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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re S.B., a Person Coming Under the  
Juvenile Court Law.

H036958 & H037255  
(Santa Clara County  
Super.Ct.No. JD15010)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

M.W.,

Defendant and Appellant.

M.W. appeals from a juvenile court order continuing the removal of S.B. from her care. We will affirm that order and two related orders on the merits.

**FACTS AND PROCEDURAL BACKGROUND**

S.B., a girl, was born in June of 2003. Within months she was removed from her parents' custody and placed in the care of the appellant herein, M.W. Eventually her parents lost their parental rights and the juvenile court freed S.B. for adoption. In 2005 appellant agreed to adopt her.

Then began a series of postpermanency review status hearings under Welfare and Institutions Code section 366.3.<sup>1</sup> At the first one, conducted on November 10, 2005, when the minor was two and one-half years old, the Santa Clara County Department of Family and Children’s Services (Department) reported that appellant had completed the required PRIDE (Parent Resource for Information, Development, and Education) program, also known as the kinship relative caregiver workshop, in April of that year. Appellant was informed that an adoptive home study application would follow and that she needed to complete it before an adoption home study social worker could be assigned. Despite continual prodding, reminders, and inquiries, however, appellant never submitted a complete application. A social worker wrote in a report that appellant “has not shown any initiative or followed through in submitting the required intake information” and had told the social worker that she was pregnant and had not been “up to completing any paperwork” because of “a miscarriage in the past year.” The social worker opined that “issues related to [her] previous pregnancy and loss may be contributing to her inability or unwillingness to follow through with the requirements for [S.B.’s] adoption.”

In 2008, appellant was required to undergo a PRIDE refresher course because the certification was valid for only three years and had lapsed.

In April of 2010, the social worker stated that the adoption application was “nearly complete.”

By then, however, other events had overtaken the adoption process, and it was never completed.

At the end of 2007, appellant gave birth to a son, Vincent.

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<sup>1</sup> Further unlabeled statutory references are to the Welfare and Institutions Code.

An interim review report in August of 2008 stated that the now five-year-old S.B. was bonded to appellant but at times seemed “depressed and very insecure.” The report described S.B. as desiring to express something but being unwilling to do so lest she lose her family.

In April of 2009, a social worker reported that appellant had changed her mind and stated that she wanted to pursue legal guardianship instead of adoption because it would be easier for her. She had not taken S.B. for her required annual medical and dental check-ups. It was unclear who was caring for S.B. at night or where her bed was. Appellant had a boyfriend, Richard C., who was living with her and S.B. but had not submitted to fingerprinting for child welfare purposes. Later that month, the Department reported in writing that it suspected appellant was telling S.B. not to talk about family affairs with social workers. By then the Department had discovered that school records showed Henrietta D., appellant’s mother, to be S.B.’s guardian rather than appellant herself.

Further reports that spring showed that appellant continued to fail to take S.B. to the doctor and dentist. On May 28, 2009, S.B. finally visited the dentist. She had six cavities and required root canal therapy for one tooth, two crowns, and one extraction (work that a later report stated was done five months later). About this time the child welfare authorities were alerted that S.B. had pushed the now 18-month-old Vincent underwater when the two were in the bathtub. S.B. reported this incident herself to the social worker. A contemporaneous Court Appointed Special Advocate (CASA) report stated that S.B.’s daycare provider, Susana, was S.B.’s sole “emotional support.” S.B. had attended the same daycare since she was 6 months old and called Susana “mommy.” Appellant did not celebrate S.B.’s birthday, so Susana arranged a birthday party with cake, balloons and gifts. Conversely, when Vincent had his first birthday, appellant held a party for him. S.B., the CASA report stated, “is not being treated as an equal by this family” and the writer opined, “I do not think this is an appropriate home for her.” A

social worker concluded, “It is this worker’s opinion that [S.B.] is tired of talking to Social Workers and various other professionals who are supposed to be helping her and no one is listening. [S.B.] is tired of telling everyone that she needs to be loved and cared for.”

About this time, a social worker received a child abuse and neglect referral regarding S.B. It had been reported that S.B. had engaged in sexualized behavior at day care. Susana reported that appellant displayed no positive feelings or love toward S.B.

A CASA employee reported in October of 2009 that S.B.’s placement situation was unhealthy, not nurturing, and unsafe. S.B. told her that she was smoking cigarettes that she collected off the ground and that Richard C. smoked marijuana in front of her. S.B. asked the employee what “humping” and “whore” meant and if it was okay for a little kid to drink beer. She stated that she did not have a bed to sleep in. Appellant called S.B. a “little liar” and the employee heard her say to S.B., “[d]on’t touch me, you give me the creeps.”

Reports in the first half of 2010 were mixed. Some accounts showed improvements in the home and in S.B.’s emotional state. Richard C. had moved out in February of 2010 and appellant was pursuing the adoption formalities. The CASA employee, however, felt that S.B. was “[continuing] to . . . languish” in a home in which she was not liked.

In November of 2010, the Department summarily removed S.B. pursuant to subdivision (n)(4) of section 366.26 because of allegations of physical abuse and neglect. In the Department’s status review report of January 10, 2011, a social worker, Peter Kehoe, reported visiting S.B. at school and seeing “a bright red mark on her throat, scratches on her arm and face and a mark on her leg.” S.B. was reticent about the provenance of these injuries but eventually said that Vincent had caused all of them except the mark on her right leg, which was caused by contact with a nail. The next day, however, S.B. was in foster care and changed her story. She revealed that she was afraid

to go home because there would be trouble. The scratch marks on her arms and face had been inflicted by Henrietta D. out of anger. Those on her neck were from a punch from Richard C., who would hit and push her periodically. Appellant did not punch her, S.B. said, but did threaten, spank, and yell at her. One threat by appellant was that she could be taken back to a children's shelter where "they keep you in cages." When S.B. first saw the shelter during the removal process she asked, "Where are the cages?"

Henrietta D. told the authorities that she inflicted the marks accidentally. S.B. was about to run out into a busy street and Henrietta grabbed her for her own safety. Appellant endorsed Henrietta D.'s account.

The Department instituted the proceedings that are before us on appeal. (See § 366.26, subd. (n)(4).) The juvenile court ordered that a trial take place, and it began March 8, 2011.

At trial, M.W. testified. Essentially, she denied any occurrences of physical or emotional abuse or neglect. So did Henrietta D. in her testimony. As we will describe in more detail below, a psychiatrist and neurologist, David Arredondo, Ph.D., doubted that S.B. had suffered neglect and felt that S.B. was attached to M.W. and her family and would suffer in their absence.

Against this testimony, Kehoe's supervisor, Leslie Griffith, essentially testified about matters contained in the Department's various reports over the years. She also testified that S.B. wanted to live with M.W. and enjoyed a supervised visit with M.W. in Griffith's office, but assessed the risk to S.B. of doing so as "moderate to high." Nathan Thomas concurred in Griffith's assessment. Thomas, a licensed clinical social worker for Legal Advocates for Children and Youth, also had reviewed the written reports on the case and spent two and a half hours with S.B., interviewing her and observing her at M.W.'s home, at daycare, and at school. Thomas was dubious that S.B.'s expressed desire to live with M.W. was wholehearted. Susana, S.B.'s daycare provider since shortly after S.B.'s birth, testified that S.B. told her Henrietta D. and Richard C. were responsible

for her physical injuries. A neighbor of M.W., in whose house S.B. spent many hours, testified that S.B. told her the same thing. The neighbor stated that “the vibe or feeling I got from the entire family was that [S.B.] was a nuisance” to them. In contrast to Dr. Arredondo’s testimony, Stephanie Raney, Ph.D., a licensed clinical psychologist, characterized the relationship between S.B. and M.W. as “troubled” and “insecure” and opined that M.W. and Henrietta D. needed to learn better parenting skills.

The juvenile court ordered that S.B. continued to be removed from M.W.’s care under subdivision (n)(3)(B) of section 366.26. It found as follows: “The Court acknowledges that [S.B.] has a bond with [appellant], Vincent and [Henrietta D.]. The Court also realizes that removing [S.B.] from [appellant’s] care and from Vincent will cause her to experience emotional suffering or loss. However, [S.B.] has not experienced any stability in her life given [appellant’s] lack of commitment to adoption, and she has suffered physical and emotional abuse and general neglect while in [appellant’s] care. . . . [T]he Court believes that [S.B.] will not develop into a stable, well-adjusted adult if left in the care of [appellant].” The amended order after hearing was filed May 10, 2011.

M.W. thereafter filed a de facto parent request, which was denied on June 10, 2011. She then filed a request to change court order seeking the return of S.B. to her care, which was denied on August 2, 2011. M.W. filed separate notices of appeal from the May 10 order (H036958), June 10 order (H036958), and August 2 order (H037255).

## DISCUSSION

### I. *Threshold Procedural Considerations*

Appellant failed to comply with rule 8.454(e)(5) of the California Rules of Court, which requires the filing of a notice of intent and request for record in connection with the filing of a petition for writ review. And she was required to file a writ petition in a timely manner to seek relief from the juvenile court’s May 10, 2011 order after hearing. She filed a request for review two days late and did so in the form of a notice of appeal, which is not permitted (*id.*, subd. (n)(5)). She asks us to treat her appeal as a writ petition

and as one timely filed. If we do not accede to her request, she argues in the alternative that she was entitled to, but did not receive, effective assistance of counsel.

We will consider the case on the merits and need not address appellant's ineffective assistance of counsel claim. "Because the question whether [appellant has] preserved [her] right to raise this issue on appeal is close and difficult, we assume that [she has] preserved [her] right." (*People v. Champion* (1995) 9 Cal.4th 879, 908, fn. 6, disapproved on another ground in *People v. Combs* (2004) 34 Cal.4th 821, 860.)

"An appellate court has discretion to treat a purported appeal from a nonappealable order as a petition for writ of mandate," although this "power should be exercised only in unusual circumstances." (*H. D. Arnaz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366–1367; accord, *Olson v. Cory* (1983) 35 Cal.3d 390, 401.)

The general rule for parents at a termination of parental rights hearing under section 366.26 is that they must file a notice of intent to file a petition for writ relief within seven days of the date of the order if they were present at the hearing or within 12 days if notified of the result only by mail. (Cal. Rules of Court, rule 8.450(e)(4)(A), (B).) Still, a parent who fails to file a timely notice of intent may obtain relief from the default for good cause shown. (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 721, 722.) Good cause may be established by the juvenile court's failure to give oral notice of the writ requirement to parents present at the hearing, or to provide written notice of the writ requirement to them if they were not present at the hearing. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 838–839.)

This is, however, not the usual case. Appellant is not the minor's adoptive parent and this was not a hearing to terminate parental rights. For years appellant forwent the opportunity to adopt the minor. She does not enjoy the same rights as would a parent, and she has shown a high degree of dilatory conduct. We have found no cases

considering whether a person similarly situated to appellant may obtain relief from default, and the Department urges that we not allow her to do so.

As stated, however, the question of procedural bar is close and difficult, which favors a resolution on the merits. (*People v. Champion, supra*, 9 Cal.4th at p. 908, fn. 6.) In addition, deciding the case on the merits makes more likely the achievement of the recognized urgent need (§ 366.28, subd. (a)) to resolve this case and stabilize the minor’s living situation. A dismissal could result in a petition for review to our Supreme Court and further proceedings there that would delay a resolution. Finally, although appellant long neglected to adopt the minor, the court did not inform her of her obligation to act quickly by writ petition at the hearing or in any court document we have been able to locate in the record. (See *In re T.W.* (2011) 197 Cal.App.4th 723, 730–731 [comparing the equities of allowing or denying relief from this type of procedural bar depending on the factual circumstances concerning notice].) The delay in filing the notice of appeal was only two days. This is not, then, a case in which at the decisive stage it was necessary “ ‘to chase [parents] down and prompt them into taking the elementary steps necessary to keep their claim of parental rights alive.’ ” (*Lisa S. v. Superior Court* (1998) 62 Cal.App.4th 604, 607.) With the well developed record before us—it is thousands of pages long—we think that deciding the case on the merits is more certain to be expeditious than any other course of action. We will proceed to address the merits of appellant’s challenge to the juvenile court’s order that S.B.’s continued removal from M.W.’s care was in the minor’s best interest.

## II. *Substantive Issues*

### A. *Admitting Reports of Social Worker Unavailable to Testify*

Appellant claims that the juvenile court erred when it allowed reports to be admitted although the Department social worker who wrote them was unavailable to testify and allowed another worker with no knowledge of the case to testify about the reports’ contents.

Peter Kehoe, the social worker, had been involved in the case for some time. Trial began March 8, 2011. When the parties came to court at the beginning of trial on March 8, 2011, it was revealed that a supervising social worker had filed a memorandum that day advising the juvenile court that Kehoe would be on leave for “an unknown duration” for a cause not specified and would not be appearing. County counsel stated that he had notified the parties of this fact on March 1.

Counsel for appellant did not question Kehoe’s unavailability. In a long pretrial discussion about this witness, the parties and the juvenile court commented on a possible reason for his absence but essentially concluded that it was not their business to try to ascertain the basis for it with certainty. Appellant’s counsel ultimately stated:

“Mr. Kehoe is not here and we have no idea [of] the reason [for] his absence and, quite frankly, we’re not that interested, so . . . we’re not going to ask any questions about that.”

However, defense counsel objected that any other witness would lack Kehoe’s knowledge of the contents of his reports and that such a witness’s testimony would be purposeless. He moved that Kehoe’s reports be excluded. The juvenile court denied the motion.

#### 1. *Ineffective Assistance of Counsel*

The juvenile court noted, though not critically, that appellant’s counsel had not subpoenaed Kehoe, and that the court had not ordered his appearance either. At the threshold, appellant argues that the juvenile court denied her motion because counsel failed to subpoena Kehoe and therefore she received ineffective assistance of counsel. Respondent argues in turn that because appellant is not a parent she lacks standing to claim ineffective assistance of counsel.

There is no dispute that a parent may claim ineffective assistance of counsel in a juvenile dependency appeal. (See generally *In re Dennis H.* (2001) 88 Cal.App.4th 94.) “To establish ineffective assistance of counsel in dependency proceedings, a parent ‘must demonstrate both that: (1) his appointed counsel failed to act in a manner expected of

reasonably competent attorneys acting as diligent advocates; and that (2) this failure made a determinative difference in the outcome, rendering the proceedings fundamentally unfair in that it is reasonably probable that but for such failure, a determination more favorable for [the parent's] interests would have resulted.' ” (*Id.* at p. 98, capitalization omitted.)

Appellant is not a parent, however, and respondent contends that she lacks standing to raise an ineffective assistance of counsel claim.

In our view, counsel did not act deficiently, so there is no need to decide whether appellant is entitled to assert an ineffective assistance claim. It is highly unlikely that the juvenile court denied appellant's motion because counsel failed to subpoena Kehoe. Rather, the court had correctly been advised during the hearing by S.B.'s counsel that at this type of hearing, which was not jurisdictional, appellant did not have the right to cross-examine Kehoe. (Compare § 355, subd. (b)(2), with § 358, subd. (b).) S.B.'s counsel explained: “I do believe accepting the reports is acceptable. I think it's well settled law and I agree with the County [that section] 355 does not apply after the jurisdictional hearing. [¶] While this is an important hearing, no one is denying that, I don't think it is appropriate to confuse the jurisdictional hearing with this hearing. I think if the legislature wanted [section] 355 to apply to this type of hearing, they could have made those restrictions apply here.” The court itself said, “I don't see anywhere in the statute that says that the Department has to present the preparer because they can just submit the social study report.” This was correct under section 358.

Moreover, when counsel for the Department, an officer of the court, stated that Kehoe was unavailable, it meant just that: Kehoe was unavailable. It would have been an effort of dubious utility to try to subpoena the unavailable witness, introducing a procedural knot and delay into the proceedings. In our view, counsel could do no more than try to exclude Kehoe's reports once the Department stated that he was unavailable. (Compare *People v. Manson* (1976) 61 Cal.App.3d 102, 196.)

Of course counsel could have asked how long Kehoe would be unavailable and sought a continuance. (See *Brown v. Superior Court* (1987) 189 Cal.App.3d 260, 264.) However, we cannot say his performance was deficient for failing to do so.

Ineffective assistance of counsel is, of course, normally at issue in criminal cases, and in them the well-known rule is that “if the record does not preclude a satisfactory explanation for counsel’s actions, we will not, on appeal, find that trial counsel acted deficiently.” (*People v. Stewart* (2004) 33 Cal.4th 425, 459.) At least two cases have imported that rule in addressing ineffective assistance of counsel claims in the juvenile dependency context (*In re N.M.* (2008) 161 Cal.App.4th 253, 270; *In re Dennis H.*, *supra*, 88 Cal.App.4th at p. 98, fn. 1) and we adopt it here.

There could be a satisfactory explanation for counsel’s failure to make further efforts to summon Kehoe. Hearsay evidence contained in written social worker reports is admissible in juvenile dependency proceedings if it is reliable. “In juvenile dependency cases it is settled that hearsay evidence . . . may . . . be considered at a dispositional hearing.” (*In re Vincent G.* (2008) 162 Cal.App.4th 238, 243, italics deleted; see § 358, subd. (b).) Such evidence must, as alluded to, “possess an intrinsic reliability” (*In re Cindy L.* (1997) 17 Cal.4th 15, 28) to be admissible, but nothing in the record before us suggests a lack of such intrinsic reliability even though some of the content might be disputed. The juvenile court was thus likely to consider the reports with or without Kehoe’s testimony; moreover, counsel reasonably could have concluded that Kehoe would be unlikely to reject his prior views and that it was just as well not to haggle over a matter whose outcome was unpromising for his client’s cause. At least we cannot say on this record that such explanations for counsel’s inaction could not exist or would be untenable if proffered. We find no ineffective assistance of counsel.

2. *Authorizing Another Witness to Testify Regarding the Reports*

Accordingly, we proceed to the merits of the case. As will be recalled, Leslie Griffith, a supervising social worker, testified in Peter Kehoe's absence.

The Department contends that at a hearing like this one, which was dispositional in nature, the writer of the report need not be available to testify as a prerequisite to the admissibility of the report. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816.) Social study reports "are prepared by disinterested parties in the regular course of their professional duties. These elements of objectivity and expertise lend them a degree of reliability and trustworthiness . . . ." (*In re Malinda S.* (1990) 51 Cal.3d 368, 377.) The Department further quotes this well understood point: " 'When ruling in dependency proceedings, the welfare of the minor is the paramount concern of the court. [Citation.] The purpose of these proceedings is not to punish the parent, but to protect the child. [Citation.] As a person, the child's future is as vitally affected as is that of the parties competing for his or her custody. [Citation.] Consequently, a trial court should not restrict or prevent testimony on formalistic grounds. On the contrary, the court should avail itself of all evidence which might bear on the child's best interest.' " (*In re B.D.* (2007) 156 Cal.App.4th 975, 983.)

The foregoing assemblage of authorities does offer a somewhat bureaucratic view of the law. All institutions are human and are populated by workers who, being human, are imperfect. Bias and subjectivity can creep into any institutional procedure, and courts are a safeguard—at times the ultimate safeguard—against unfair or arbitrary results. Exercising this role is particularly important given appellant's interest in the case—an interest not as great as that of a parent, but not inconsequential either.

In addition, and notwithstanding the general statement made in *In re B.D., supra*, 156 Cal.App.4th at page 983, even if " 'social studies will generally contain accurate reports of interviews with children, the statements of the children themselves found therein do not necessarily possess any particular guaranties of reliability.' " (*In re Lucero*

*L.* (2000) 22 Cal.4th 1227, 1245 (plur. opn.); accord, *id.* at pp. 1250-1251 (conc. opn. of Kennard, J.).)

Even if the juvenile court erred, however, in some respect, such as failing to strive to have the Department exercise every effort to make Kehoe available for cross-examination, it was harmless. There is no reasonable probability that absent any possible error by the juvenile court—we emphasize that we are not stating that the court erred—the outcome would have been more favorable to appellant. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) The court properly took judicial notice of the social studies previously admitted into evidence (Evid. Code § 452, subd. (d)(1)), and considered them for the truth of their contents (see *In re Vincent G.*, *supra*, 162 Cal.App.4th at p. 243; § 358, subd. (b)). Those many reports set out in detail the frequent neglect of and indifference to the emotional and domestic needs of S.B., regular deficiencies that later came to be accompanied by physical abuse and an unsafe environment generally. Notably regarding indifference, appellant delayed adopting S.B. for years and at one point desired a guardianship instead because it would be more convenient for her. After hearing testimony and considering the evidence before it, the court stated that it “is not convinced that [M.W.] truly wishes to adopt [S.B.]” Moreover, as the court accurately concluded after the end the trial, there was strong evidence that S.B. suffered abuse and neglect. Any error in admitting Kehoe’s reports was harmless.

B. *Limiting the Scope of an Expert Witness’s Testimony*

Appellant claims that the juvenile court prejudicially erred in discounting the testimony of Dr. Arredondo, the psychiatrist and neurologist, about the effects on S.B. of being separated from appellant and removed to a new living situation.

Dr. Arredondo prepared an attachment study in accordance with a juvenile court order, issued by another judge, entitled, “Attachment Study.” The order stated that he should examine the attachment between S.B. and M.W. to help the court consider S.B.’s best interests in deciding whether she should be removed from appellant.

Following a long discussion, the juvenile court ruled that Dr. Arredondo's testimony must be limited to the issues identified in the prior court order, i.e., the bonds between S.B. and appellant and members of appellant's household. At one point, the court stated that "as a judge, I'm bound by the order of [the other judge]." In general, however, the court was concerned that Dr. Arredondo not try to predict the future of S.B.'s emotional state outside M.W.'s care because it felt it could not be done. In addition, the court did not want Dr. Arredondo to testify about matters for which one or more parties had had no notice and that might introduce other evidentiary complications. The court therefore decided that Dr. Arredondo "can tell me . . . the extent of the attachment [and] whether he thinks it's in her best interests to be removed. So not the [psychological] effect, but whether or not it's in her best interests, and there I see that as a big difference." Dr. Arredondo cautioned during these proceedings, however, that such a limitation would impinge on his ability to give an accurate assessment.

Dr. Arredondo provided testimony that was favorable to appellant in a number of respects. S.B. seemed securely attached to appellant and the two had a mother-daughter-type relationship. S.B.'s relationship to Vincent was indistinguishable from that of biological siblings. S.B. and Henrietta D. seemed to have the equivalent of a grandparent-grandchild relationship. Dr. Arredondo opined that S.B.'s best interest lay in continuing to reside with appellant. In the short-term, removing her from the home would cause great emotional distress, and in the long-term it would likely impact her sense of trust in the world and undermine her sense of emotional security. He did not see evidence of neglect.

When Dr. Arredondo had concluded, the juvenile court stated that it did not want him to testify beyond the limits of the prior court order. At one point during a long discussion with the parties, the court summarized, "I just limited this morning when we talked about Dr. Arredondo [that he] could talk about the psychological and emotional connection between [S.B.] and [appellant], [S.B.] and Vincent, and [S.B.] and

[Henrietta D.].” But, the court stated earlier in the discussion, “what he wants to testify about far exceeds the scope of what [the other judge] ordered or what she okayed and what was asked.” The court made clear it was going to consider Dr. Arredondo’s testimony only for the limited purposes it originally requested. Appellant argues that “Dr. Arredondo’s opinions were largely ignored” as a result.

“On appeal, ‘an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence . . . .’” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1007–1008.) To find an abuse of discretion in a dependency case, the reviewing court must be persuaded that the juvenile court’s ruling fell outside the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

We see no abuse of discretion here. The juvenile court heard an enormous amount of evidence promoting each party’s view about the proper disposition. It could reasonably direct that Dr. Arredondo confine his testimony to the questions of bonding and attachment. It was for these purposes that the juvenile court had authorized Dr. Arredondo’s involvement. The court could reasonably disregard anything that it felt ventured into other areas. There was no error.

#### CONCLUSION

The juvenile court’s (1) amended order after hearing, filed May 10, 2011, continuing S.B.’s removal from M.W.’s care pursuant to subdivision (n)(3)(B) of section 366.26, (2) decision re: de facto parent request and order relieving counsel, filed June 10, 2011, and (3) order denying 388 Petition, filed August 2, 2011, are affirmed.

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Duffy, J.\*

WE CONCUR:

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Rushing, P. J.

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Elia, J.

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\* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.