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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re G.Q. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

KATHY V.,

Defendant and Appellant.

G045962

(Super. Ct. Nos. DP016349,
DP016350 & DP016351)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary
Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

Kathy V. (the mother) appeals from the juvenile court's order terminating her parental rights at the permanency hearing held pursuant to Welfare and Institutions Code section 366.26.¹ She argues the court should have allowed her to present evidence on one of the exceptions to termination of her parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We conclude her arguments lack merit and we affirm the order.

In 2009, we considered the mothers' writ seeking extraordinary relief from the juvenile court's order terminating reunification services at the 12-month review hearing and referring the case to a permanency hearing. (*Kathy V. v. Superior Court* (June 26, 2009, G041736) [nonpub. opn.] (*Kathy V.*)) We found the following contentions without merit: (1) there was insufficient evidence to support the court's finding she received reasonable services, (2) there was substantial evidence her children could be returned to her at the 18-month hearing, and (3) the court's could not order the mother to pay for a visitation monitor after services were terminated. (*Ibid.*)

I

We begin by incorporating a large portion of the factual summary recited in our prior opinion: "On December 5, 2007, [G.Q., B.Q., and P.Q.], ages seven, five, and four, respectively, were taken into protective custody by the Orange County Social Services Agency (SSA). [B.Q.] told her teacher that her mother had held a knife to the father's neck, and the school authorities called the police. When the police arrived at the home, they found no food or drinks, the toilet did not work and was filled with feces, the refrigerator did not work, and the floor was dirty and covered with trash. The parents

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

have a history of domestic violence; a restraining order preventing the father from coming near the mother was put into place in November 2004 and was not due to expire until November 2008. Notwithstanding, both parents appeared to be living in the home with the children. The father said they were married, the mother said they were divorced. Each of the three children described severe and continuous domestic violence between the parents and physical abuse to them by the father.” (*Kathy V., supra*, G041736.)

“The children were declared dependents of the juvenile court under section 300, subdivision (b) [failure to protect], and placed with their maternal grandmother. The parents were offered reunification services, which included counseling, parenting classes, and a domestic violence program. The court ordered monitored visitation twice a week.” (*Kathy V., supra*, G041736.)

“At the six-month review hearing, in July 2008, the parents were making substantial progress on their case plans. . . . The social worker recommended a 60-day trial visit with the mother to begin in September. The mother stipulated that continued supervision was necessary and she had been provided reasonable services. The court ordered additional reunification services and set a 12-month hearing for January 2009.” (*Kathy V., supra*, G041736.)

“By late July, the maternal grandmother’s home was no longer a satisfactory placement. Rather than relocating the children temporarily, SSA moved up the planned 60-day trial visit to July 29 and placed the children with the mother. Unfortunately, the mother had financial problems almost immediately and was unable to pay her rent for July and August. During that time, the father provided some child care by visiting the children on weekend nights so the mother could work as a dancer, and he paid her \$300 per week in child support. But the relationship between the parents deteriorated toward the end of August, and the mother obtained a new temporary restraining order protecting herself and the children from any contact with the father.” (*Kathy V., supra*, G041736.)

“The mother was evicted from her apartment on September 8, 2008. For the next three weeks, she and the children moved among six motels for housing. She received assistance through the CalWorks cash assistance grant, but refused to apply for homeless assistance through CalWorks, ‘although she has been directed to do so in Team Decision Making meetings so that she may conserve her cash resources to secure a new residence.’ The social worker discovered that in July, the mother had spent \$400 on a birthday party for [B.Q.] and \$500 for a pedigreed dog. The mother also lost her CalWorks cash assistance because she failed to report the child support she received from the father. She stopped returning the social worker’s calls and failed to advise the social worker of the location where she and the children were staying.” (*Kathy V., supra*, G041736.)

“As of September 29, however, the social worker continued to believe the mother could reunify with the children. ‘[T]he children are experiencing distress and anxiety relating to their recent changes in housing, and the mother has been the significant daily constant in the lives of the children. The children do not exhibit behavioral concerns in school, and it is the opinion of the undersigned that the mother is managing the children’s worries to the best of her ability. Because the mother has consistently provided shelter and has met the basic needs of the children since they were placed in her care for a trial visit, the undersigned recommends continuation of the trial visit so as to allow the mother the opportunity to rectify her financial and residential circumstances’” (*Kathy V., supra*, G041736.)

“On September 18, the social worker discovered the mother had two outstanding warrants. The first was for failure to appear in June 2008 on traffic violations, including driving on a suspended license. The second arose out of the mother’s criminal charges for child abuse and endangerment which were issued after the incident leading to the children’s detention in December 2007. The criminal court had ordered the mother to enroll in a 52-week parenting class, which she did; but she was

later dropped from the class for unexcused absences. Between September 18 and October 29, the social worker repeatedly advised the mother ‘to resolve the warrants immediately’ because the children would be placed at risk of harm if she were arrested. The mother asserted she had talked to law enforcement officers and she was not in danger of being arrested. . . . Notwithstanding the mother’s repeated promises to take care of the warrants, she never did so.” (*Kathy V., supra*, G041736.)

“On October 29, 2008, the mother was arrested and incarcerated. The social worker considered the trial visit to have failed, and she went to the children’s school to re-detain them [and she] . . . placed them at Orangewood. [¶] The father was not able to take the children and was not interested in seeking placement of them in the foreseeable future. After reevaluating the maternal grandmother’s home, the social worker placed them there on October 30. On that same day, the mother was released on bail. She was not permitted to live in the same home with the children but was able to visit them there several times a week.” (*Kathy V., supra*, G041736.)

“During November and December, the mother’s phone worked only sporadically, and she failed to attend appointments with the social worker. She was dropped from her counseling for missing three appointments, and she failed to start the court-ordered domestic violence program. She remained homeless and financially unstable. On December 2, the mother told the social worker she had been diagnosed with uterine cancer and she was too distraught to work. She also said her boyfriend was due to be released from prison in a few days and she planned to move into a residence with him. On December 16, the social worker wrote that the mother had ‘demonstrate[d] an unwillingness to cooperate with the [c]ourt or with [SSA].’ Furthermore, the mother’s actions since November 13 ‘do not reflect that the children [are] a priority in making decisions’” (*Kathy V., supra*, G041736.)

“In her report prepared on December 31 for the 12-month review hearing in January 2009, the social worker stated that the father was no longer interested in

reunification. The mother, on the other hand, ‘feels she has the capacity and the strong desire to reunify with the children.’ Despite the mother’s problems, the social worker recommended six more months of services. By January 16, however, the social worker had changed her recommendation to termination of services for both parents and long term foster care for the children. The maternal grandmother’s home had been decertified by SSA because the grandfather had an outstanding arrest warrant. The children were transported to Orangewood by the maternal grandparents on January 7 without their belongings. Later that day, they were placed in a foster home. The social worker then discovered that the father had brought Christmas gifts for the children to the maternal grandparents’ home on Christmas morning, but the mother took the gifts and locked them in her storage unit. The social worker asked the mother to bring the gifts, together with the children’s clothing and personal items, to a scheduled appointment, but the mother did not. Twice thereafter, the mother promised to bring the items but failed to keep her appointments with the social worker.” (*Kathy V., supra*, G041736.)

“The 12-month review hearing was continued to February 9, 2009. On February 4, the social worker reported that the foster family was prepared to monitor visits with the mother, but the mother frequently changed the schedule and failed to confirm her visits in advance, as agreed. The mother also continued to disregard appointments she made with the social worker, which resulted in delays in the completion of the paperwork necessary to enroll her in court-ordered programs and in obtaining a clearance for her boyfriend to have contact with the children. She signed a lease with her boyfriend for \$1095 per month, despite the fact that he had not been approved by SSA, and she planned to start a new job on February 1 where ‘she would be earning \$7.50 an hour plus tips, and . . . she would be working on Friday and Saturday nights from 6:00 p.m. until 2:00 a.m., and all day on Sundays.’” (*Kathy V., supra*, G041736.)

“After interviewing the children, the social worker determined that the mother had finally given the father’s Christmas presents to the girls, but not to [G.Q.].

The mother had told him ‘he would receive the gift when he moved into his mother’s new home.’ . . . [¶] The social worker opined that the mother ‘continues to make decisions without consideration of the best interests of the children’ but continued to recommend long term foster care and monitored visitation ‘because the children present a strong attachment to each of their parents’” (*Kathy V., supra*, G041736.)

“By February 9, the social worker had changed her recommendation from long term foster care to setting a permanent plan selection hearing. The court continued the case to February 23, but told the mother it was concerned about her repeatedly changing the visitation schedule and failing to give [G.Q.] his Christmas presents from the father, which remained in the storage unit. The mother again said she would give [G.Q.] the present at her next visit, which was in two days.” (*Kathy V., supra*, G041736.)

“Two weeks later, the social worker submitted another report. The foster family reported concerns about the mother’s behavior. She ‘calls the foster home multiple times a day every day [She] calls over and over, again and again, several times in a row.’ She also ‘frequently cries while on the phone,’ which negatively affect[s] the children. Problems with visitation scheduling continued because ‘the mother does not commit to a regular time for visitation each week, and . . . she fails to call back and confirm visitation arrangements timely.’ The social worker discovered, contrary to the previous information, that the mother had not given the Christmas gifts to any of the children. She continued to make promises to bring the gifts and excuses when she did not follow through.” (*Kathy V., supra*, G041736.)

“The 12-month review hearing began on Monday, February 23, 2009. When the court discovered that the mother had still not given the children their Christmas gifts, it ordered her to do so by Wednesday, February 25 or face incarceration for contempt of court. The mother did not turn over the gifts as ordered; rather, she failed to show up for court on February 25. Instead, she went to an emergency room and asked a doctor there for a note to excuse her from court. The court received a fax from the

emergency room asking that she be excused from work, not court. The mother finally turned over the Christmas gifts to the social worker on Friday, February 27.” (*Kathy V., supra*, G041736.)

“The social worker testified she terminated the trial visit in October 2008 because the mother had failed to take care of her warrants and had been incarcerated. The mother had been terminated from individual counseling in mid-November because she had failed to attend three times. The social worker tried to reinstate services, but the mother refused to meet with her during November and December to sign the referral forms. The social worker mailed the forms to the mother, but for some reason she did not receive them. The mother finally signed the forms on January 12. By the time the social worker obtained the signatures of her supervisor and the program manager, however, a hold was placed on all referrals. The children were still not in therapy even though the court ordered SSA to arrange therapy for [G.Q.] on September 29, 2008. The social worker prepared the referral, but the children were with the mother in September and October, and the mother failed to contact the therapy provider for an intake assessment. The children were with the maternal grandmother in November and December, and they also failed to contact the therapy provider. In January, the therapy provider failed to follow up with the social worker; finally in February, the social worker ‘initiated a separate route for therapy,’ and the children were due to start within the next two weeks.” (*Kathy V., supra*, G041736.)

“The mother testified she moved in with her boyfriend, who she identified as her fiancé, in mid-December 2008. She met him in 1998, and since that time he had been in and out of prison as many as six times. . . . The mother said she ‘wouldn’t want him to be living with my kids yet until he gets help, until he gets his life together, but not right now.’” (*Kathy V., supra*, G041736.)

“The mother was diagnosed with uterine cancer in mid-November 2008. She had surgery a month later. She did not have to undergo chemotherapy afterwards,

but she was treated with antibiotics for an infection. She stated the doctor ‘told me to take it easy on what I do because it’s only been two months, and it’s not totally healed. But other than that, he said I’m fine.’” (*Kathy V., supra*, G041736.)

“The juvenile court found that the mother, notwithstanding her illness, exhibited ‘a pattern . . . of being resistant in many ways to following either suggestion or direction’ and lacked the ‘ability to follow through.’ The court observed, ‘The mother has a lot of problems that she has to work on and one of the first problems that she needs to address is being able to accept responsibility for herself. She cannot, when faced with a problem ignore it and hope it will go away’ The court found the mother could not have the children returned now and there was no substantial probability that they could be returned in the next 13 weeks, which was the time remaining in the 18-month reunification period. Accordingly, the court found that return of the children would create a substantial risk of detriment to their physical and emotional well-being, and that reasonable services had been provided. It terminated reunification services and set a permanent plan selection hearing.” (*Kathy V., supra*, G041736.)

“The court ordered that the mother’s two hour, twice weekly, monitored visits should continue. SSA asked that the mother arrange and pay for a visitation monitor, explaining that the foster family had asked not to serve as monitors because ‘they feel it’s become a conflict’ and SSA was using its limited resources for monitors only on reunification cases. . . . The court asked SSA if the foster family agency could help with the monitoring. . . . The court then ordered: ‘Social Services to make every effort to provide . . . an objective monitor for mother’s visits. The first visit to be monitored by somebody from [SSA], and if after the Agency has exhausted all efforts to obtain a monitor, then mother’s going to have to come up with it ‘cause that’s all we can do.’” (*Kathy V., supra*, G041736.)

A. The First Permanent Plan Placement Hearing

The first hearing took place on June 29, 2009. The social worker (Tiffany Reinoehl) recommended the court terminate parental rights and continue the matter for 180 days because the children were difficult to place. SSA needed time to search for an adoptive family for a sibling group. The current foster family was not willing to consider adoption or legal guardianship.

Reinoehl reported the mother's inconsistent visitation was negatively impacting the children. Since January, the mother had missed nine out of the last possible 14 visits. The sporadic visiting was causing the children emotional harm. G.Q. and B.Q. were having behavioral problems requiring therapy. P.Q. was more well-adjusted but occasionally had tantrums. Reinoehl recommended visitation be limited to once a week and be contingent on the mother visiting consistently.

Reinoehl reported that on April 30, 2009, and again on May 29, 2009, the children stated they wanted to live with their mother. On June 22, 2009, the children told an adoptions worker they would be all right with going to a new family and home. P.Q. said she did not want to go with her mother.

At the June 2009 hearing, and pursuant to the parties' signed stipulation, the court ruled termination of parental rights would not be detrimental to the children. It ruled the children had a probability of being adopted but they were difficult to place and there was not yet an identified prospective adoptive family. Adoption was identified as the permanent placement goal. The mother was authorized to have monitored twice-weekly visits for two hours each.

The hearing was continued several times while SSA looked for appropriate placements. From July to October 2009, the children lived with their maternal aunt. Throughout this period, Reinoehl wrote in her reports that the children's emotional and behavioral issues would improve with continued therapy and if visitation with their mother were decreased. For example, in September 2009, Reinoehl stated she was

concerned “that the mother appears to disregard specific direction regarding visitation boundaries and expectations, including providing the children with lavish gifts, and that the mother’s actions in this manner facilitate ongoing risk of emotional harm to the children.” She requested visits be decreased to once a week because the children were “confused” about the possible return of their mother and because the mother was not adhering to the visitation guidelines. The maternal aunt reported that once the mother started re-visiting after a gap of about one month, the children’s behavioral problems significantly increased after visits.

In September 2009, G.Q.’s therapist reported the child’s behavior problems (including anger, depression, aggressiveness, noncompliance, biting himself) were caused by difficulties adjusting to multiple placements and accepting the process of adoption. Similarly, B.Q.’s therapist opined her behavioral difficulties, including anxiety, defensiveness, irritability, were impairing her interpersonal relationships. B.Q. was diagnosed with ADHD and prescribed psychotropic medication. P.Q.’s therapist stated the child’s sadness was caused by the multiple placements and her behavioral problems jeopardized her placement.

From October to December 2009, the children were placed with a foster family interested in adoption. In early December, Reinoehl reported that since being placed in this home the children had “expressed a variety of mixed emotions through actions and words.” The eldest child, G.Q., was adjusting well and stated he wished to remain in the home. The middle child, B.Q., experienced significant adjustment difficulties. She hit her caretakers on a daily basis and repeatedly stated she wished to return to her mother’s care. The youngest child, P.Q., often had tantrums, screamed, and locked herself in the bathroom. B.Q. and P.Q. admitted to the social worker they were breaking the rules so that they could leave their current placement and return to their mother. B.Q. explained, “I want to live with my mom, because she lets us eat whatever we want to eat, and do whatever we want, and I don’t have to be in a time out.”

P.Q. echoed she felt the same way. After Reinoehl explained return was not possible and these caretakers were specially picked to be their ““forever home,”” the behavior problems improved slightly and the tantrums became less frequent.

Reinoehl stated the children expressed confusion about contact with the mother. She stated, “The children have specifically disclosed they are confused about why they see their mother weekly if they are not going to return to the mother’s care.” Reinoehl stated it was in the children’s best interests to decrease contact with the mother.

On December 14, 2009, the foster father told Reinoehl that he had become so angry with B.Q.’s misbehavior that he had thrown away all her toys. B.Q. had been continually throwing the toys at him and breaking some of them, and he also broke a few. The foster father stated he removed himself from the situation and was surprised when the children later warmly received him at the front door. The foster father now had reservations about adopting the children. The next day, the foster mother reported P.Q. told them a new caseworker was being assigned to the case and they would be returned to the mother. G.Q. yelled out, ““That was our secret!”” The foster mother was concerned the mother was the one who had told the children this misinformation.

The following day, the foster father yelled at the foster family agency (FFA) social worker, ordered her to leave his home, and yelled at her as she sat in her car speaking to Reinoehl. The children were immediately removed from this placement and relocated to Orangewood.

On January 14, 2010, the court continued the permanency hearing again and ordered SSA to evaluate all relatives for placement. The court authorized weekly one hour monitored visit and it warned the mother visits would cease immediately if she made any inappropriate comments about placement.

A few days later the children were placed for six months with a foster family who was not interested in adoption. SSA made many attempts to find permanent placement with relatives. The children’s weekly visits with the mother were positive

during this time period. She would bring food, clothing, or toys to each visit. Reinoehl reported, “The children continue to assert that they will return to the mother’s care and cite weekly visits as the source for their beliefs.”

In March 2010, the children underwent psychological and educational assessments. All three children exhibited disorders related to being exposed to domestic violence. They insisted on being returned to the mother because they were worried about her. The therapists recommended the children continue with their current foster care placement to provide them with stability and consistency and that the children would benefit from permanent adoption. The therapists recommended individual psychotherapy for each child.

Reinoehl and the adoptions social worker discussed the psychological evaluations, and they were both concerned the children were currently “not emotionally available” to a permanent family. The two social workers concluded that while the children waited for reunification, they were only willing to accept a caregiver providing their basic necessities. The social workers concluded the “children strongly present as unwilling, and perhaps unable, to attach beyond their immediate and short-term care needs.” They determined the children should remain in their current placement and that visits with the mother should be decreased “to facilitate emotional distancing.”

On March 15, 2010, the court continued the permanency hearing for three more months. At the end of March, Reinoehl met with the children, who expressed “a strong desire to return home” to the mother’s care or another maternal relative. The children explained they did not like living in foster homes where they are frequently moved and have to endure unfair chores. The children complained they felt like Cinderella, having to clean the foster homes. When Reinoehl explained household responsibilities are a normal part of family life, the children responded they were never asked to clean when living with the mother or her relatives. The children began chanting, “We want Mom! We want Mom!”

The children were progressing well in therapy and were beginning to discuss details about when they resided with the mother. For example, G.Q. disclosed he remembered a time when his ear swelled up, he could not hear, and he was in pain for several days. When the mother took him to a doctor, a dead cockroach was extracted from his ear. The therapist indicated the children, in discussing their stories, were beginning to process the reasons why they were removed from the mother.

At a visit in April, the mother told the children she rented a two bedroom apartment and B.Q. asked if she and her siblings could live there. After the visit, B.Q. became increasingly defiant and threatened to harm herself. P.Q. also was throwing tantrums. On June 11, 2010, the foster mother asked for the children to be removed. She cited the behavioral problems and the mother's confrontational behavior during visits. The foster mother admitted she feared the mother, and she would not end visits when the mother made inappropriate comments to the children. The children returned to Orangewood.

On June 17, 2010, the court concluded the children were not adoptable and no one was willing to accept legal guardianship. The court determined the children would remain in long term foster care with a permanent plan of placement with a foster family. The mother was permitted weekly one-hour monitored visitation.

As of July 1, 2010, B.Q. was placed in one foster home and her siblings were placed in another. Because the caretakers decided not to adopt, SSA continued searching for an adoptive home. Through July the mother visited the children, but in August she missed four visits, disappointing the children. The mother had been arrested and was incarcerated for possessing methamphetamine.

The mother resumed visiting in September 2010 and B.Q. began having behavioral problems before visits with the mother. When questioned more about this pattern of tantrums, B.Q. finally admitted she did not like being there when the mother failed to show up for the visit. The foster mother also reported B.Q. said the mother told

the children during visits that if they did not like their foster homes they should be rude and mean so they could return to the mother. A new social worker assigned to the case, Priscilla Pasion, warned the mother all visits needed to be confirmed each week or the visit would be cancelled. Over the next several months, the mother visited the children but brought the children clothing, shoes, and jewelry despite being told not to because the items were causing behavioral issues.

In December 2010, P.Q.'s and G.Q.'s therapist reported continued weekly visits were not in the children's best interests. The therapist opined, "I feel that these visits are detrimental for these children. It does not allow them to fully grieve, is what they need to do. It gives them a weekly tease of what they can't have." The children continued to receive therapy and were making some progress. At a periodic review hearing held on December 16, 2010, the court found continued contact with the mother might be detrimental to the children and it halted visitation until the next hearing at the end of January 2011.

In January 2011, the children were placed with prospective adoptive parents. Pasion reported the children adjusted well to the move and appeared to be happy. They were enthusiastic about being part of a new family. Pasion recommended the court schedule a permanency hearing.

B.Q.'s therapist opined the child's behavioral difficulties were due to ongoing contact with the mother. P.Q.'s therapist stated the child suffered from a depressive disorder and although she had made a lot of progress, they were working on addressing her sad mood, frustration, and anxiety.

On February 24, 2011, at a periodic review hearing, and pursuant to the parties' stipulation, the court scheduled a permanency hearing. Mother was permitted monitored visits, once a month for two hours.

In a report prepared for the permanency hearing, social worker Isabel Loor recommended the court find termination of parental rights would not be detrimental and

the children could be adopted. She opined that despite their behavior problems caused by past neglect and witnessing domestic violence, the children were adoptable. She reported the children were connecting well with their new caregivers and learning to be more affectionate and trusting. The children appeared to be happy and proud of their responsibilities and accomplishments. The children were responding well to a behavior chart and were trying very hard to comply with house rules. The prospective adoptive parents wished to adopt the children and stated they were “in it for the long haul.” They were determined to provide the love, understanding, permanency, and parenting the children needed. They enrolled the children in extracurricular activities.

The prospective adoptive parents did not wish to have the mother visit after adoption. The children had difficulties after visits with the mother. Although the visits went well, the children would act out and refuse to follow rules afterwards. They would tell the caregivers they did not have to listen to them. G.Q. told Loor that he did not know if he wanted to be adopted but he wanted to be a Jonas brother and live in Hollywood. If that was not an option, he wanted to stay in his current placement. B.Q. said she wanted to keep moving around because she was used to it. B.Q. did not know if she wanted to be adopted. P.Q. indicated she wanted to be adopted by the caregivers.

The permanency hearing scheduled for June 14, 2011, was continued to July 18 and then trailed to July 21. The mother was present on July 14, and present in custody on the July dates. On July 21, 2011, the parties stipulated that termination of parental rights would not be detrimental to the children and the children would likely be adopted but were difficult to place. The court identified adoption as the permanent plan goal. The permanency hearing was continued to October 2011.

Before the final hearing, Loor submitted a report stating the children were happy and enthusiastic about their placement. Loor saw B.Q. and P.Q. hugging their caretakers and calling the prospective adoptive mother “Mom” several times. G.Q. said he wished to stay in his placement. Loor opined the children’s behavior had stabilized.

In August 2011, the caretakers reported there had been no problems. It was the first time the children had not acted out after their visit with the mother. The following month, the caretakers reported continued progress and that the children again were well behaved after their visit with the mother. B.Q. was now telling her friends she was already adopted and began identifying things in the house as hers. She called the caregivers, “mommy” and “daddy” when she was really happy. P.Q. stated she was really happy living in “my house” with her siblings and her mom and dad. When G.Q. was asked if he wanted to be adopted by his caregivers, he smiled and said “sure.” The children’s court appointed special advocates (CASA’s) reported the children were doing very well in their new home and advocated terminating parental rights so the children could be adopted. In Loor’s October 2011 report, she stated the children did not talk about the mother’s visits unless asked and they did not ask for more time with her.

At the October 25, 2011 permanency hearing, counsel submitted on SSA’s reports and waived cross-examination of the social worker. The mother’s counsel stated the mother wanted the children and wished to testify as to the parent-child benefit exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). Counsel stated the mother believed it would be detrimental to terminate parental rights due to the bond she shared with the children. Minors’ counsel objected, arguing there had already been a stipulation and court finding on July 21, 2011, that the children were adoptable and terminating parental rights would not be detrimental. SSA also objected, maintaining that to overcome the prior finding the mother should have filed a petition for modification under section 388 showing a change of circumstances. The court agreed, stating additional evidence regarding the benefit exception was irrelevant because the mother had failed to file a section 388 petition.

The mother commented she just wanted to keep visiting the children. Her counsel requested that the caretakers be appointed guardians and to permit further visits

with the mother because the children were not likely to be adopted. The minors' counsel and SSA argued the children should be freed for adoption.

The court ruled termination of parental rights would not be detrimental to the children and they were likely to be adopted. It terminated parental rights and ordered the children be adopted. It stated none of the exceptions to terminating parental rights applied.

II

The mother asserts her due process rights were violated when the court did not allow her to present evidence on an exception to terminating parental rights at the final continued permanency hearing in October 2011. She recognizes the case *In re A.G.* (2008) 161 Cal.App.4th 664, 670-671 (*A.G.*), held that where findings and orders have been made pursuant to section 366.26, subdivision (c)(3), the court has no obligation to reconsider the issues decided unless there is a showing that circumstances have changed or that there is new evidence. In that case, the court reasoned that at the termination phase, the mother was entitled to notice and the opportunity to be heard. (*Id.* at p. 670.) The court further concluded the mother and her attorney had received the "fundamentally fair procedures to which she was constitutionally entitled." The court reasoned the mother was given an opportunity to be heard at the prior hearing and she was advised of her right to appeal the findings. In the case before us, the mother asserts she did not receive "fair procedures" and, therefore, the *A.G.* case is factually distinguishable. We disagree.

The mother's claim she was denied due process is based on her assertion she did not receive notice of some of the continued permanency hearings dates or notice of SSA's recommendation to terminate parental rights. We find this claim specious given that SSA had been recommending termination of parental rights since February 2009 (well over three years). In addition, the mother repeatedly stipulated to terminating parental rights and never filed a petition to modify the no-detriment finding based on her

stipulation. Specifically, the mother stipulated at the June 29, 2009 permanency hearing that termination of parental rights would not be detrimental to the children. She does not dispute she had the opportunity to present evidence and argue the issue at that hearing. The mother made the same stipulation nearly two years later at the July 21, 2011 permanency hearing. Once again, she had an opportunity to present evidence and argue the issue at that hearing.

At no time during the two years SSA searched for an adoptive home (June 2009 to October 2011) did the mother file a petition for modification to assert parental rights should not be terminated. Moreover, in the months leading to the final permanency hearing in October 2011, the mother did not file a section 388 petition. At that point, the trial court was not required to consider the issue without evidence that circumstances had changed or there was new evidence since the mother's last stipulation in July 2011. (*A.G., supra*, 161 Cal.App.4th at p. 671.) "Her right to present evidence was only limited to presenting 'relevant evidence of significant probative value to the issue before the court.' [Citation.]" (*Id.* at p. 670.)

The mother complains that although she received notice of the June 14, 2011 permanency hearing and of SSA's recommendation to terminate her parental rights, she did not receive further notice when the hearing was continued from June 14 to July 18. The mother claims she also was not provided notice when the hearing was trailed from July 18 to July 21.

We conclude the mother waived the issue of faulty notice regarding the two dates the permanency hearing was continued or trailed. First, we note the mother admits she received notice of the first scheduled hearing date (June 14). Because the mother was actually present on both days the hearing was continued (July 18 and July 21) any error was waived and can be deemed harmless. (*In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1198-1200 [parent who participated in hearing waives right to challenge lack of notice of the hearing].) The mother did not complain about faulty

notice or about not receiving SSA reports at either hearing. She was at all times represented by counsel. Moreover, at the time of these hearings she was in custody and the Orange County jail provided her transportation to attend the hearings. The circumstances of this case simply do not support her claim she was “completely denied the procedural due process she was entitled to.”

The mother also raises a due process issue regarding the lack of a formal advisement regarding her right to appeal. The mother admits she was present for the July 21 hearing, during which she stipulated termination of parental rights would not be detrimental to the children. She asserts the court continued the permanency hearing after accepting her stipulation but it did not advise her of her right to appeal the findings and orders made that day. The mother does not assert she was unaware of her right to appeal, but she suggests a perfunctory advisement was necessary to protect her due process rights.

We find the claim meritless. If the mother had appealed from an order terminating parental rights that was based entirely on her unambiguous stipulation that terminating parental rights would not be detrimental to the children, she would not have prevailed. (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394-1395 (*Eric A.*) [father conceded allegations in petition were true and this stipulation was found to be fatal to his pending appeal]; *In re Brandon M.* (1997) 54 Cal.App.4th 1387, 1401 [appeal from orders entered into as a result of a settlement entered in open court].) The mother’s stipulation to a finding of no detriment can be considered an admission of that fact. (*Eric A.*, *supra*, 73 Cal.App.4th at p. 1395; *In re Dani R.* (2001) 89 Cal.App.4th 402, 405-406 [parents’ stipulation to express findings “amount[s] to an unqualified admission that the initial jurisdictional findings and dispositional order are supported by substantial evidence”].)

In addition, the mother was at all times represented by counsel who was aware of the right to appeal, the chances for success on appeal, and that the mother had

available a more effective way to change the court's finding if circumstances were to change by filing a section 388 petition before the final permanency hearing. The mother does not assert her counsel provided ineffective representation. And we find no reason to suspect otherwise.

More importantly, this case is not a close call. There was very little in the record to support application of the parent/child benefit exception. (§ 366.26, subd. (c)(1)(B)(i).)² The first prong requiring “regular visitation and contact” (§ 366.26, subd. (c)(1)(B)(i)) with the children was not met. To the contrary, the record repeatedly documented how mother's *inconsistent* visitation contributed to many of the children's emotional and behavioral problems. The court at times halted visits entirely, and it repeatedly *reduced* the length and frequency of monitored visitation times because the mother acted inappropriately during visits and missed visits causing the children to suffer emotionally.

The second prong required evidence the children “would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The record shows the children loved the mother, but her presence was always destabilizing and rarely beneficial. The children's therapists opined visits with the mother were detrimental and should be discontinued. They recognized that whatever the children received from the mother during one monitored visit each month must be weighed against the tantrums, anxiety, and emotional turmoil the children experienced for the days and weeks thereafter. That the mother gave her children false hope and repeatedly coached them to

² Generally, at a section 366.26 hearing, if the juvenile court finds the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions (§ 366.26, subd. (c)(1)(A) & (c)(1)(B)(i)-(vi)), including the beneficial parent/child relationship exception, which applies when “termination would be detrimental to the child” because “[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).)

be rude and mean in their placements was both cruel and heartless, especially since the mother knew she would not be reunifying with them.

We conclude the record clearly supports a finding of detriment, not benefit, arising from this parent/child relationship. These children have been trapped in the dependency system since 2007, and they are long overdue for the gift of peace, stability, and love that come from a permanent loving home.

III

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.