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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

M.R., Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B287843 (Los Angeles County Super. Ct. No. DK15809)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Hon. Stephen C. Marpet, Commissioner Presiding. Petition denied.

Keiter Appellate Law and Mitchell Keiter for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Petitioner is the mother of two daughters, five-year-old M.R. and two-year-old H.R., both dependents of the juvenile court. On February 13, 2018, the juvenile court terminated reunification services and set a selection and implementation hearing under Welfare and Institutions Code section 366.26.[1] Mother filed a petition for extraordinary writ pursuant to rule 8.452 of the California Rules of Court challenging the order. We conclude substantial evidence supports the juvenile court's order and therefore deny the petition.

PROCEDURAL BACKGROUND AND FACTS

A. General Factual Material

After the birth of her older daughter, mother and the children were homeless for an uncertain period of time until December 2015, when they moved into an apartment. After mother expressed suicidal thoughts to the reporting party, the Department of Children and Family Services conducted an assessment at mother's apartment on February 23, 2016.[2]

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[1] Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

[2] Because mother's unpredictable behavior was the principal cause of the termination of reunification services, we provide significant detail about mother's mental health.

Mother told the social worker that she felt overwhelmed and had thoughts of doom. She said she had researched successful people and that they needed to hurt others to be successful. Mother reported hearing voices telling her that she will never succeed and that it would be better for her to give in. She said, "I don't want to have to kill myself but I wish I would die," and reported having suicidal thoughts as recently as the prior week. Mother denied having considered killing her children. She reported that she was diagnosed with depression probably in 1999 and prescribed Celexa. She said she had taken medication for some time but no longer did.

Mother permitted the social worker to assess her home. The social worker reported that the children's room was so cluttered that it was difficult to enter. The bed and crib were filled with stuff. M.R. was sleeping on the floor among dirty clothes and clutter, without a pillow or blanket. H.R. was sleeping in mother's bed and there was a cord wrapped around or underneath her. The bathroom smelled of cigarette smoke; a lighter and a pack of cigarettes were on the sink. The next day the social worker found both children adequately dressed. M.R. had no visible signs of abuse or neglect, and H.R. appeared to be in good health.

When the social worker explained the Department would recommend placing her children in protective custody, mother said, "I know I shouldn't be relieved but I am. I have been so overwhelmed I don't know what I am capable of doing at this point."

The Department also reported that mother had been hospitalized approximately three times for self-harming behavior or taking too many pills.

Mother later acknowledged that she had been arrested three times before her children were born: once around 2007 trying to prevent her car from being repossessed, again in 2007 for trespassing after a fight with her then-boyfriend, and once in 2009 for refusing to pay a taxi driver.

B. The Jurisdiction Hearing

On February 29, 2016, the juvenile court conducted a jurisdiction and detention hearing and ordered that the children be detained with the Department for suitable placement; the Department provide mother with family reunification services, including mental health services; and mother have monitored visitation at least twice a week for two hours.

C. Mother's Erratic Behavior During Reunification

On March 27, 2016, mother refused to return the children to their shelter caregiver after a visit. After M.R. indicated to mother the caregiver had spanked her, mother took the children to a police station. The police and an in-house social worker found no evidence of abuse and released the children to the caregiver. The caregiver denied the allegations.

The Department reassessed mother's home on March 29, 2016. It was clean and organized, but still had a cigarette smell. Mother said the prior tenants smoked in the home. Mother denied she ever had been suicidal. She later explained that she had been doing poorly in school and had wanted to drop her classes.[3] She told her therapist she needed a doctor's note stating that she could not handle the stress, pointing to a

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[3] Mother and her relatives had reported that she previously attended the University of North Carolina and Columbia University.

February 12, 2016 email from the Department of Student and Alumni Services at UCLA Extension advising her about refunds for her classes. She denied having told the therapist that she wanted to hurt herself. A therapist who had helped M.R. in January and February 2016 with transitioning out of homelessness confirmed that mother had asked her for a note to withdraw from classes. The therapist also reported that a previous therapist told her that mother had threatened suicide.

The Department referred mother to Kedren Community Health Center for an assessment. She initially refused, but later relented. Mother described numerous symptoms, including depression, disappointment, isolation, and paranoia about people sabotaging her success. She reported having an open case with the Department, but not being required to attend therapy, instead saying that she came in because she felt like she "might need to talk to a therapist again." She also said that her mother had emotionally and verbally abused her.

On April 6, 2016, the juvenile court placed M.R. and H.R. with maternal grandmother.

From April through June 2016, mother spoke with a Kedren therapist multiple times, but appears to have attended only two therapy sessions. On May 15, 2016, mother stated that she did not believe in psychology and asked that meetings with her pastor suffice for ordered therapy. During the last discussion with Kedren, mother said she wanted an evaluation, did not need therapy, and requested her case be closed. But the therapist told mother she "cannot speak much to progress in therapy or changes in the client's diagnosis."

On August 8, 2016, mother's attorney moved to withdraw as counsel of record due to "a substantial breakdown in the

attorney-client relationship." The court granted the motion and appointed new counsel. On December 7, 2016, new counsel applied ex parte to be relieved as counsel of record due to "an irreparable breakdown" of the attorney-client relationship. The court granted the application and appointed a third lawyer. On December 13, 2016, mother asked to be represented by attorney Steven Kimmel. She stated that she had asked her last attorney to sign a substitution of attorney form, but he had refused. She believed his ex parte application "was some type of railroading escapade to try to keep me stuck with a court-appointed lawyer."

During the month of December 2016, mother had online services with a therapist. By January 2017, mother had also completed at least 12 sessions of parenting education classes.

In advance of a February 15, 2017 hearing, the Department spoke with mother about her earlier-expressed suicidal thoughts. Mother said that when she had reported being overwhelmed, she meant just with school. She said that when she moved to California, she "got into acting. Because of that, I can say things that I don't mean." She also denied that her apartment had been in disarray during the initial home assessment, explaining that she had just moved in and had gotten lots of donations.

Mother then resumed therapy at Kedren on about April 6, 2017. A Kedren psychiatrist evaluated mother that month and did not recommend medication. From April to September 2017, mother participated in at least seven sessions ranging in duration from 30 to 90 minutes.

On April 21, 2017, while visiting California with M.R. and H.R., maternal grandmother told a social worker that mother would not release the children to her for the night. Mother later released the girls after maternal grandmother threatened to

contact the Department. Maternal grandmother returned with the children to the east coast, ending her Los Angeles visit earlier than expected, because she did not want things to escalate.

On May 3, 2017, mother called a Department social worker and questioned her about personal issues unrelated to the case, asking, for example, about her nation of birth, and calling her "an evil person." Eventually, the social worker ended the call. Mother then texted the social worker additional, similar comments. Mother also called the supervising social worker on the same day. She accused the supervising social worker of making money off her children and accused various entities and individuals in the Department and the juvenile court of being "in cahoots to make money."

On May 4, 2017, mother called the supervising social worker again. She accused her of not recognizing Mother's Day, questioned her about what she planned to give her own mother, and again accused people of profiting from keeping her children from her. The supervising social worker ended the call. Mother then called her again and asked for her first, middle, and last name. The supervising social worker gave her first and last name, but not her middle name. Mother became upset and said, "so you can know everything about me but I cannot know about you?" Mother "started to berate" the supervising social worker, who told mother she "is concerned about mother's behavior and the things she is saying." When the supervising social worker said she would end the call, mother said she would just keep calling.

On May 5, 2017, an unidentified woman called the assistant regional administrator and the director's office, voicing concerns about not having unmonitored visits with her children.

The Department believed the caller "more than likely" was mother, although she gave a different name. Mother then called the supervising social worker and asked whether she had spoken with the assistant regional administrator and, if so, what they discussed. The supervising social worker explained mother had not yet been allowed unmonitored visits because the Department needed updates about her progress in treatment and had concerns about her behavior. Mother called back several times that day. The Department described her as increasingly paranoid about her calls being monitored or recorded.

At a May 23, 2017 child and family team meeting, the supervising social worker expressed concerns about the recent calls. The Department reported that mother became irate and began shouting. When a social worker told mother that they had to address the court orders, "Mother jumped up from the table and lunged toward [her]." The supervising social worker called for security. Mother shouted on her way out of the building about childbirth, breastfeeding, and her assumptions about the social workers' experiences with the same. The social workers "stayed back . . . to avoid further confrontation [and] concluded that it was unsafe to meet with Mother other than the office near security as her phone calls and in person conduct have been inappropriate and aggressive."

D. Therapist Report and Team Meeting

On August 28, 2017, a therapist reported that mother had "been working on treatment goals, which include utilizing positive coping skills to manage daily stressors and positive parenting psycho-education." He reported that mother had been compliant over the past four months with her mental health treatment and that mother denied ideations of self-harm and

harm to others. The therapist also reported that mother presents engaged in sessions and motivated to complete the court-ordered plan.

On September 1, 2017, the Department told mother it had liberalized her visitation and would allow her three hours of unmonitored visits twice a week at maternal grandmother's house.

Mother agreed to another child and family team meeting with the Department, which took place on September 12, 2017. Although mother had earlier refused to identify her support team, for this meeting mother identified maternal grandmother, her ex-boyfriend, and three neighbors. Maternal grandmother agreed to participate in the meeting by telephone. Mother's ex-boyfriend and two neighbors all said they had no concerns about mother having custody of her daughters and described her as very good with her children. One neighbor and the ex-boyfriend also explained that they did not believe that mother's earlier expressions of intent to self-harm were genuine. It is unclear whether the Department was able to reach the third neighbor.

E. The Department Recommends Termination of Reunification

In a September 20, 2017 report, the Department recommended terminating family reunification services.

The Department acknowledged that mother appeared to be in literal compliance with her court-ordered programs, including individual therapy and parenting classes. Mother had demonstrated parental resilience in problem-solving and seeking help. Mother said she was receiving encouragement from her church and her pastor and had learned to release stress through dancing, music, and writing. The Department relayed mother's expressions of love and affection for her daughters. During the

children's detention, mother called or face-timed the children regularly and maternal grandmother repeatedly supported reunification. Mother also demonstrated social connections with family, neighbors, and friends.

But the Department stated it believed mother's continued unpredictable behavior would be detrimental to M.R.'s and H.R.'s health and safety, particularly at their young ages. The Department also stated that mother did not seem to take any responsibility for her actions that led to the initial intervention.

F. The October 2017 Incident and Aftermath

During the weekend of October 7 and 8, 2017, mother and maternal grandmother had an argument that led to a physical altercation. This event would play a significant role in the court's ultimate decision. Mother had taken maternal grandmother's car to the carwash and, while there, threw away some items that had been in the car. Maternal grandmother became outraged when she found out. The argument became physical, and maternal grandmother told the Department that she had filed a police report. Maternal grandmother also reported that mother "has threatened my life if she loses her children" and stated that mother is no longer welcome in her home and that she does not want to monitor any more visits.

Mother told the Department that, when maternal grandmother found out mother had thrown out her things, maternal grandmother threatened to call the Department and tell the social worker that mother is crazy. Mother also said that maternal grandmother pushed and scratched her and was acting like "a crazy maniac."

A few days later, mother claimed maternal grandmother did not clean her home, had a roach infestation, and brought men

she dated around the girls. On October 15, 2017, a social worker went to maternal grandmother's home and reported no safety concerns. He stated the home was organized and clean, that the only man to visit was maternal stepgrandfather, that the children were clean and well-groomed with no obvious marks or bruises, and that M.R. said she and her sister enjoy being with maternal grandmother.

G. The 18-month Review Hearing

On November 15, 2017, the Department filed an ex parte application pursuant to section 385 to modify mother's visitation from unmonitored to monitored. The court considered the application in conjunction with an 18-month review hearing pursuant to section 366.22 on January 17, 2018. The court heard oral argument, considered exhibits and statements by multiple maternal relatives, and took judicial notice of the case file.

In a written statement, maternal great-uncle generally supported termination of reunification services and requested to adopt the children. He wrote that, during the October 2017 incident between mother and maternal grandmother, mother gave maternal grandmother a black eye. He also wrote that mother had allowed her children to be homeless despite offers of housing from multiple relatives.

The other relatives to provide statements all supported reunification. Maternal great-grandmother wrote that the girls cry almost every time they are separated from mother and that mother had never demonstrated erratic or aggressive behavior.

Maternal stepgrandfather described mother as sensible, respectful, and "a peace maker." He denied that mother is erratic or aggressive. As to the October 2017 incident, he wrote that he believed mother was being blamed for a situation that was

beyond her control. He wrote that he "could tell [mother] was trying to prevent a disagreement from occurring." He also stated that he was on the telephone during the incident. He also wrote that he could "personally vouch for [mother's] nurturing and caring nature towards her daughters" and that he would "continue to support [mother] in anyway necessary."

Maternal aunt described mother as caring, nonviolent, sensible, and the family mediator, and said that she is not erratic. She wrote that mother's goal has been to be as loving, protecting, and nurturing a mother as she can be and that she trusts mother with her own children. Maternal aunt wrote that maternal great-uncle's accusations against mother regarding the October 2017 incident are false and motivated by a desire to adopt the children. Maternal uncle similarly spoke to mother's generosity and reputation as the family peacemaker. He believed any problems had been rectified, mother has always taken good care of her children, and she did not need a monitor for visits. He also said that, for her fifth birthday, M.R.'s wish was to be with mother forever.

Mother requested, but the court denied, maternal aunt to testify by telephone. Mother's attorney offered that the aunt would testify that mother was not the primary aggressor during the October 2017 incident: that it was a mutual conflict, during which maternal grandmother was hostile and irate and mother was calmer. The court concluded that it would not be able to evaluate her credibility over the telephone and denied the request for telephonic testimony.

The court also considered the Department's progress reports and other reports as part of what it "considers when it deals with mother's issues when it comes to a [section 366.22

hearing]." The court noted in particular that the reports are relevant as "we're 23 months into the case." The court considered the statements by mother's relatives in support of and in opposition to reunification, noting that the court would "take into consideration the fact that they're statements made by other people about what somebody else said and use it appropriately."

During the hearing, the Department repeated the history set out in its reports of mother's unpredictable behavior, including mother's inappropriate comments to and physically aggressive behavior towards Department social workers, the steps maternal grandmother and Department social workers had had to take to de-escalate disputes, and mother's unsupported allegations with regard to maternal grandmother's care of the children. The Department also spoke to mother's extended initial reluctance to engage in therapy, and argued that the record suggests mother had not processed or benefitted from therapy.

The juvenile court terminated reunification services. The court explained: "This is a case that came in as a result of mother's conduct taking care of the children. And we must go back to how this case came in, what services were provided by the Department, whether or not mother's complied with those services." The court found that mother had been going to therapy as ordered, but observed that, "it's not just taking the services, going to therapy. It is whether or not after all of the things that mother has done, if there's a continued risk to return. And the court must make a finding by clear and convincing evidence that there is a substantial danger to the minor's physical and/or mental well being." The court noted that it had been almost two years since the children were removed from mother's custody. The court also referenced the various conflicts between mother

and maternal grandmother. Finally, the court spoke to the October 2017 incident, which it found to be "so significant."

The court set a hearing pursuant to section 366.26, and sustained the Department's section 385 request to modify visitation to monitored.

On January 24, 2018, mother timely filed a notice of intent to file a writ petition and request for record. The present petition for extraordinary relief followed.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services. Specifically, she argues the court would not have terminated reunification services but for the October 2017 confrontation, and that the exclusion of maternal aunt's proposed telephonic testimony was prejudicial. We disagree.

A. Standard of Review and Principles Applicable to Termination of Reunification Services

The juvenile court's determination is reviewed for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In reviewing the evidence, we must construe it in the light most favorable to the juvenile court's determination, resolve all conflicts in support of the court's determination, and indulge all inferences to uphold the court's order. (*In re R.T.* (2017) 3 Cal.5th 622, 633; *In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) "Thus, in order to succeed on appeal, mother must demonstrate that there is no evidence of a sufficiently substantial nature to support the court's

order." (*In re K.B.* (2015) 239 Cal.App.4th 972, 979.) Most evidentiary rulings are reviewed for abuse of discretion. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1176.)

Typically, when a child over the age of three years is removed from a parent, the child and parent are entitled to 12 months of child welfare services in order to facilitate family reunification, which may be extended to 18 months. (§ 361.5, subd. (a); see also § 361.5, subd. (a)(1)(B) [typically entitling a parent to six months of child welfare services to facilitate family reunification when the child removed is under the age of three].) Section 366.22 provides that within 18 months after a dependent child was originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child's status. At the hearing, "the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).)

The mere completion of the technical requirements of the reunification plan is not the sole consideration when deciding whether to return the child to the parent. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) Where the parent has complied with the plan, the question " 'is not, as it were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling, therapy or parenting classes are doing any good).' " (*Constance K.*, *supra*, 61 Cal.App.4th at p. 706,

quoting *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) Moreover, the detriment justifying continued removal need not be the same as the initial detriment. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899-900 ["[I]f returning the child will create a substantial risk of detriment to his or her physical or emotional well-being [citations omitted], placement must continue regardless of whether that detriment mirrors the harm which had required the child's removal from parental custody"].)

B. Substantial Evidence Supports the Juvenile Court's Order

At the section 366.22 hearing, the Department submitted evidence that, despite participating in individual therapy and completing parenting classes, mother continued to exhibit erratic and unpredictable behavior. The record shows that mother repeatedly called Department social workers and quizzed them improperly on their backgrounds and personal lives and expressed fear about the Department monitoring her calls and profiting off the detention of her children. The record also shows combative and unpredictable behavior at a meeting with Department social workers that resulted in security physically removing mother from the building. Mother twice refused to release the children to their caretakers, once in March 2016 and once in April 2017. Two sets of attorneys requested and were granted leave to withdraw as mother's counsel of record due to irrevocable breakdown of the attorney-client relationship. Mother later made various accusations against maternal grandmother, which a home assessment found to be unsupported.

The record also reflects that mother failed to take responsibility for the statements and actions that led to the initial assessment and intervention. Mother alternately denied ever having expressed suicidal thoughts or tried to explain them

away as an untruthful part of a strategy for getting a refund after dropping classes. Similarly, while mother cleaned her apartment after the initial home inspection, she later denied it had ever been in disarray.

While mother argues in her petition that she not only learned positive coping skills, but learned how to apply them in her every life, substantial evidence in the record supports the juvenile court's finding to the contrary. Despite participating in therapy and working on managing stress, mother's erratic behavior and failure to acknowledge her earlier difficulties managing stress persisted, despite the passage of almost 23 months from initial removal of the children to the section 366.22 hearing. (See, e.g., *San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 222-223 ["The juvenile court may extend reunification services beyond 18 months from the date of initial removal, to 'a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent" under certain circumstances] [citing § 361.5, subd. (a)(4)].)

Although mother's appellate briefs suggest that the juvenile court rested its decision almost solely on the October 2017 incident with maternal grandmother, the record indicates otherwise.[4] The juvenile court considered the reports of repeated

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[4] Mother argues that the juvenile court implied that the degree of responsibility a party has for an incident or confrontation is irrelevant. Mother notes that, when she told the court that she tried to turn around and walk away from the October 2017 incident, the court responded, "Well, the fact remains . . . that there was this altercation." We interpret the court's remarks to mean that the court declined to adjudicate who

instances of mother's erratic and unpredictable behavior, which included—but long pre-dated—the October 2017 incident. Indeed, the Department recommended terminating reunification services on September 20, 2017, *before* the October 2017 incident occurred. The juvenile court expressly found those reports to be relevant and rejected mother's argument that they were too attenuated and not probative.

C. The Juvenile Court Did Not Abuse Its Discretion in Excluding Maternal Aunt's Telephonic Testimony

Mother requested maternal aunt be permitted to provide telephonic testimony on the subject of the October 2017 incident: specifically, that maternal grandmother was the primary aggressor and the angrier party, that mother was much calmer, and that the incident "was in fact a mutual conflict that was more the doing of the grandmother than it was the mother." Maternal aunt apparently was talking to either mother or maternal grandmother on the telephone when the incident took place.

The juvenile court did not allow maternal aunt's telephonic testimony and instead admitted only her (and other maternal relatives') written statements. The court said that it "needs to assess the credibility of a witness when I see them and hear them testify. And it's invariably impossible for the court to get to that position when I'm dealing with a phone contact about issues that are significant in terms of the probative value that I'm trying to

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was the aggressor or instigator of the incident, not that degree of responsibility is irrelevant. Given that the court considered an extensive record of mother's actions over the prior months, the juvenile court reasonably found mother's participation in the October 2017 incident troubling.

assess." Mother contends that disallowing maternal aunt's telephonic testimony was prejudicial error.

The reviewing court will not disturb the juvenile court's findings as to the admissibility of evidence absent an arbitrary, capricious, or patently absurd determination. (*In re Nada R., supra,* 89 Cal.App.4th at p. 1176, citing *In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1456.) In dependency proceedings, "the court should avail itself of all evidence which might bear on the child's best interest" without "restrict[ing] or prevent[ing] testimony on formalistic grounds." (*In re B.D.* (2007) 156 Cal.App.4th 975, 983.) Nonetheless, "[t]he state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence. . . . The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147.)

Mother argues that the court abused its discretion because the telephonic testimony that the court disallowed is more reliable than the written statements the court admitted. In other words, it is more difficult to assess the credibility of a witness's written statement than to assess the credibility of a witness's oral, telephonic statement.

The juvenile court expressly considered the written statements with this limitation suggested by mother in mind. In reference to maternal great-uncle's statement describing mother as the aggressor of the October 2017 incident, the juvenile court said: "I take it for what it's worth, hearsay on hearsay." The court also stated: "I take into consideration the fact that they're statements made by other people about what somebody else said and use it appropriately."

The juvenile court did not exclude maternal aunt's testimony, it restricted the method of presenting the testimony. The court considered her (and maternal stepgrandfather's) written accounts of the October 2017 incident, which set forth the substance of maternal aunt's proposed telephonic testimony. Further, the record does not reflect that mother proposed an alternative method of testimony by maternal aunt that would have allowed the court to judge her credibility and demeanor. (See *In re Nada R., supra*, 89 Cal.App.4th at p. 1176 [finding the juvenile court did not abuse its discretion in refusing to permit telephonic testimony based on "concerns about the reliability of telephonic testimony" and noting that there had been "no request for a continuance or any other remedy which would have provided live testimony"].) To the extent the juvenile court excluded testimony that might appear more reliable than the written statements, the juvenile court could have reasonably concluded that the telephone testimony might have given it a false aura of credibility and that the fairest approach would be simply to consider the various letters submitted by maternal aunt and others.

Mother also argues that the juvenile court's order contravenes the observations in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 of the probative value of live testimony: "the witness's personal presence and oral testimony is significant because it 'enable[s] the trier of fact to consider the demeanor of the witness in weighing his testimony and judging his credibility." (*Id*. at p. 1356.) The juvenile court did not allow maternal aunt to testify in a way that would have prevented the court from seeing the witness, observing her movements, assessing her facial expressions, making eye contact with her.

That decision was not arbitrary or capricious. The court did not abuse its discretion in precluding telephonic testimony.

D. Even if the Juvenile Court Erred in Excluding the Telephonic Evidence, That Error Was Harmless

Even if the juvenile court had erred in precluding maternal aunt from testifying telephonically, that error would be harmless under the circumstances. We will assume for our purposes that the beyond a reasonable doubt standard applies to this harmless error question. (See *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132 ["[A] constitutional due process violation in the dependency context requires application of the harmless beyond a reasonable doubt standard, since the error is of federal constitutional dimension"]; see also *In re Mark A.* (2007) 156 Cal.App.4th 1124, 1146 [agreeing with "the weight of authority in California" that the harmless beyond a reasonable doubt standard applies in juvenile dependency proceedings "where the error is of constitutional dimension"].)

Here, maternal aunt's proposed telephonic testimony—that mother was not the aggressor but the calmer party and that the incident was a mutual conflict—was information that was already before the juvenile court. Mother presented that evidence through maternal aunt's and maternal stepgrandfather's written statements, which the juvenile court expressly considered. The juvenile court did not find mother to have been the instigator or primary aggressor of the incident and did not terminate reunification services on that basis. Rather, the court expressed concern about mother's participation generally, a concern maternal aunt's proposed testimony did not allay, and that mother was not able to peacefully extricate herself from the situation. But there was much more to the juvenile

court's order than the October 2017 incident, and maternal aunt did not propose testimony that would have contradicted the substantial evidence of mother's erratic and unpredictable behavior over some two years.

Mother's position that *In re M.M.* (2015) 236 Cal.App.4th 955 (*M.M.*) compels a different result is not well taken. Mother contends the *M.M.* court found the use of the mother's written statements rather than live testimony not only to be error, but to be prejudicial. In *M.M.*, the juvenile court held the initial jurisdiction and disposition hearing without the presence of an incarcerated mother, which violated her statutory right to be present under Penal Code section 2625. (*M.M.*, at p. 961.) The court held the error was prejudicial. (*Id*. at p. 963.) Had the mother been at the hearing, she could have testified to her version of the events that led to her child's removal—that, contrary to the police officers' report, she had not been working as a prostitute that evening and the man watching her child was her boyfriend, not her pimp. (*Ibid*.)

The *M.M.* court highlighted the probative value of in-person live testimony and the ability to assess the mother's demeanor. The juvenile court here precluded not live testimony, but telephonic testimony, precisely because of the inherent difficulties in assessing demeanor and credibility over the telephone. We conclude any error here was harmless because (1) the testimony was before the court; and (2) the proffered testimony did not address the two years of erratic behavior that seriously undermined mother's ability to reunify with her children.

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

RUBIN, Acting P.J.

We concur:

GRIMES, J.

ROGAN, J. *

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* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.