuse of discretion standard]; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449 [Second Dist., Div. Eight applying the abuse of discretion standard]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [Second Dist., Div. Seven applying the hybrid standard]; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [Sixth Dist. applying the hybrid standard].)

Mother applies the substantial evidence standard in her analysis, so we will apply that standard as well. Under the substantial evidence standard, we view the evidence in the light most favorable to the juvenile court's ruling. We do not reweigh the evidence, but merely determine whether there are sufficient facts to support the trial court's findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Mother missed two visits with the children during September. Mother failed to appear for the September 2 visit, and she failed to confirm the September 16 visit, so the visit was canceled. Additionally, Mother canceled the August 19 visit due to illness. The record reflects Mother attended four visits, but was "nodding off" during one of the four, and she missed three visits. Given the multiple missed visits following the second detention, there is credible support for the juvenile court finding that Mother did not maintain regular visitation with the children. Thus, there is substantial evidence supporting the juvenile court's decision to not apply the parent-child bond exception to termination.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

KING  
J.