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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.R., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

A.R. et al.,

Defendants and Appellants.

G052373

(Super. Ct. No. DP023496)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant A.R.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant R.M.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance on behalf of the Minor.

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A.R. (Father) and R.M. (Mother), appeal the juvenile court's findings denying their Welfare and Institutions Code section 388 petitions (all further statutory references are to the Welfare and Institutions Code), and terminating their parental rights to their daughter, M.R. (born in February 2013). We conclude their contentions lack merit, and we affirm the judgment.

## I

Approximately one year before M.R. was born, her brother (one-year-old C.R.), and three half-siblings (10-year-old M.W., five-year-old A.R., and three-year-old Ma.R.), were removed from Mother's and Father's care based on substantiated neglect. In February 2012, the four children lived in a filthy garage infested with rats and lacked food. Mother, the children's primary custodian, was under the influence of alcohol and marijuana in their presence. She often left the children unsupervised while she went out and used drugs. Mother sometimes left the children in the care of her young son M.W.

When M.R. was born, the Orange County Social Services Agency (SSA) sought a protective custody warrant on the grounds the parents were receiving family reunification services for her four siblings, who were all dependents of the court. The social worker reviewed a recent report, dated December 2012, describing the status of those dependency proceedings. It revealed the parents had made minimal progress towards reunification. Visitation with the four children was going poorly and Mother needed "constant redirection." In addition, Mother had missed 24 of her 81 drug tests, she tested positive for marijuana (THC) three times, and she had not enrolled in a substance abuse or 12-step program. Father had missed five of his 60 drug tests, tested positive for THC seven times, and also had not enrolled in a substance abuse or 12-step

program. Both parents had criminal records. Mother's criminal history included vandalism and possession of marijuana. Father's criminal history included vandalism, petty theft, and possessing a switchblade.

In addition, the social worker learned that during a monitored visit the parents engaged in domestic violence while their three-year-old daughter sat between them. Mother slapped Father across the face, and Father slapped Mother on the chest. Mother then repeatedly kicked Father's midsection until he left the scene. During a different visit, Mother challenged a foster mother to a fight because she did not like the way the woman was looking at her.

The parents no longer lived together in the garage. Mother had been living at Casa Teresa, a temporary home for pregnant women. Before that she had been staying with different friends. Father had been staying with different friends. M.R.'s siblings were placed in three different homes.

Although Mother and M.R. did not test positive for drugs at the time of her birth, the social worker believed that based on the parents' poor progress with their family reunification plans with their other four children, M.R. was also at risk of abuse or neglect. The petition was filed February 13, 2013.

The petition, as later amended, alleged M.R. came under section 300, subdivisions (b) [failure to protect], and (j) [abuse of sibling]. M.R. was detained and placed with foster parent, Dee E. The court authorized monitored visitation for Mother and Father. It also ordered SSA to evaluate Casa Teresa because it was considering granting a CRISP (Conditional Release to Intensive Supervision Program) for Mother.

In the March 12, 2013, jurisdiction/disposition reports, social worker Michele Schmitz recommended M.R. be released to Mother under CRISP. Schmitz reported Mother was residing at Casa Teresa and complying with all aspects of its program. She enrolled in a perinatal program and "provided all negative drug tests since the child's birth." Mother recently started attending 12-step meetings and found a

sponsor. Schmitz opined Mother “has been slow to start her drug treatment regarding the child’s siblings case, but since she enrolled she has been compliant with the program.”

Schmitz reported both parents completed a parent education class and in-office counseling. Father was scheduled to start his drug treatment program on March 8, 2013, and he had “consistently tested negative since the child’s birth.”

After including in her report the summaries of several monitored visits, Schmitz concluded the visits were frequently “chaotic” and the parents had a difficult time managing the children. She opined the problems likely stemmed from the “lack of structure prior to the children’s dependency case.” Schmitz added, “The parents do not believe that there are issues with their visitation and believe that the ‘chaos’ is normal.”

Finally, Schmitz commented Mother appeared to have “some delays or processing issues that make it difficult for her to remember things without several reminders.” Mother stated she took medication for ADHD when she was younger. The social worker voiced concern that Mother would have difficulty managing the needs of more than one child, but she would likely be able to handle M.R.’s basic needs while they resided at Casa Teresa. She therefore recommended the child be released to Mother under the CRISP.

On March 12, 2013, Mother submitted on, and Father pled no contest to, the amended petition. The court sustained the petition and released M.R. to Mother under the CRISP.

Sadly this arrangement did not last for long. On April 4, 2013, M.R. was re-detained because CRISP had failed. Schmitz filed an ex parte application and reported on the events leading to the detention.

Schmitz stated that two days after M.R. was released to Mother a CRISP worker, Andy Nguyen, reported he met with Mother because a Casa Teresa counselor indicated Mother had a hard time following the program. Mother had not told the counselor her schedule. Nguyen wanted to make sure Mother understood she was

required to tell the counselor about her whereabouts at all times. Mother stated she was cooperating and would focus on doing well at Casa Teresa. However, the following day, the counselor informed Schmitz that Mother received her third violation for not doing her chores. The counselor stated Mother left the house early to apply for CalFresh aid for M.R., but did not complete her chores before leaving, and did not provide a copy of her daily schedule as required by the program rules. The counselor reported Mother often left the house at 8:00 a.m. and did not return until 9:00 p.m. Schmitz observed Mother's perinatal classes should not have taken all day, and Mother should be able to provide the shelter with her schedule. The counselor stated a third violation usually meant expulsion from the program. The counselor noted Mother had interviewed with Collette's House, but it was not going to work out. She did not explain why.

When Schmitz later spoke to Mother, she became argumentative and did not want to accept responsibility. Schmitz told Mother to ask the counselor if there was anything she could do to stay in the program. Schmitz then received an e-mail from CalFresh worker, Sandra Duff, who reported Mother was very difficult to work with. Mother had an attitude, was argumentative, and wanted everything right away. For example, Duff gave Mother an umbrella stroller and Mother rejected it because she wanted a bigger one.

Two days later, on March 18, 2013, the Casa Teresa counselor stated Mother was being more compliant and provided the staff with her schedule. She made an appointment at Mariposa for counseling. The counselor stated they would keep Mother in the program and they were working with her on basic parenting skills. The counselor agreed Mother was argumentative and she was not ready to move to a different program because she was having difficulty complying with the current minimal house rules.

On March 19, 2013, foster mother Dee E. gave Mother a stroller, but Mother complained it was dusty. Mother and Father left the baby in the car seat for their entire visit with all the children (typically three hours long). The social worker

monitoring the parents' visit with M.R.'s siblings noted that since the baby was returned to Mother, she tended to leave M.R. in the car seat the entire visit unless the grandparents held the baby. Mother and M.R. were seen getting into Father's car after this visit, which was prohibited because he did not have a license or insurance.

On March 28, 2013, Schmitz spoke with the Casa Teresa counselor who reported Mother was admonished for riding in Father's car. Mother was not complying with their program, but they were allowing her to stay until her scheduled exit date, and they hoped she would find a new program. The counselor stated she had been unable to meet with Mother because Mother was avoiding her. Mother continued to leave the house each day despite being told she needed to stay and meet with the counselor at 9:00 a.m. The counselor reported the other residents and staff had been complaining about Mother's attitude.

On April 2, 2013, Schmitz received a copy of Mother's schedule and noticed there were large gaps of time not accounted for. The counselor stated Mother continued to leave each day early in the morning and she would not return until late at night. Mother had not met with the counselor as required, and she had missed classes, groups, and meetings with the CRISP worker. Moreover, although Mother knew her exit date was in just a few days (April 9), she had not found another program and was refusing to make herself available for the counselor to assist her in the relocation process. Nguyen confirmed Mother had failed to meet with him on several occasions. He concluded that the CRISP "should be failed" because Mother did not comply with the "CRISP agreement."

On April 4, 2013, Schmitz and Nguyen initially had a difficult time locating Mother to arrange for M.R.'s re-detention. They eventually found Mother during her scheduled visitation with M.R.'s siblings. When they explained CRISP had failed, Mother disagreed, made excuses, and did not take responsibility for her actions. The social worker apologized the re-detention had to take place during visitation but

explained it was necessary because Mother was avoiding contact with them. Mother was upset but cooperative.

M.R. was placed with foster mother Dee E., who also was caring for M.R.'s brother C.R. In a report prepared for the dispositional hearing, dated April 23, 2013, the social worker stated Mother had been compliant with her substance abuse treatment program and had been testing negative for drugs. The parents had consistently visited their children, however, "their visitation [was] reported to be chaotic and the parents have difficulty controlling the chaos." The social worker recommended the court declare M.R. a dependent and offer the parents reunification services. The court agreed with the recommendation and declared M.R. a dependent of the court.

#### *A. Two Year Reunification Period*

A different social worker was assigned to the case, Priscilla Morfin, who reported throughout the lengthy reunification period that the parents' progress in their case plans was moderate. She reported Mother and Father tested negative on all their drug tests during this time period. However, she concluded there were other serious problems.

Morfin's six-month review hearing report, dated November 4, 2013, recommended the court terminate reunification services. She explained Mother's case plan required her to participate in individual, conjoint, family, and/or group therapy to address codependency, relationship, and co-parenting issues as well as "understanding appropriate supervision and care of the child." Mother stated she was not interested in participating in counseling. Mother and Father agreed to enroll in the In-Home Parenting Coach program during their monitored visitation. However, they refused to accept the coach's suggestions and were uncooperative. The coach would not give the parents a certificate of completion.

Although all 95 drug tests during this time period were negative, Mother had not been compliant with her case plan requirement to attend a 12-step program or

obtain a sponsor. Mother stated neither the program nor having a sponsor proved her sobriety. However, Mother graduated from the perinatal program. Morfin stated it was standard for perinatal graduates to attend the AfterCare program. After telling Morfin she would not participate in the AfterCare program because, "It's a waste of gas," Mother told her perinatal counselor she was willing to participate in the program.

During the first six months, Father also refused to participate in any counseling, announcing it would be a waste of time. Father had all negative drug tests and was in phase three of his alcohol and drug treatment program. He inconsistently attended 12-step meetings and had not obtained a sponsor as required by his case plan. Father wanted his visits with the children to be combined with Mother's visits because they are in a relationship and he liked to help Mother. Father stated the visitation monitors were liars and he found no issues with the visits.

Morfin's report contains summaries and examples of the reoccurring chaos during visitation. The monitored visits took place twice a week at SSA's Eckhoff office on Mondays from 4:00 p.m. to 7:00 p.m., and on Thursdays from 3:30 p.m. to 6:30 p.m. The visits were monitored by Foster Family Agency (FFA) social worker, Vicki Rider, and/or FFA staff member, Mark Chevalier. In addition, foster mother Dee E. was present during visits.

All three monitors reported visits were consistently chaotic and the parents showed they had very little control over the children's behaviors. Morfin stated she had extensive e-mails from Rider and Chevalier about the visits, and summaries were "available upon the [c]ourt's request." Based on the monitors' observations, Morfin surmised the following: "The monitors often describe [Mother] as being 'irritated and annoyed' and often yelling at the children. The parents are reported to often [arrive late] to the visits. [Father] often leaves the visit early. [Mother] has been observed arguing with other mothers in the visitation area. The parents [sometimes do not get along] and on a few occasions [were] arguing with each other. [Mother] has been reported . . . [as]

being aggressive with the children's arms and . . . to have not supported M.R.'s head at one time. [The parents] provide unhealthy food and snacks . . . [and do] not always follow through with timeouts . . . . [Mother] often does not change M.R. or her sibling, C.R.'s diaper and will put the responsibility on [Father]. [The parents] . . . will often leave M.R. in her stroller, or bouncer, or car seat and pay very little attention to her. [Mother] provides M.R.'s siblings with false promises of reunifying in a new apartment and promises them games and/or gifts. [Mother] . . . speak[s] negatively about [M.W.'s] father."

Morfin acknowledged the parents did not agree with any of the monitors' reports or with the In-Home Parenting Coach. "The parents become defensive and argumentative with the monitors and [Morfin], and the parents are not open to suggestions in regards to their parenting skills. [They] . . . ignor[e] directions or [state] that they already know a certain parenting skill but [then] do not demonstrate the skill." Morfin added that Mother curses in front of the children. She added, "The parents have continually stated throughout this period of supervision that their visitation goes well and that there are no issues. They become agitated, curse, and defensive with [Morfin] on an almost monthly basis when [she] attempts to provide [them] with suggestions in regards to visitation." Morfin included the summary of approximately 30 visits (ranging in date from March 21 to October 22, 2013.)

Morfin also described an e-mail she received from the Sheriff's office. It stated, "In the past, in addition to the problems with taking pictures and videos, [the parents] also played kicking and throwing balls in the visiting area. The disruptive [parents] were a nuisance to other visitors. I had to order them to stop playing every time. Not only the parents are the source of many problems, their kids are also unruly and obnoxious. Please command, remind [the parents] of how to behave and obey rules and regulations in this facility."

Morfin's recommendation to terminate services was based on (1) the parents' moderate progress in their case plans, (2) that visits continued to be monitored, and (3) the parents were unreceptive to suggestions made by the monitors or the parenting coach. Morfin concluded M.R. was an adorable, healthy, adoptable baby girl. Pursuant to the parties' stipulation, the court continued the six-month hearing to December 2013.

In an addendum report dated December 4, 2013, Morfin reported the In-Home Parenting coach left a message at the end of October 2013, stating the parents had cancelled their visitation and this was their "fourth no-show." Mother first told the coach she cancelled due to a court hearing, but then later stated she had to cancel because of work. In early November, FFA social worker stated the parents telephoned at 3:00 p.m. to cancel the visitation scheduled to occur at 3:30 p.m. that day. The children were already in route to SSA's offices. The social worker noted the parents had cancelled several visits "last minute." Morfin decided Mother must start providing 24-hour notice before each scheduled visit. She reported Rider provided extensive written summaries of visits occurring between October 14 and November 20, and the court could request copies of these summaries anytime.

Pursuant to the parties' stipulation, the court continued the six-month review hearing to January 2014. In a second addendum report, dated January 7, 2014, Morfin reported there was no visit on December 2 because the parents failed to provide 24-hour advanced notification. Mother telephoned Morfin on December 4 and stated she cancelled visits in November because of her work schedule. Mother stated she could not rearrange her work schedule to avoid conflicts with visitation. She added the visitation monitors were "liars" and "will get their karma one day." Morfin asked Mother if she and Father were willing to separate M.R.'s visitation from the other four children to have time to concentrate on M.R. and her needs. The Mother stated she and Father did not have time to have separate visits with M.R.

On December 5, 2013, Dee E. reported the visits were still chaotic and the parents continued to ignore M.R., who was left strapped in her car seat or stroller. Dee E. stated M.R. was crawling and did not like to sit still.

The six-month review hearing was continued to the end of January 2014. In her third addendum report, Morfin stated Mother consistently drug tested negative and was happy at her new job. Father also drug tested negative during this time. However, the visitation problems persisted. Morfin stated the visitation monitors e-mailed extensive summaries of visits taking place between November 25, 2013, to January 13, 2014. Morfin stated the summaries were “available upon the [c]ourt’s request.” The parents cancelled visits on November 25, December 2, December 16, 2013, and January 2, 2014. Dee E. reported visits were chaotic and M.R.’s siblings continue to run out of the visitation area and into the hallway. The parents often ignored M.R. Rider opined Mother was “overwhelmed.” She added there had been a few incidents where C.R. ran away from the visit and sometimes the parents failed to notice. Rider stated she would have to prompt the parents to stop C.R. from running away. Rider reported the parents cancelled their visit on January 23 because Mother hurt her back.

On January 29, 2014, the court considered and accepted the parents’ signed stipulation. It continued reunification services and set a 12-month review hearing for March 12, 2014.

Morfin prepared a status review report for the 12-month review hearing. She recommended the court terminate reunification services and schedule a permanency hearing. She described the parent’s compliance with their case plans as still being moderate. Although testing negative for drugs, both parents refused to participate in counseling. They completed a parenting education class but they were not awarded a certificate of completion from the In-Home Parenting Coach program due to their no-shows and minimal participation. The coach’s termination report, dated October 28, 2013, stated, “[Mother] cooperated during some sessions. [She] exhibited moderate

motivation during sessions . . . however, she struggled in finding ways to implement parenting techniques with her children. [Father] did not cooperate during sessions. [He] lacked motivation during visits and was reluctant to participate during sessions.” After describing all the information given to the parents and coaching efforts, the report concluded the parents “did little to show implementation of discussed topics during [the] session. Moreover, [the parents and the children] disregarded the rules and [the parents] struggled to implement consequences and effective communication.” The report concluded the parents did not complete the nine-week program and did not receive a certificate due to “excessive [n]o-[s]hows.”

As for visits, Morfin reported the three monitors (Dee E., Rider, and Chevalier) concurred the visits continued to be chaotic because the parents had very little control over the children’s behavior. They all reported seeing the parents ignore one-year-old M.R. and she was frequently left strapped in her stroller. The social worker noted she had detailed summaries of the visits from Rider and Chevalier that were available upon the court’s request. Morfin stated the parents failed to show up to several visits. Since the last hearing, Mother cancelled a visit on February 6 because M.R. had a cold and Mother did not want to infect her siblings. The parents failed to provide 24-hour advanced notice before the February 13 visit, and therefore, it was cancelled. Morfin concluded M.R. was adoptable, and because the parents’ visits had not progressed to unmonitored and they had only moderately complied with their case plans, her recommendation was to terminate services.

The hearing was continued several times, prompting several addendum reports. On April 3, 2014, Morfin reported the parents cancelled six visits between February 20 and March 27 (approximately half the visits scheduled for February and March). Mother’s reasons for cancelling varied. On March 17, Mother stated she had too much to do. On March 27, she cancelled because she had a bad cough. Morfin added Mother violated the visitation agreement by speaking negatively about the social worker

to her son M.W. He reported Mother was angry Morfin would not authorize extra visitors. Mother stated the visitors were paternal uncles, but M.W. maintained they were maternal cousins.

In the next addendum report, dated May 1, 2014, Morfin stated the parents continued to have many cancellations in April and summaries of the visits were available if the court requested copies of them. The parents missed seven of the 12 scheduled visits.

The report dated May 19, 2014, revealed the parents continued to have many cancellations and often failed to provide 24-hour advanced notice. Father missed many visits due to being at work. He did not tell Morfin about his schedule or request a change in visitation days/hours. The monitors for the visits during this time period described Mother as being mad or frustrated during visits. She had difficulty managing the children's behaviors. On a positive note, the parents interacted with the children in "an age appropriate manner at times." Morfin stated the parents were not receptive to having a new referral for the In-Home Parenting Coach program.

On May 22, 2014, the court scheduled an 18-month review hearing for August 11, 2014, and an interim case plan review for June 4, 2014. A few days earlier, the court terminated reunification services for M.R.'s three older siblings in their dependency case. The permanent plan for these siblings was adoption for M.W. and long term foster care for A.R. and Ma.R.

At the case plan review hearing concerning M.R., the court adopted Morfin's new case plan for Mother that recommended counseling, parenting education, random drug testing, and 12-step meetings. Morfin met with Mother about the new case plan on June 5 and explained the new plan was similar to the old plan but did not require a substance abuse treatment program because Mother had already completed one. Mother opposed the new plan. She explained the parenting classes were not needed because her visits were fine. She did not need more counseling because she successfully

completed counseling before M.R. was born. She also attended counseling sessions while at Casa Teresa right after M.R. was born. Morfin reminded Mother she did not complete Casa Teresa's counseling and because the CRISP failed, Mother would benefit from additional counseling. Mother disagreed there was any need for counseling.

In Morfin's interim review report, dated July 3, 2014, she noted the parents signed an In-Home Parenting Coach referral. They tested negative for drugs. However, they declined to participate in the 12-step meetings, claiming the recovery program was against their Catholic religious beliefs.

Morfin reported she granted Mother's request to have visits occur at the park. Morfin scheduled one visit per week at the park and kept the second visit at SSA's offices. She indicated detailed written summaries of visits occurring between May and June were available upon the court's request. She added there was a family interested in adopting M.R. and her three siblings.

Morfin's next report, filed August 11, 2014, was prepared in anticipation of the 18-month review hearing. Her recommendation was to terminate services and schedule a permanency hearing. She reported the parents were living together in a two bedroom apartment. Father was employed. Mother was not employed.

Morfin determined the parents' compliance with their case plans was moderate. There was a waiting list for the In-Home Parenting Coach program, but the parents had received their approval on July 15, 2014. Mother delayed signing a counseling referral but, as of July 17, 2014, the parents were scheduled to start counseling services. They had completed part one of a two part intake session. Both parents tested negative for drugs in May, June, and July 2014. They still refused to attend 12-step meetings due to their religious beliefs.

Although visitation remained monitored, the parents requested a 60-day trial visit because they were now living in a suitable residence. The visitation monitors reported there were many missed visits in June and July 2014. During one visit in early

June, Mother demonstrated both good and poor parenting skills. Mother put A.R. in a time-out for not listening, C.R. in a time-out for spilling his juice, and Ma.R. in a time-out for climbing on a table. Mother threatened the children the grandparents would leave if they would not complete their time-outs. However, Rider observed Mother was not watching M.R. and she pulled all the books off the book case. Mother sang and played games with the children. She changed diapers. She spoke to A.R. about his behavior after he stuck out his tongue at her. The visit ended on a positive note.

At the next visit, June 9, Mother overfed the children to get them to behave. Mother told the children they had enough to eat but then let them eat a large bag of chips. Mother stopped M.R. from leaving the visitation area, but took no action when M.W. called the social worker (Rider) inappropriate names. Mother held and sang to M.R. but ignored C.R. as he threw toys. The monitors described the children as being wild and out of control. Mother ended the visit 15 minutes early, and Father arrived five minutes before the visit ended.

A visit on June 12 at the park went well because the children mostly played on the playground equipment. The monitors described the children as being cooperative and in good spirits. However, they observed Mother as being frustrated that the grandparents brought food because she wanted pizza. M.W. stated his mother was unappreciative and he lightly hit her in the stomach. Mother placed him in a time-out. Mother also made C.R. say ““sorry”” after he pushed another child at the park. A.R. spent a lot of time with his grandparents. The children also spent a great deal of time playing with Father’s dog.

Dee E. stated visits at the park were better than visits at SSA’s offices. She believed Mother ended the June 9 visit early because she could not handle her children. On July 14, Mother cancelled the visit after she learned A.R. declined to visit. Mother stated she wanted to visit with all five of her children.

After considering the parties' stipulation, the court continued the 18-month review hearing to September 25, 2014. In an addendum report dated September 25, 2014, Morfin reported the parents agreed to visit with only M.R. once a week.

During this reporting period there were many missed visits, cancellations, and forgotten 24-hour advanced notices in the months of July, August, and September. The parents ended visits early on 12 occasions and missed six visits entirely. The monitor (Rider) filed a special incident report regarding a visit taking place on September 18, 2014. Rider informed Mother the visit would need to take place in SSA's air conditioned offices rather than the park due to an extreme heat advisory. The parents went to the park and called Morfin, who told them to walk to SSA's offices. Despite this express directive to stay indoors, Mother called Rider and said Morfin authorized Rider to bring M.R. to the park despite the heat. The temperature at the park was over 100 degrees and there were no other small children playing there. Rider opined Mother put M.R. at risk because it was too hot to play outside.

The court continued the 18-month review hearing to October 6, 2014, after reviewing and considering the parties' stipulation. In an addendum report, Morfin reported the parents attended four conjoint counseling sessions. The counselor stated the parents were engaged during the sessions and were working on issues such as parenting skills. The parents completed the In-Home Parenting Coach program and their coach, Miriam Quintanilla, reported the parents were cooperative, motivated, and progressed in treatment. The coach's termination report stated the parents demonstrated they knew how to parent children in different stages of development, they could address safety concerns in a supervised environment, and they implemented discipline techniques. The report noted, "There are no unresolved treatment concerns or need for other services present. [The parents] will continue to keep children's safety a priority during visits and continue to encourage positive behavior by using praise. [The parents] will continue to use effective methods of discipline according to age of children . . . and also continue

spending quality time with children together and make an effort to give one on one time to each child as well. [The parents will] continue using communication techniques to encourage children to express their feelings and be able to resolve conflict without acting out. [The parents] completed the [six] week In-Home Coach Parenting Program and received [a] [c]ertificate of [c]ompletion.”

Two days after this report was filed, on September 22, 2014, Rider filed a special incident report regarding C.R. Rider stated C.R.'s foster mother arrived early due to a family emergency. As she was talking with Mother, C.R. ran away towards the basketball court. When C.R. saw he was being pursued by Ma.R., he bolted for the parking lot and another monitor ran to intercept him. Father also went after him, but the other monitor was closer.

The following day, September 23, 2014, Morfin met with the parents at a monitored visit at the park. When she arrived, she saw C.R. run to the other side of the playground. She heard Rider inform the parents of this fact. Father replied, “I know. I’ll catch up to him.” Morfin reported Father delayed chasing after C.R. for a minute and when he caught up with him, Father took him back to the playground equipment. Rider stated she was concerned by the parents delay in retrieving their children when they ran off. She told Morfin she had filed a special incident report the day before when C.R. ran into the parking lot.

On September 26, 2014, Morfin learned M.R. was placed in respite care because her caretaker, Dee E. had a family emergency. Mother was upset about M.R.'s placement and complained M.R. had bruises all over her body. Rider reported M.R. had five mosquito bites from the park but no bruises on her body. On September 30, Mother again complained to Morfin about the respite care and bruises. When asked if the marks could be bug bites, Mother stated she had seen bruises.

On October 1, 2014, Morfin examined M.R. She saw a small dime sized bruise on M.R.'s cheek under one eye, and a mosquito bite under her other eye. She did

not see any other bruises, but she called the child abuse registry. An emergency response social worker examined M.R. She reported the bruise was light and M.R. had been in two respite care homes the prior weekend in addition to being in Dee E.'s care. The social worker opined the outcome of her investigation would probably be "unfounded."

*B. After 20 Months Court Terminated Reunification Services (October 2014)*

On October 8, 2014, the court terminated reunification services. It considered the parties' stipulation to set the matter for a progress review on December 10, 2014, and a permanency hearing for February 4, 2015. The matter was submitted on the reports. The court authorized visitation and funding for some services until the permanency hearing.

Morfin filed an interim review report on December 10, 2014. She reported the parents continued to test negatively for drugs. However, in early November, 2014, a manager from one drug testing site stated Mother could not return because she had threatened the staff. The manager stated this was the second incident of misconduct. The manager filed a special incident report describing the events. On November 3, Mother arrived at the collection site for a urine drug test. One of the employees, Sharon Ortega, stated she had been using the restroom when Mother arrived. When she returned, Ortega asked Mother if she was ready to go. Mother said, "Yeah I been [*sic*] waiting here for your ass." When questioned, Mother repeated this statement. In the restroom, Mother stated, "You're lucky you work here, because if you were out on the street I would of [*sic*] knocked your ass out." Ortega did not respond other than to say Mother could go someplace else for her drug testing.

The parent's counselor, Karen Netherlain, left a telephone message for Morfin, stating the parents were consistently attending their weekly conjoint therapy sessions. She stated the parents were open to discussions and cooperative. Morfin stated she asked Netherlain for information about the parents' progress, but she had not received a return telephone call.

As for visitation, Rider stated there was a new schedule to accommodate Father's work schedule. The parents visited with the children from 4:45 p.m. to 7:45 p.m. on Mondays and Wednesdays. M.R. would not attend visits on Mondays and would visit alone with her parents on Tuesdays.

Mother cancelled her visit on October 1 due to illness, and she cancelled visits on October 8 and 13, for "unknown reasons." On October 14, the parents arrived late to the 4:45 p.m. visit, at 5:05 p.m., and ended the visit early at 6:30 p.m. Rider stated the parents did not bring M.R. dinner but brought snacks. They brought her a toy she liked. Father changed her diaper once. Mother told Rider that she was not feeling well and believed she might be pregnant.

On October 15, the parents again arrived approximately 15 minutes late and ended the visit 45 minutes early. It was noted that during this visit M.R.'s siblings spent a lot of time arguing. Mother cancelled the next visit scheduled for October 22.

On October 28, the parents arrived a few minutes late and ended the visit over an hour early, at 6:30 p.m. Rider stated the visit went well and the parents sang songs and played games with M.R. They could "adequate[ly]" supervise M.R. when her siblings were not present. Rider noted, "M.R. tests the parents by trying to escape out of the back room." Mother stated she was ending the visit early to purchase a birthday cake for M.R.'s sibling for the following day.

The birthday party took place at Chuck E. Cheese. Rider reported several paternal uncles and cousins arrived, and she told Mother the visitors would have to leave. Mother responded "It's a public place. You can't tell them to leave." Rider stated the relatives sat at the next table and interacted with the children in the game area.

Morfin met with the parents on November 24 and asked why they had missed visits and left other visits early. She reminded the parents to remain for the entire time. Mother stated she had missed only one visit with M.R. and it was because she was not feeling well. Morfin also asked about whether the parents had proof of their

attendance at the 12-step meetings, and they replied they were attending meetings. They agreed to give Morfin cards proving their attendance at their next visit. Morfin also asked Mother about the incident at the drug testing facility and whether her counselor was addressing anger management issues. Mother denied the incident occurred, and she claimed the staff was being rude to her and lied about the events.

Morfin concluded the monitored visits with M.R. were mostly “fine” but there had been issues with Mother’s conduct, i.e., she lied about being authorized to visit with M.R. at the park during the heat wave and was uncooperative during the birthday party about having other relatives present during the monitored visit.

On December 10, 2014, the court considered the parties’ stipulation to accept into evidence the social worker’s report and to appear at the permanency hearing scheduled for February 4, 2015. M.R., born February 9, 2013, would soon be two years old.

Morfin’s report for the permanency hearing (dated February 4, 2015) recommended termination of parental rights. She noted M.R. was difficult to place because she was part of large sibling set of four. She concluded adoption was probable and requested a 180-day continuance to locate an adoptive family.

Morfin stated M.R. was a happy and playful baby. Her current caretakers were not willing to adopt her or her siblings. M.R. was placed in the same foster home as her brother C.R. Her half siblings, A.R. and Ma.R., were placed together. Her oldest brother, M.W., had a failed placement in November 2014. No relatives had come forward to request placement of any of the children.

Morfin summarized the history of visitation over the past two years. After the CRISP failed after only a few weeks, the parents were authorized six hours of monitored visitation. As described in more detail earlier in this opinion, Morfin described many of the problems that arose during monitored visitation, all relating to the parents’ lack of control and parenting skills. Morfin stated that at the time of the 12-

month review hearing on March 12, 2014, the parents had made no progress in regards to increasing visitation or lifting the monitor. Over the next six months, visits became more sporadic and shorter. The parents showed no progress in their parenting skills, and the visits continued to be chaotic. M.R. was often ignored and left strapped to her car seat or stroller. Morfin stated that at the time of the 18-month review hearing in August 2014, there had been little progress and they continued to miss and cancel visits. On a positive note, in July 2014 the parents accepted a second In-Home Parenting Coach referral and they were actively participating in sessions. The parents stated they were committed to helping each other and finding ways to better discipline and control their children.

*C. The Permanency Hearing (24th Month of this Dependency Case)*

At the hearing on February 4, 2015, both parents submitted section 388 petitions. Mother's motion requested modification of the court's order terminating services and setting a permanency hearing and returning M.R. to her care. Mother asserted she completed the 12-step program, has tested clean for over two and one-half years, and could prove she regularly attended Alcoholic Anonymous (AA) meetings twice a week. She maintained she completed counseling (K.C. Services) and completed every part of her case plan. In addition, Mother claimed M.R. was "highly bonded" to her, they had regular visits, and she would provide M.R. a safe and stable home. In her declaration, Mother stated she made a significant change in her circumstances because she "truly valu[ed] a drug and alcohol free life." She stated that during visits she acted "as a true parent" by changing M.R.'s diapers, providing food, playing with her, and disciplining her "appropriately." Mother believed she had completed everything the court asked of her, and because M.R. was highly bonded to her, M.R. should be returned to her care.

Father's section 388 petition contained the identical information and essentially the same declaration as Mother. They both attached certificates showing completion of counseling and AA attendance cards containing dates from October 2014

to February 2015. Father also submitted evidence he completed the drug treatment program and the In-Home Parenting Coach program.

At the hearing, Father's counsel argued the motions made a prima facie case for an evidentiary hearing. Minor's counsel disagreed, arguing the petitions failed to make a best interests showing, the declarations were identical, and M.R. was adoptable. SSA's counsel also opposed the motions, arguing "The issue here is visits, and it's always really been the issue. [¶] I understand the parents have five kids . . . [s]o I understand it's going to be chaotic but the visit[ation monitors] are reporting that the parents are leaving early routinely and are attending about [one] third of the visits." Counsel stated M.R. was often the one left out and visits had not improved since the court ordered the permanency hearing. Counsel added, "We do recognize that parents tend to be going through the motions of the case plan but there is still a concern that the visits have not improved." Father's counsel replied, "I guess we're asking that visits would not only continue just with M.R., that's the request, and we're asking for those visits to begin to become unmonitored, and then I'll submit upon that."

The court ruled a prima facie case had not been established in "particular with reference to a showing of best interests of the child." The court denied the section 388 petitions. It ruled the parents could visit with only M.R., and the court would schedule a visitation review to evaluate the quality of these visits. The parents waived cross-examination of Morfin and did not present any other evidence. They submitted on SSA's reports. The court continued the permanency review hearing 180 days to locate an adoptive family. It determined M.R. was likely adoptable but difficult to place. It authorized supervised visitation of six hours per week and gave SSA authority to liberalize or restrict visits.

Morfin filed an interim review report on March 5, 2015. She noted that after the last hearing Mother telephoned her and complained the monitors were not giving her visits with M.R. alone because they wanted to be more efficient with their resources

and combine visits with all siblings. Morfin spoke with Rider about Mother's complaint. Rider stated Mother had been fine with combining visits and neither parent had requested visits be separated. Rider recalled Mother had transportation issues and had previously stated she would not be available for an extra day of visitation with just M.R. Rider noted the parents continued to end visits early and they cancelled many visits. Rider told Morfin she would coordinate with Mother and the caretakers to separate M.R.'s visits.

Several days later, on February 10, Morfin went to SSA's offices to watch the parents visit with M.R. She saw Father was not present, and Mother was speaking with the monitor as M.R. sat on a chair. When Mother noticed Morfin, she fed M.R. grapes and took her to the bathroom to change her diaper. Rider told Morfin that while visits with all the children remained chaotic, visits with just M.R. were calm and good.

Morfin reported that in early March she received a visitation log from Rider that included visits from December 29, 2014, to March 2, 2015. Rider reported the parents arrived 10 to 15 minutes late to all visits and often ended visits early (between 6:30 and 7:00 p.m.). Visits were scheduled to end at 7:45 p.m. In addition, Mother cancelled six visits due to being sick or because not all the children were able to attend. She reported being sick the last four visits (February 24 & 26; March 1 & 2). Father had also missed many visits.

Rider offered some additional history on why the parents stopped having a separate visit with M.R. She recalled it began in January 2015. Mother stated she could not find transportation to attend visits on Wednesday and she was upset to see C.R. crying when she took M.R. for a solo visit. Mother decided to forgo her solo visit with M.R. and visit all the children together on Mondays and Tuesdays. Visits with M.R. resumed in February when Mother complained to Morfin she was not allowed to have visits with M.R.

Morfin stated she telephoned Father and asked if he wanted his visits to be separate from Mother's visits. The Father declined, stating the visits were fine. He added that they did not wish to have visits with M.R. separate from her siblings.

Rider sent Morfin an e-mail regarding the quality of M.R.'s visits with her parents. She stated neither Mother nor Father had scheduled a separate visit with M.R. Father had not been to the Tuesday night visits with only M.R. except for one occasion (on February 17, 2015), and he arrived for the last 15 minutes of the visit. She added there had only been two visits in February with Mother. On the first visit, February 10, 2015, Mother arrived at 5:00 p.m. with two tacos and French fries for dinner. Mother also brought a bag of age appropriate toys that M.R. enjoyed. She observed, "[Mother] does interact with [M.R.], but typically sits in a chair, talking to M.R. and this writer. I try to answer [e-mails] on my phone and not engage [Mother], but she is typically fairly talkative to whoever is monitoring. Her parenting skills with M.R. are the same as with the other children. She threatens time-out but does not follow through. She counts to [10] giving M.R. many chances but only once gave her one time-out. Then she let her out of the time-out after about 30 seconds. I reminded her that time-outs for M.R. should be about two minutes now, and she just kinda laughed. The visits are calm, and she did change her diaper one time. The visit ended at 7:00 p.m. without incident."

On the day of the second visit, February 17, 2015, Mother called Morfin and asked if the visit could start early because it was 4:00 p.m. and she was already at SSA's offices. Morfin stated it was not possible because she was just on her way to pick up M.R. When Morfin arrived with M.R., they saw Mother in the reception area. She did not bring anything with her. Mother stated she did not have time to get M.R. dinner, but M.R. could eat when she got home. Mother had a few snacks in her purse to give M.R. Rider opined Mother "seemed rather distracted during the visit." "[Mother] interact[ed] with M.R., but not as much as usual. At one point, [Father] called during the visit and she was complaining about his parents." Mother told Rider the paternal

grandparents were mad at her because she would not help take care of “grandma,” and then “grandpa” would not give her a ride so she had to take the bus. Rider noticed that throughout the visit Mother mentioned M.R. was not hungry and that 7:00 p.m. was not too late to feed her. At 6:45 p.m., Father arrived with a pizza. Mother was surprised and quickly fed M.R. pizza before the visit ended at 7:00 p.m.

On March 9, 2015, the court scheduled the permanency hearing for August 3, 2015. The court stated it had read, considered, and accepted the parties’ stipulation and SSA’s report.

Morfin filed her next report on July 30, 2015. Morfin stated SSA completed and approved the prospective adoptive parent’s home study. She described the background and history of the adoptive parents who had been caring for M.R. and C.R. since May 7, 2015. For the past three months, the prospective adoptive parents had cared for the children and fully integrated them into their lives. They had developed a strong relationship and spoke lovingly and positively about the children. They wished to adopt M.R. and her brother.

Morfin stated the parents were still authorized to have monitored visits with their children six hours a week. The visits were scheduled for Mondays, Tuesday, and Thursdays, with M.R. having her own visit separate from her siblings on Tuesdays and a joint visit with her siblings on Thursdays. M.R. did not attend the Monday visits. For this period of supervision, visits had to be moved from the park to SSA’s offices because the parents were not adequately supervising the children. There had been no other issues or concerns during visits, other than the problem with the parents routinely canceling visits. Mother claimed she cancelled visits because she was not feeling well due to her current pregnancy. She gave birth to a boy, J.R., on July 23, 2015.

On March 10, 2015, Mother called Morfin and asked how she could improve visits. Morfin advised Mother to arrive on time and stay for the three hours.

She also told Mother to not have any more cancellations. Mother disagreed with reports the visits were chaotic.

Morfin included in her report descriptions of several visits. On March 24, 2015, Rider stated visits would be moved from the park to SSA's offices due to the lack of supervision. In an e-mail, Rider stated Mother was by herself at the last park visit and she was unable to supervise all the children. She brought Chinese food for the kids, but there was nothing M.R. could eat so she did not have dinner. M.W. had an attitude and took a lot of Mother's time. M.R. nearly fell off the concrete benches because Mother was distracted and not watching her. When they went to the playground full of other children, Mother sat on the bench. The three oldest children got into a physical fight over a swing. When Mother went to address the fight, M.R. ran out of the playground area, and Rider retrieved her. Things did not improve when Father arrived. He spent approximately 15 minutes pushing M.R. and C.R. on the swings, but then sat on the bench with Mother for 20 minutes. During this time, Ma.R. left the playground area four times with another child and went to a gazebo area. Mother and Father did not know she had left. One of the times, Rider watched Ma.R. leave for five minutes and saw the parents did not notice she was gone. When she returned, Rider informed the parents and they told Ma.R. not to leave the playground and gave her a time-out. She did not comply and ran to the playground. Rider stated she will supervise at the park only if both parents are present. Rider added she would monitor visits on Monday or Tuesday when not all five children are present.

Over a month later, on May 12, 2015, Rider was no longer willing to monitor all the visits. Rider agreed to monitor Monday's visits (without M.R.) and SSA began monitoring the visits on Tuesday and Thursday.

On May 20, 2015, SSA visitation supervisor Gina Davis stated Mother declined the full three-hour visit with M.R. on Tuesdays. Mother requested her visit be from 4:45 p.m. to 7:00 p.m. due to Father's work schedule.

On June 3, 2015, Morfin telephoned Mother and stated that due to the many cancellations, she must provide two-hour advanced notice in addition to her 24-hour advanced notice prior to the children being transported to SSA's offices.

On June 11, 2015, SSA visitation monitor Cynthia Cooksey wrote that she and social worker Nelda Katibian monitored the visit. The family greeted each other with hugs and kisses before having dinner together. Father took C.R. to the restroom, and then joined the family for dinner. After dinner the family sat together and played with various toys. A.R. asked who he looked like. When Mother said he looked like his father, he began to kick Father. Mother asked him to stop and warned she would give him a time-out. A.R. stopped kicking, and Mother asked him to apologize. A.R. stuck out his tongue at his mother. Mother asked him to stop because the younger children were watching. Father placed A.R. in a time-out and he did not listen to his parents while in time-out. Mother asked A.R. to sit still in time-out, and A.R. yelled at his mother and stated he wanted to go with Satan. The parents ignored this statement and encouraged A.R. to sit nicely in time-out. Afterwards, Mother told A.R. why he was placed in time-out and confirmed her love for him.

During this visit, Mother asked if M.R. had a burn mark on her arm. Katibian stated the mark was not a burn and the caretaker explained it was a bug bite. Father noticed M.R. had on mismatched shoes. Ma.R. then blew bubbles in Katibian's face, and Mother asked her to apologize. She eventually did. Father changed M.R.'s diaper, and the family played a game together. The parents noticed C.R. was scratching his back and had a rash. Father scratched his son's back to comfort him. Paternal grandfather came to the visit for 15 minutes. He hugged and kissed each child. Mother told Ma.R. it was not polite to grab things from her hand. They offered the children a snack and played a guessing game. Mother placed M.R. in a time-out for not listening. At the end of the visit, the parents and children hugged and kissed each other, saying goodbye.

On June 16, 2015, M.R.'s new foster mother telephoned Morfin and stated Mother had followed her to her vehicle after the visit and "confronted" her about M.R.'s bug bites. The foster mother stated she felt threatened by Mother. Morfin telephoned Mother and expressed concern about her interaction with the foster mother and "encouraged" Mother to communicate via the social workers. Mother claimed she did not know she could not speak with the foster mother.

Mother cancelled the next scheduled visit on June 18, 2015, stating she had a doctor's appointment. The following three weeks, she cancelled her scheduled Tuesday visits with only M.R. (June 23, June 30, & July 7), stating she was not feeling well and her hands and feet were swollen due to her pregnancy. Mother believed she had toxemia. She cancelled her visits scheduled with all the children on June 25 and July 9. She cancelled her visit on July 23 because she gave birth to her son J.R.

In her closing remarks, Morfin reported M.R. and her brother had adjusted well to their placement and were comfortable in their new home. M.R. was an adorable, healthy, happy baby girl, and all her needs were being met by her new foster parents. The foster parents had an approved adoption home study and wished to adopt M.R. and her brother C.R. Morfin noted that during the last period of supervision, the parents consistently missed their Tuesday visits scheduled with M.R. alone. The parents visit M.R. with her siblings on Thursdays, although they had missed some Thursday visits as well.

*D. Continued Permanency Hearing (30th Month of this Dependency Case)*

At the August 3, 2015, hearing, the parents each submitted section 388 petitions. Father's motion requested that M.R. and C.R. (who was placed in long-term foster care in March 2014) be returned to his care. Father cited the following changed circumstances: On July 28, 2015, Father's newborn son, J.R., was placed in his and Mother's care at the detention hearing. Father completed the 12-step program, attended regular AA meetings and completed counseling services and all other parts of his case

plan. Father stated he had lived a sober life for over two years and the children were highly bonded to him. In his supporting declaration, Father added he could provide the children with a stable and safe home. Father maintained he attended “regular visits” with the children, during which he acted as a “true parent” by changing diapers, providing food, disciplining, and playing with them.

Father provided a copy of SSA’s report written for J.R.’s detention hearing. The social worker, Aurelio Lopez, recommended the child be detained with an authorized release to the parent or suitable adult. The report contained a historical summary of M.R.’s and her siblings’ dependency cases. The social worker noted the family was considered for the CRISP, but it was determined they were not appropriate for these intensive services because the parents failed CRISP in 2013, and they failed to reunify with J.R.’s five siblings. The oldest child was adopted in April 2015. A.R. and Ma.R. had received permanent placement services and were residing together in a long-term foster home. C.R. also received permanent placement services and was living with M.R. and foster parents who wished to adopt them. The court terminated family reunification services in May 2014 for C.R., A.R., and Ma.R. Their permanency hearing was trailed because there was not an identified adoptive home. The court terminated family reunification services with respect to M.R. and trailed her permanency hearing to also find an adoptive home.

The report filed in J.R.’s case stated there was a team decision making (TDM) meeting held after his birth. The team discussed many risks and safety concerns present if J.R. were released to his parents. Most of the discussion centered on the parents’ inconsistent visits, poor parenting, and refusal to accept parenting suggestions during visits. Mother stated her pregnancy impacted her ability to visit, but Morfin reported the parents missed “one third to one half” of visits since 2012. She expressed concern that visits with the children had not progressed past six hours of monitored time together.

The team also discussed the family's strengths, including the parents' long term sobriety and their strong desire to reunify with their children. Chevalier noted he had supervised visits for a few years and saw the children were "high energy, difficult children" and they were "difficult for anyone to supervise." Chevalier opined the parents had matured over time and there was some improvement with visits being less chaotic. He explained, "They started to be more consistent (the parents with limit setting) in visits. They've done well, bring food and engage the kids. There's a level of emotional regulation between the parents."

Also attached to J.R.'s report was a print out of the parents' criminal history. It showed that on February 8, 2015, Father was arrested for disorderly conduct involving alcohol.

Mother's section 388 petition was essentially identical to Father's motion. The declarations contained the same statements.

At the hearing, the court considered argument from the parties. Counsel for the parents argued there was sufficient evidence to grant an evidentiary hearing on their section 388 petitions. The parents claimed they completed their case plans and the children had only been in their adoptive home for three months. Mother argued she missed visits due to a pregnancy-related illness and it would be in the children's best interests to know their new brother J.R. Counsel for SSA and the children opposed the motions. Minors' counsel stated the motions offered nothing new or different from the first section 388 petitions. The parents were very late in obtaining services and much of the documentation submitted related to events completed a long time ago. Counsel noted the parents' AA attendance cards were missing for all of April and part of May.

Minor's counsel stated J.R. was removed from parental custody and was released on CRISP-like conditions. The reports showed the quality of visitation was poor, and Mother attended only approximately 50 percent of her visits over the years. Visitation had to be moved from a park to SSA's offices to keep the children safe. And

finally, there was no showing the parent/child bond outweighed the children's need for permanency. There was no reason to believe M.R.'s current foster parents would not adopt her. SSA's counsel joined in the minor's counsel's arguments. She noted there was no connection between J.R. being released under CRISP and the best interests of the children. She argued the new baby was not evidence of stability, but rather suggested it might be more dangerous to send M.R. and C.R. home when the parents were distracted by the high needs typical of newborns. SSA's counsel found it significant that visitation became more restricted due to the parents' inability to keep their children safe in a public place.

The court stated it was concerned about Father's disorderly conduct arrest. The court noted the case was dismissed, but his contact with police was a fact considered by the juvenile court assigned to J.R.'s dependency case. The trial judge in J.R.'s case did not outright release the child to his parents, and Father's contact with the police was a factor in releasing the child under CRISP-like conditions. The juvenile court in J.R.'s dependency case determined supervision was needed to assure his safety.

Based on all of the above, the juvenile court in M.R.'s case summarily denied the motions, stating there was no showing of a change in circumstances or that granting the motions would be in her best interests.

The permanency hearing was continued to the following day. The court received and filed SSA's reports. The parents chose not to attend, authorizing their counsel to appear for them. Counsel did not cross-examine Morfin and submitted on the reports. The court ruled M.R. was adoptable and no exceptions to termination of parental rights applied. The court terminated parental rights for M.R. and set a permanency hearing for C.R.

## II

The parents contend they made a sufficient showing to warrant an evidentiary hearing and the juvenile court erred by summarily denying their section 388 petitions. We disagree.

“A juvenile court dependency order may be changed, modified, or set aside at any time. (§ 385.) A parent may petition the court for such a modification on grounds of change of circumstance or new evidence. (§ 388, subd. (a).) The parent, however, must also show that the proposed change would promote the best interests of the child. (§ 388, subd. (a)(2); *In re M.W. B.* (1992) 8 Cal.App.4th 1698, 1703.) [¶] Whether the juvenile court should modify a previously made order rests within its discretion, and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*)) ‘. . . “[’]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’” [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 525-526.) In this case, the court did not abuse its discretion.

### *A. The February 2015 Section 388 petitions*

The court terminated family reunification services in early October 2014 and scheduled a permanency hearing for February 2015. At the February hearing, Mother and Father filed essentially identical section 388 petitions citing the following changed circumstances: (1) completion of 12-step program and attending 11 AA meetings; (2) completed counseling with K.C. Services; and (3) tested clean and maintained sobriety for over two years. They asserted returning M.R. to their care would be in her best interests because they regularly visited her, she was bonded to them, and they could provide her with a safe and stable home.

The motion failed to address the primary reason the court terminated family reunification services. For over three years, the parents had not progressed past six hours

of monitored visitation with their children each week. Before M.R.'s birth, the parents' visits with her four siblings were problematic, and on one occasion, the parents engaged in domestic violence while their three-year-old daughter sat between them. Mother needed constant redirection. After M.R.'s birth, matters did not improve. Before releasing M.R. to Mother on CRISP, the monitored visits were described as chaotic due to poor parenting skills. At the time, the social worker opined the children's bad behaviors likely stemmed from lack of structure prior to the dependency case. Rather than seeking help or working to improve their parenting skills, the parents denied there were any problems with visits. They accused the monitors of lying.

When participating in CRISP, and receiving counseling at Casa Teresa, Mother frequently left M.R. strapped in her car seat during the entire visit with her other children. After CRISP failed, the parents again refused referrals to counseling and parenting coaches. They denied there were any problems with their parenting skills and blamed the three visitation monitors for the negative reports. Consequently, during the first six months of the dependency case, the parents made no progress toward the goal of having additional time or unmonitored visitation with their children. Mother was observed as being overwhelmed, angry, and physically aggressive. She made Father change the diapers and refused to listen to any parenting suggestions offered by the monitors, social workers, and parenting coach.

Despite being given only six hours a week (split between two evenings) to see M.R., the parents frequently did not stay the entire time, and cancelled many visits. In November 2013, due to the frequency of last minute cancellations, the social worker required the parents to provide 24-hour notice before each visit. Due to the chaos created by the older children, M.R.'s parents did not pay much attention to her in the limited time they had. The monitors frequently noted M.R. was kept strapped in her car seat or stroller for the entire visit. The following month, in December 2014, the social worker asked if the parents would like to separate their visits with M.R. from the other children

so that the parents would be able to concentrate on then 10-month-old M.R.'s needs. They refused, claiming they did not have the time for a third evening visit with just M.R.

Thus, for the entire first year of M.R.'s life, her parents visited her for one or two nights a week for a few hours at a time. The quality of these visits was complicated by the presence of her energetic older siblings, who demanded their parents' time. For reasons that are not clear in the record, M.R. was kept immobile, strapped in her car seat or stroller. Her parents denied there was any problem with visits and refused suggestions, counseling, or the parenting coach's advice. The parents often claimed their work schedules interfered with visits, but they did not take action to remedy the conflicts.

In July 2014, the month before the first scheduled 18-month review hearing, the parents took some positive steps to satisfy their case plan. They signed up for a second round with an In-Home Parenting Coach and enrolled in counseling. Although the parents engaged in these case plan requirements, they still missed many visits or ended visits early. SSA allowed one visit each week to take place at the park, and although these visits were initially more positive, with the parents, at times, interacting appropriately with their children, the parents still demonstrated poor parenting skills. The parents often ignored M.R. The parents failed to notice or quickly respond when their children wandered away. Yet the parents continued to deny there were any issues and asserted the poor visitation reports were written by liars.

After the court continued the 18-month review hearing, the parents scheduled separate visits with only M.R. on Tuesdays. M.R. was then 19-months old. These visits were sporadic throughout the months of September, October, November, and December. Mother cancelled them entirely for the month of January. M.R.'s visits with her siblings were also sporadic. Very telling is that Mother continued to cancel and shorten her visits even after the court scheduled the permanency hearing for February 4, 2015. It was not until the parents filed their first set of section 388 petitions, claiming regular visitation that Mother insisted on resuming separate visits with just M.R. on

Tuesdays. She blamed the monitors for combining M.R.'s visits with her siblings. The social worker monitoring visits stated their allegation was unfounded and the visits were cancelled because Mother claimed to lack transportation.

We conclude Father's and Mother's long-term sobriety, renewed efforts in counseling, and new attention towards parenting M.R. were commendable but did not establish an order giving them custody of M.R. would be in the child's best interests. "To understand the element of best interests in the context of a [section] 388 petition filed, as in this case, on the eve of the [permanency] hearing, we turn to the Supreme Court's language in *Stephanie M., supra*, 7 Cal.4th 295: '[A]t this point "the focus shifts to the needs of the child for permanency and stability.'" [Citation] . . . . A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.' (*Stephanie M., supra*, 7 Cal.4th at p. 317; see *In re Edward H.* (1996) 43 Cal.App.4th 584, 594 [on eve of section 366.26 hearing, children's interest in stability was court's foremost concern and outweighed any interest in reunification].)" (*In re J.C., supra*, 226 Cal.App.4th at p. 526.)

Mother and Father's evidence did not establish M.R.'s need for permanency and stability would be advanced by an order returning her to their care. The evidence showed then two-year old M.R. was in a loving home with her older brother and foster parents who wished to adopt her. These prospective adoptive parents had assumed full parental responsibility and care for M.R. each full week (168 hours) for three months. Not surprisingly, M.R. was thriving and happy. Mother and Father, who typically could not manage devoting the minimum of six hours a week to M.R., and who had not progressed to unmonitored visitation, were unable to present any evidence M.R.'s best interests in permanency and stability would be furthered by the proposed modification.

Father's counsel asserts the court abused its discretion because the parents addressed all the issues raised in the original dependency petition. He argues the petition

was based on the parents' drug use, failure to complete substance abuse programs, and having a dirty home. Father contends, "[T]he heart of the complaints against the parents regaining custody of M.R. was their inability to control all of their children during chaotic visits. This issue was not part of the dependency petition and no supplemental petition was ever filed to allege such a problem." He suggests M.R.'s case should not be "impacted by the parents['] inability to control the older children that had behavioral issues that made *those children* 'difficult for anyone to supervise.'" He adds, the "parents had enough insight to request visits with M.R. alone" and it was undisputed those visits were calm and good. The premise of his argument is faulty.

The original petition was based in large part on the parents' failure to reunify with M.R.'s older siblings despite receiving reunification services. The petition's "failure to protect" allegation specifically listed as a supporting fact that, "Both parents remain on monitored visitation with their other children." It was alleged there was a substantial risk M.R. will suffer harm "as a result of the failure or inability of her parent . . . to supervise or protect [her] adequately" because the visits with their other children must still be supervised for their safety. Thus, contrary to Father's contention, the fact the parents had not progressed to unsupervised visitation with their other children in over a year was a part of M.R.'s dependency petition. This fact supported the juvenile court's decision to detain M.R. and order visitation with her to also be monitored for her safety.

In the initial detention report, the social worker commented the parents denied there were any issues with their visitation and letting the children run wild without supervision or discipline was "normal." She noted the children's behaviors were likely due to the lack of discipline and supervision prior to the dependency case. Father acts as if he played no role in his children's behavior and their problems do not reflect poorly on his ability to protect and be a good parent for M.R. This is absurd; as is Father's suggestion the parents had "the insight" to request visits alone with M.R. The record plainly shows the parents' initially *refused* the social worker's suggestion to visit M.R.

alone. When visits were finally arranged near the end of the dependency proceedings (M.R. was approximately 18 months old), they missed many visits or cut them short. More importantly, three hours alone with M.R. does not shed any light on whether the parents will be able to supervise and protect M.R. together with her two brothers. It should go without saying that these three children will grow older someday and the parents have shown they are unable to control their current, older, badly-behaving children.

*B. The July 2015 Section 388 Petitions*

The second section 388 petitions were filed six months after the first set of motions. During this time, the parents continued with their renewed efforts at counseling and working with a parenting coach. This participation theoretically should have resulted in positive changed circumstances in the persistent problems surrounding visitation. The record shows matters got worse, not better. In March 2015, visits had to be moved from the park back to the confines of SSA's offices because the parents were not adequately supervising the children and the monitors were concerned for the children's safety. Mother declined to stay for the full three hours during some visits and cancelled others on short notice. This prompted the social worker to impose a two-hour advanced notice requirement in addition to the existing 24-hour advanced notice before the children would be transported. In summary, during this time period visitation was restricted, not liberalized. Moreover, in June and July, the parents cancelled most of their Tuesday visits with only M.R. and missed many of the group visits as well.

We accept Mother's claim she had pregnancy-related illnesses in the weeks before giving birth to her son at the end of July. But cancelling and shortening visits has been a persistent problem for over three years of dependency proceedings. Having an excuse for cancelling visits after reunification services were terminated is not useful in proving a change of circumstances in M.R.'s best interests. "[A]t this point "the focus

shifts to the needs of the child for permanency and stability” [citation] . . . .” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 526.) Such excuses are relevant in assessing a parent’s compliance with their case plan before services are terminated, or to the determination of whether there was continuous contact required for parent/child benefit exception to termination of parental rights. Mother fails to explain how her toddler’s best interests would be advanced by seeing her less than three hours a week, or sometimes not at all.

The parents also maintained the trial court’s order permitting a CRISP-like release of their newborn was a changed circumstance in regards to orders concerning M.R. While the order suggests the parents may be fit to care for their newborn infant, the court’s ruling does not create the inference they were also able to safely care for a newborn and two toddlers at the same time. Noticeably absent from the section 388 petitions are any facts or statements relevant to the parents’ ability to safely supervise and adequately care for multiple children at the same time. The parents do not offer any excuse for not progressing past a mere three hours per week of supervised visitation. Their declarations suggest that taking part in a few parenting duties during “regular visits” is enough. It is not, especially when visits were often shortened or cancelled. The parents demonstrated they were unable to make a full emotional commitment to M.R. by their actions of not being a consistent presence in her life for a mere six hours a week.

It is not in M.R.’s best interests to further delay permanency and stability. Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) As discussed earlier, a parent’s petition for an order returning custody must establish how a change will advance the child’s need for permanency and stability. The section 388 petitions filed in this case failed to address the issue of how they have improved their parenting skills or gave examples of how they were making better choices with respect to M.R.’s best interests. The parents received over three years of services, and their petition did not offer any

evidence suggesting they were close to receiving longer or unmonitored visits anytime in the near future. We conclude the court did not err in denying the motions.

### *C. SSA's Reports*

On appeal, Father maintains this case is not about the parents' deficiencies but really about SSA failing to report the case in an unbiased manner. He notes that in every report, SSA reported Mother missed 24 drug tests and tested positive for marijuana three times, but failed to state these tests occurred before M.R. was born. He also faults SSA for not reporting Mother missed many visits due to her troubled pregnancy with J.R. And finally, Father asserts Chevalier's positive observations were purposefully excluded from SSA's reports in M.R.'s case but were included in SSA's reports generated in J.R.'s dependency case. He concludes SSA's failure to disclose known exculpatory evidence should result in this court ruling all the reports containing hearsay information were inadmissible. "Without the reports, there was no evidence the children should not have been returned to the parents." We conclude his argument misstates the record.

We will start with the allegation of biased reporting regarding the parents' sobriety. Morfin, at the end of nearly every report, in the "assessment/evaluation" summary, restated the same fact about Mother testing positive for drugs. She cut and pasted the same paragraph as follows: "The [c]ourt has for its consideration, the child, [M.R.], . . . born at the [hospital]. The mother, . . . tested negative for drugs at the time of the child's birth. The mother is participating in [f]amily [r]eunification services for child's sibling/half-siblings. However, the mother has missed [24] of her [81] randomized drug tests and has tested positive three times for THC." This paragraph is identical to the first allegation contained in the petition to support the "failure to protect" allegation (§ 300, subd. (b)). It is an accurate account of the history of the case. However, Father complains Morfin's inclusion of this history proves she was biased because she failed to also add a time line showing the positive tests occurred before M.R.'s birth, and that for two years Mother had tested negatively.

We find no evidence of bias by cutting and pasting an allegation stated in the original petition to remind the juvenile court about how the child came to the attention of SSA and the court. In every report, Morfin followed this historical recap with information from the most recent period of review. For example, in the six-month review hearing report, the next sentence reads, “M.R.’s parents . . . continue to randomly drug test negative with the MedTox facility.” In the 12-month review hearing report, Morfin wrote, “The child’s mother . . . continues to randomize drug test negative with the MedTox facility. . . . [¶] [The child’s father] . . . continues to randomly drug test negative with the MedTox facility. . . .” The report for the 18-month review informed the court, “To the mother’s credit, she continues to randomly drug test with negative results through the MedTox facility” and “To the father’s credit, he continues to randomly drug test [with negative results] at the MedTox facility.”

We found nothing in the record to suggest the juvenile court was misled or confused by the cut and paste historical recap in each report. To the contrary, 18 months into the proceedings, the court adopted Morfin’s new case plan eliminating the requirement of attending a substance abuse treatment program because the parents had satisfied that requirement. The court did not cite to evidence of drug abuse or a relapse as a reason for denying the section 388 petitions. SSA and minor’s counsel agreed, “The issue here is visits, and it’s always really been the issue.” We find no evidence to support Father’s contention of biased reporting due to Morfin’s decision to cut and paste the petition’s allegations for historical reference.

Father also faults SSA for not reporting Mother missed many visits due to her troubled pregnancy with J.R. We find no evidence this fact was intentionally hidden from the juvenile court or that the court was unaware of Mother’s excuse for missing most of her visits in June and July 2015 immediately before J.R.’s birth at the end of July. Morfin reported the parents shortened a visit in October 2014 and Mother told Morfin she was not feeling well and might be pregnant. In her report for the continued permanency

hearing, Morfin reported the parents routinely cancelled visits in the months of March through July and “[M]other contributes her cancellations due to her not feeling well in regards to her pregnancy.” Morfin added that at the end of June and July, Mother reported she was not feeling well and suffered from swollen hands and feet due to her pregnancy.

In summary, we conclude there is no support in the record for Father’s contention the pregnancy-related problems were unreported. Moreover, we note Mother’s pregnancy-related problems occurred *after* the court terminated parental rights and Father is suggesting additional cancelled visits, albeit excusable, should be considered a change of circumstances in M.R.’s best interests. We cannot join Father in this leap of logic. And we find it very telling that Father offered absolutely no excuse for why he could not have visited M.R. or her siblings without Mother during the time of her troubled pregnancy.

We also note the juvenile court was aware of the pregnancy-related problems, and stated during the permanency hearing, “The [c]ourt wants to specifically note for the record that in making the evaluation in terms of regular consistent visitation, [the c]ourt has considered Mother’s pregnancy leading up to this hearing. And counsel has commented on that. But the extent of the time of visitation . . . remains problematic. And independently the court would find that, assuming that [the regular visitation prong of the parent/child bond exception to terminating parental rights had] been met, that the underlying substantive nature of the relationship as parents is not availing under the code . . . .”

Father asserts further evidence of biased reporting is found when one sees that Chevalier’s positive observations of visits were purposefully excluded from SSA’s reports in M.R.’s case but were included in SSA’s reports generated in J.R.’s dependency case. We disagree. Chevalier’s positive observations were included in J.R.’s dependency case as part of the social worker’s summary of the TDM, where the issue to be decided

was whether J.R. should be removed from his parents' care. Chevalier was present at the meeting and identified "family strengths," including that the parents had matured and were making better parenting decisions during visits. The social worker in J.R.'s case did not include in her report any summaries of visits monitored by Chevalier. This would not have been possible because the case was in the initial stages and there was no visitation to report on.

There is no evidence Chevalier made positive observations in his written summaries submitted to Morfin in M.R.'s case. In her reports, Morfin summarized Rider's and Chevalier's e-mailed reports for the juvenile court and also advised the court that extensive written summaries of visits could be provided if requested. The court did not request them, and the parents did not ask the court to review them.<sup>1</sup> Therefore, we have no reason to speculate Morfin hid exculpatory information given to her by the monitors. The record shows Morfin included positive information when it was available. There are several examples, such as when Morfin reported, "Rider stated the visit 'went well' and that the parents interacted with M.R. by singing songs and playing games. [Rider] stated that the parents were able to provide adequate supervision for M.R. when the other children were not present." In conclusion, we do not find any aspect of the reports to be biased.

#### *D. Termination of Parental Rights*

The parents' challenge to this order is dependent on prevailing on the section 388 issue discussed above. We have concluded the court did not abuse its discretion in denying the section 388 petitions and, therefore, we need not say more regarding the order terminating parental rights.

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As aptly noted by SSA, the parents chose to stipulate or submit on the reports at most of the hearings and they never cross-examined the social worker or the visitation monitors whose statements were summarized in the reports. The parents made repeated accusations that the monitors were lying but over the two-year dependency case made no effort to prove it.

IV

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.