Filed 1/7/14 In re Kenneth F. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re KENNETH F., a Person Coming Under the Juvenile Court Law.	B247819
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHRISTINE S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK88892)

APPEAL from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Melinda A. Green, Deputy County Counsel, for Plaintiff and Respondent.

Christina S. (mother) appeals from an order terminating her parental rights over her son, Kenneth F. Soon after the Los Angeles Department of Children and Families (DCFS) detained Kenneth, he was placed with his paternal grandmother. On appeal, mother contends the trial court erred by failing to consider placing Kenneth with his maternal relatives, and by failing to order DCFS to facilitate visitation between Kenneth and maternal relatives after mother's parental rights were terminated. Mother also argues DCFS failed to provide reasonable reunification services to her while she was incarcerated. Finally, mother contends the trial court erred in terminating her parental rights because the beneficial parent-child relationship exception to adoption applied. We find no basis for reversal.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2011, police executed a search warrant at the home where mother and four-year-old Kenneth were living. During the search, a police officer saw mother remove a glass pipe from her shirt. The pipe was of the kind used to smoke methamphetamine. Police recovered methamphetamines from the house, as well as several unspent rounds of ammunition. Police informed DCFS that mother's family was associated with a gang and law enforcement had been to the house several times for drug-related issues. Two children of another woman living in the house told DCFS they had seen mother using drugs. Father was incarcerated. DCFS detained Kenneth.

Before the detention hearing, a social worker spoke with Kenneth's maternal grandmother about placing him with her. The maternal grandmother revealed she had a drug-related criminal charge that was resolved the year before. She live-scanned and requested that Kenneth be placed with her. However, other adults living in her house did not live-scan before the detention hearing. DCFS provided the court with CLETS results for maternal grandmother and her husband. The CLETS report indicated maternal grandmother had a long history of drug-related arrests, as well as drug-related felony convictions in 2005 and 2010. A CLETS report for maternal grandmother's husband revealed multiple convictions between 1981 and 2005.

At the detention hearing, Kenneth's counsel requested that the court order DCFS to conduct a pre-release investigation for the paternal grandmother, who was present in court. Mother did not make any requests respecting her relatives.

As reflected in the jurisdiction and disposition report, mother told DCFS maternal grandmother had an ongoing substance abuse problem. Mother visited Kenneth regularly; they were reportedly "close and bonded." Immediately prior to the scheduled August 17 jurisdiction hearing, DCFS filed a "last minute information" informing the court that a paternal uncle expressed interest in having Kenneth placed in his care, but neither he nor his family showed up to be live-scanned. DCFS reported there were no other relatives to consider. At the August 17 hearing, father was not present. Before continuing the proceedings, the court asked if any party objected to Kenneth being detained with the paternal grandmother. There were no objections.

At the August 23 continued hearing, the juvenile court asserted dependency jurisdiction over Kenneth. At disposition, father asked that Kenneth be released to him and placed with the paternal grandmother. Mother asked that DCFS provide her with referrals for recommended programs and transportation costs. She did not ask that her relatives be considered for placement, or that DCFS facilitate visits with her relatives. The court ordered suitable placement with the paternal grandmother. The court also ordered DCFS to provide mother with reunification services, including visits with Kenneth.[1]

In a February 2012 status review report, DCFS reported mother had not submitted to drug and alcohol testing. Mother said she had enrolled in counseling but she had no verification of enrollment. For a time, mother had visited Kenneth at the maternal grandmother's house. However, in January 2012, the paternal grandmother informed the social worker she was uncomfortable with Kenneth having visits at the maternal grandmother's home because she suspected there was drug use taking place during the

---

[1] Father was to be incarcerated until 2025, and the court found father had already been incarcerated for most of Kenneth's life. The court denied father reunification services. (See § 361.5, subd. (e)(1).)

visits. The paternal grandmother reported that during visits, the maternal grandparents would go into a bathroom together for long periods of time, then emerge with a "funny smell." The social worker changed the location of visits and sent mother written letters informing her of the change. Mother did not respond or contact DCFS regarding visits or other services. DCFS reported it had not been able to establish contact with mother since December 2011.

Mother did not appear at the February 2012 review hearing, but was represented by counsel. The court extended reunification services.

At the end of July 2012, the paternal grandmother informed DCFS that mother was incarcerated. In an August 2012 status review report, DCFS again indicated the agency had not had contact with mother since mid-December 2011. Mother had drug tested only once, in June 2011, and had not provided any evidence showing she enrolled in any form of counseling. DCFS reported mother had sporadic visits at the maternal grandmother's home. Mother was not present at the August 2012 review hearing. Her counsel made no mention of mother's incarceration. He stated only that he had "no direction" from mother. The court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26.[2]

In the December 2012 section 366.26 report, DCFS reported mother had "initially" visited Kenneth at paternal grandmother's house. The visits were frequent, albeit irregular. The paternal grandmother reported the visits became increasingly sporadic beginning in early 2012. DCFS asserted mother had "steadfastly ignored" the services social worker's "efforts to solicit her cooperation in establishing a regular visitation schedule and submitting to on-demand drug/alcohol testing." DCFS explained that in January 2012, "mother cut off all contact with her family for several months before her arrest, possibly as many as six." DCFS further reported mother "dropped out of sight" from February 2012 until mid-June 2012, when she "surfaced in the custody of

---

[2] All further section references are to the Welfare and Institutions Code unless otherwise specified.

the L.A. County Sheriff's Department." A social worker subsequently visited mother at a detention facility. Mother said she had not complied with the court's orders because she had a drug problem. DCFS also reported: "Apparently the rate of mother's visits dropped off after [maternal grandmother] told mother she would have to contact DCFS to coordinate any future visits with Kenneth. For reasons that are currently unknown, mother refused to do this, and she stopped her visits with Kenneth altogether." According to DCFS, since she had been incarcerated, mother had "made no known attempt to contact [Kenneth] by phone or mail . . . ." The report indicated the paternal grandmother wanted to adopt Kenneth and had been assessed for adoption. DCFS recommended that the permanent plan be adoption by the paternal grandmother.

Mother was not present on the date scheduled for the section 366.26 hearing. Before the proceedings were continued, Kenneth's counsel informed the court that some maternal relatives were having visits with Kenneth, and some were not. Counsel asked that the maternal relatives be assessed for visitation. The court ordered DCFS to do so. On two subsequent occasions mother was not transported to court. At one such date in late January 2013, mother's counsel again indicated some maternal relatives had been asking the social worker to set up visitation with Kenneth. The maternal relatives were seeking monitored day, or overnight, visits. The court ordered DCFS to evaluate the maternal relatives for visits, and facilitate visits if appropriate.

In a last minute information filed before the next hearing date, DCFS reported the paternal grandmother favored Kenneth maintaining relationships with his maternal relatives, and she was willing to make him available for visits under "reasonable circumstances." DCFS indicated Kenneth's last visit with maternal relatives was in late December 2012, when his maternal great-grandmother took him to visit mother at the detention center. Paternal grandmother had not heard from the maternal great-grandmother since. The report continued:

> "PGM [paternal grandmother] said the only maternal relative she has ever heard from regarding visits with Kenneth is MGGM [maternal great-grandmother]. Apparently MGGM does not drive and is most often accompanied by MGM [maternal grandmother] to the visits that have

> occurred with Kenneth. When not accompanied by MGM, MGGM is driven by 'one of her sons,' none of whose names PGM knows. MGM and her husband . . . have long histories of substance abuse and drug-related arrests or convictions as late as 2010. [¶] PGM is very concerned that by allowing MGGM to take Kenneth for overnight or weekend visits she is putting him at risk, because she believes, based on maternal family's history, MGGM will take Kenneth to MGM's home where she has no reason not to believe illicit drug use continues. . . . MGGM . . . said she just wants to be able to show her grandson her home and take him places. . . . [¶] MGGM said she did not come forward earlier, because she did not know Kenneth was in the system. However, according to [the services social worker], mother was repeatedly asked about family members who may be interested in Kenneth. Mother never mentioned MGGM. [¶] In view of the lateness of the hour, the demonstrated capacity of many of mother's family members for deceit and manipulation, it seems in Kenneth's best interest that any change in the visitation order be approached with an abundance of caution, until a good deal more is known. [¶] In view of the foregoing, it is respectfully recommended ongoing visitation for MGGM, mother, and other maternal relatives continue to be monitored."

At the contested section 366.26 hearing, mother opposed termination of parental rights. She asked the court to order legal guardianship instead of adoption. She did not offer any evidence or argue that any exception to termination of parental rights applied. The court terminated parental rights and ordered adoption as the permanent plan. Mother's counsel raised his previous request that the maternal relatives be assessed for visitation. The court ordered DCFS to facilitate contact with the maternal relatives "if appropriate."

Mother filed a notice of appeal challenging the court order terminating her parental rights and "grandparent rights that were not granted to my grandparents [maternal great-grandmother and great-grandfather]."

DISCUSSION

I. No Reviewable Issues With Respect to Relative Visitation or Placement

Mother asserts the trial court abused its discretion in failing to independently review the placement of Kenneth with his maternal great-grandparents, and in delegating to DCFS the decision whether Kenneth would visit with the maternal relatives after the

court terminated parental rights. We reject these arguments. Mother does not have standing to challenge the visitation order. Further, relative placement with the maternal great grandparents was never raised below.

A. Mother Does Not Have Standing to Challenge the Visitation Order

On appeal, mother advances only one argument regarding visitation. Mother contends the trial court erred in giving DCFS discretion to determine whether visitation between Kenneth and maternal relatives was appropriate. Because the challenged order concerned visitation with relatives after mother's parental rights were terminated, we conclude she does not have standing to challenge the order.

The standing of a parent to challenge a dependency court order relating to a non-parent relative was recently discussed in *In re K.C.* (2011) 52 Cal.4th 231. The court explained:

> "Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision. [Citation.] These rules apply with full force to appeals from dependency proceedings. [Citation.] . . . . All parents, unless and until their parental rights are terminated, have an interest in their children's 'companionship, care, custody and management . . . .' [Citation.] This interest is a 'compelling one, ranked among the most basic of civil rights.' [Citation.] While the overarching goal of the dependency law is to safeguard the welfare of dependent children and to promote their best interests [citation], the law's first priority when dependency proceedings are commenced is to preserve family relationships, if possible. [Citation.] To this end, the law requires the juvenile court to provide reunification services unless a statutory exception applies. [Citation.] In contrast, after reunification services are terminated or bypassed (as in this case), 'the parents' interest in the care, custody and companionship of the child [is] no longer paramount. Rather, at this point "the focus shifts to the needs of the child for permanency and stability . . . ." ' [Citations.]" (*K.C.*, at p. 236.)

In *K.C.*, the appellant father challenged a dependency court order denying the grandparents' petition to modify the child's placement so that he would be placed with them instead of with unrelated foster parents. Although the juvenile court had terminated

the father's parental rights, the father did not challenge that order. As a result, our high court concluded the father was not "aggrieved" by the court's placement order. After reviewing relevant authorities, the court derived the rule that "a parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Id.* at p. 238.) Because the father did not contest the termination of his parental rights, he had "relinquished the only interest in [the child] that could render him aggrieved by the juvenile court's order declining to place the child with grandparents." (*Ibid*, fn. omitted.)

Mother argues that unlike the father in *K.C.*, she is aggrieved because she contests the termination of her parental rights. That factor is not determinative. Mother challenges the court's alleged error with respect to visitation with maternal relatives, not placement. And the alleged error concerned visitation *after* mother's parental rights were terminated. Indeed, mother's contentions with respect to visitation are limited to the court's order issued after it terminated her parental rights, giving DCFS discretion to determine whether future visitation with maternal relatives was appropriate. Even were we to find the trial court erred in failing to require DCFS to facilitate visitation with maternal relatives at that point, reversal of the visitation order would not advance mother's argument against terminating her parental rights.

Placement of a child with relatives may facilitate the parent-child relationship and may make the termination of parental rights unnecessary. (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054; *In re H.G.* (2006) 146 Cal.App.4th 1, 10-11.) But a court order requiring relative visitation after parental rights have been terminated—even if it were appropriate—would not alter the already-pronounced order terminating parental rights.[3]

---

[3] Under section 366.26, subdivision (j), after parental rights are terminated and the child is referred for adoption, the relevant adoption agency "shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption . . . is granted." The agency's decisions are subject to juvenile court review for abuse of discretion. (*In re Mickel O.*

Mother could not be legally aggrieved by the court's order regarding relative visitation that would occur after her parental rights were terminated.

In sum, the visitation issue mother challenges is the post-termination of parental rights court order delegating authority to DCFS to determine whether visits between maternal relatives and Kenneth would occur. There was no possibility that reversing that order might lead the juvenile court not to terminate parental rights. Mother cannot establish she was aggrieved by the court's order. She therefore does not have standing to challenge the issue on appeal.[4]

B. There Was No Relative Placement Issue Presented to the Juvenile Court

Mother also contends the juvenile court erred in failing to consider placing Kenneth with maternal relatives. She argues that, under the reasoning of *K.C.*, she has standing to appeal the order. Yet, mother's argument is out of step with the facts of this case. Mother does not contend the trial court failed to appropriately consider maternal relatives for initial placement under section 361.5 at the disposition hearing, nor could she timely challenge a disposition order in this appeal. Mother also does not contend DCFS failed to properly ascertain whether maternal relatives were interested in having Kenneth placed with them. She does not contend she at any time requested that Kenneth be placed with maternal relatives. Instead, as we understand her argument, mother asserts the trial court erred in failing to independently consider placement with the

---

(2011) 197 Cal.App.4th 586, 618 (*Mickel*).) We note the record contradicts mother's assertion that paternal grandmother was uncomfortable facilitating contact with maternal relatives, or that paternal grandmother "declined to facilitate flexible visitation for the maternal relatives. . . ." In fact, DCFS reported paternal grandmother was *in favor* of Kenneth maintaining relationships with maternal relatives, was willing to make him available for visits "under any reasonable circumstances," and had not limited the length of monitored visits. Paternal grandmother's discomfort concerned the maternal relatives' request for unsupervised visits, and overnight or weekend visits.

[4] *Mickel, supra,* 197 Cal.App.4th 586, does not support mother's standing argument. In *Mickel,* the aggrieved maternal grandparent appealed a juvenile court order terminating the maternal grandparents' visitation with the child, and denying placement with them. The parents were not parties to the appeal. (*Id.* at p. 588.)

maternal great grandparents in response to the last minute information filed immediately before the section 366.26 hearing. We conclude there was no placement issue properly before the court at that time.

Before the initial detention hearing, the maternal grandmother live-scanned and asked that Kenneth be placed with her. However, by the time of the detention hearing, not all adults in the maternal grandmother's home had live-scanned. In an interview recounted in the jurisdiction and disposition report, mother told DCFS the maternal grandmother had an unresolved substance abuse problem. Mother did not make a relative placement request, either in writing, or in court. In late August 2011, when the dependency court asked if there were objections to placement of Kenneth with the paternal grandmother, mother did not object. In the 17 months that followed, neither mother nor her relatives requested placement of Kenneth. Moreover, even when the maternal great-grandmother entered the picture immediately before the section 366.26 hearing, she asked *only* for visitation. There is no indication in the record that the maternal great-grandparents sought to have Kenneth placed in their home.[5]

Under section 361.3, whenever a child is removed from parental physical custody at disposition, "preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." (§ 361.3, subd.(a); see also *In re N.V.* (2010) 189 Cal.App.4th 25, 31 ["Once a child is placed in the home of a nonrelative at the dispositional hearing, the relative placement preference does not arise again until 'a new placement of the child must be made.' [Citations.]"]; *In re Joseph T.* (2008) 163 Cal.App.4th 787, 794-795 [when relative comes forward requesting placement during reunification period, court and social worker must evaluate relative].) When more than one "appropriate relative requests consideration . . . each relative shall be considered

---

[5] Mother's appellate briefing is inaccurate on this point. Mother asserts "maternal great grandmother wanted to have Kenneth placed with her," and "DCFS did not want to reconsider the placement issue because of the 'lateness of the hour' . . . ." These statements are entirely unsupported by the record. The "lateness of the hour" comment concerned a request for unmonitored visitation.

under the factors enumerated" in the statute. (§ 361.3, subd. (b).) Here, aside from the maternal grandmother's initial request for placement at detention--which is not at issue in this appeal--there were no other requests for consideration from maternal relatives. Thus, mother's argument on appeal that the court "abused its discretion by declining to independently review the placement of Kenneth with the maternal great grandparents," is misplaced.

No placement decisions were being made at the section 366.26 hearing. But even to the extent placement was an issue, there is no indication the maternal great-grandparents wanted to have Kenneth placed with them. The last minute information indicated the maternal great-grandmother "just wants to . . . show her grandson her home and take him places." The last minute information made no reference to placement. We have no legal or factual basis to conclude the trial court erred in failing to sua sponte reconsider Kenneth's stable placement with the paternal grandmother and prospective adoptive parent, in favor of maternal great-grandparents who expressed no interest in placement.

II. Substantial Evidence Supported the Court Order Terminating Reunification Services

Mother contends the trial court erred in terminating reunification services because DCFS did not provide reasonable reunification services. We disagree.

A. Mother's failure to comply with the writ requirement

Mother acknowledges that, in general, a parent wishing to challenge a juvenile court order terminating reunification services and setting a hearing pursuant to section 366.26 may only do so by timely filing a petition for extraordinary review. (§ 366.26, subd. (l).) The order is not appealable unless such a writ petition has been filed and denied, or otherwise not decided on the merits. (§ 366.26, subds. (l)(1), (l)(2); Cal. Rules of Court, rules 8.450 & 8.452.)

Mother did not file a writ petition to challenge the termination of reunification services. However, she contends she was relieved from the writ requirement because she was not properly advised of her writ rights. When the juvenile court makes an order

setting a section 366.26 hearing, it must advise all parties of the extraordinary writ review requirement. The court must give an oral advisement to parties present at the time the order is made, and "[w]ithin one day after the court orders the [section 366.26] hearing, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the [section 366.26] hearing." (Rule 5.590(b)(1) & (b)(2).) In accordance with these rules, "judicial error in failing to advise a party in a dependency proceeding of the writ requirement for challenging an order setting a section 366.26 hearing that results in a failure to file a writ petition may excuse a party's failure to comply with that requirement and allow a reviewing court to reach the issues on appeal from the orders following the section 366.26 hearing." (*In re A.H.* (2013) 218 Cal.App.4th 337, 347.)

Mother contends she was not duly advised of her writ rights. She was not present on August 21, 2012, when the court set the section 366.26 hearing and gave the requisite oral advisement. And, while the court ordered the clerk to mail the written advisement to the last mailing address mother had provided to the court, mother was at the time incarcerated. Supporting mother's position is the DCFS status review report filed on the day of the August 21 hearing which indicated mother was incarcerated, and identified the address of the detention facility. This was ostensibly mother's "last known address," but the writ advisement was not sent there.

On the other hand, mother does not claim she was unaware of the writ requirement, or that she failed to receive the written notice sent to her last permanent mailing address before her incarceration. (*In re T.W.* (2011) 197 Cal.App.4th 723, 730, 731.) Further, the record does not indicate mother informed DCFS or the court of her incarceration and resulting address change; the DCFS social worker found out from the paternal grandmother. "A parent's designated permanent mailing address is used by the court and the social services agency for notice purposes *unless and until* the parent provides written notice of a new mailing address. (See § 316.1, subd. (a).)" (*In re A.H.,*

supra, 218 Cal.App.4th at p. 348.) Mother had in fact notified the court and DCFS of a previous address change using the judicial council form designed for that purpose.[6]

"[I]n the published cases that have permitted a parent to challenge the merits of a referral order after failing to take a writ, it is clear that the court in fact failed to give the oral advisement (when the parent was present) or that the written advisement (when the parent was not present) was not sent to or received by the parent." (*T.W.*, *supra,* 197 Cal.App.4th at p. 730.) Here, it is clear the written advisement was not sent to mother at the detention facility, but not clear she did not actually receive the advisement, which was sent to the last permanent mailing address she designated. In an abundance of caution we will consider mother's challenge to the juvenile court order terminating reunification services.

B. Substantial evidence supported the juvenile court's reasonable efforts finding

We disagree with mother's assertion that the juvenile court's reasonable efforts finding was in error. DCFS was required to " 'make a good faith effort to develop and implement a family reunification plan. [Citation.] "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . ." [Citation.]' [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.] 'The applicable standard of review is sufficiency of the evidence. [Citation.]' [Citation.]" (*In re T.G.* (2010) 188 Cal.App.4th 687, 697.)

---

6 However, mother subsequently told a DCFS social worker her address had changed, again. Mother did not file a new change of address form. The last address mother formally provided to the court was the one to which the writ advisement was sent.

Substantial evidence supported the juvenile court finding that DCFS provided reasonable reunification services. In the jurisdiction and disposition report, DCFS recommended a case plan including parenting education, individual counseling to address case issues, a drug program, and random drug testing. In August 2011, the court approved a plan for DCFS to provide mother with no or low cost referrals for programs. Mother was to have monitored visits at least once per week. She was additionally ordered to participate in a counseling program addressing parenting and alcohol and drug counseling, as well as individual counseling to address case issues. She was also to have random alcohol and drug testing. A social worker reviewed the court orders with mother in September 2011. Mother had reportedly checked into a treatment center for one week, but then left. The social worker offered mother referrals, but she had her own list she wished to use. The social worker told mother about the process for weekly drug testing and told mother her paperwork would be submitted to the testing service the next day. The social worker also discussed visitation. The social worker met with mother again two months later, in November 2011. Mother told the social worker she was in the process of following the court orders. The social worker gave mother a copy of the court orders and a list of counseling referrals.

In December 2011, mother failed to attend a scheduled meeting with the social worker. They spoke on the telephone. The social worker requested that mother provide an on demand drug test. Mother said she could not, but offered to test the next day. Mother also said she would go to the social worker's office and provide information about the counseling she was receiving. Mother then ceased all contact with DCFS for at least eight months.[7] By the time of the 12-month review hearing in August 2012, the DCFS social worker had only recently learned that mother was incarcerated.

---

[7] The record does not indicate exactly when DCFS got back in touch with mother, or who initiated the contact. In February 2012, DCFS reported the last contact with mother was in December 2011. In August 2012, DCFS reported it had not been in contact with mother, but had learned, in late July 2012, that mother was incarcerated.

Mother submitted only one drug test in June 2011. She missed all subsequent tests. She never provided any information indicating she had engaged in counseling as ordered. Mother visited Kenneth until the visit location was changed. Mother did not respond to DCFS letters sent in December and January 2012 asking mother to contact DCFS.[8] In the DCFS section 366.26 report, the agency indicated mother initially had frequent but irregular visits with Kenneth, these visits became less frequent in early 2012, then stopped, apparently before she was incarcerated in June 2012. The February 2013 last minute information suggested Kenneth had visited mother once at the detention center in December 2012, along with the maternal great-grandmother.

On appeal, mother asserts DCFS failed to provide reasonable reunification services because it did not arrange visits for mother with Kenneth after she was arrested and subsequently incarcerated in or around June 2012. However, the court terminated reunification services in late August 2012. Thus, the court's reasonable efforts finding had to be based on DCFS efforts between August 2011 and August 2012. There is substantial evidence to support the court's reasonable services finding for that period. Mother was in custody during only the last two months of that period, and DCFS only learned of mother's incarceration in the last few weeks of that period. Before mother was incarcerated, DCFS set up drug and alcohol testing for her. She failed to comply and tested only once. DCFS offered referrals for programs and counseling; mother once rejected the referrals, then later accepted them, yet she never provided any verification of her participation in any program.

DCFS also attempted to work with mother regarding visitation, but it is undisputed that mother did not cooperate, falling completely out of contact in December 2011, despite DCFS's attempts at communication. "While it is true the social worker is

---

In December 2012, DCFS reported the case social worker visited mother at the detention facility, but the report did not provide the date of the visit.

[8] We note no address was listed on the top of the copies of the letters included in the record. However, while mother points out the absence of an address, she does not claim she failed to receive them.

charged with maintaining reasonable contact with the parents during the course of the reunification plan, he or she cannot do so without some degree of cooperation from the parent." (*T.G., supra,* at p. 698.) Mother ceased contact with DCFS in December 2011. The record indicated the social worker tried to remain in contact with mother by telephone, in person, and in writing, to no avail. A later report indicated mother had no contact with family members between February and June 2012. Mother did not tell the social worker she was incarcerated, leading the worker to only find out, belatedly, from the paternal grandmother. (*T.G., supra,* at p. 698.)

The record supported a finding that DCFS made a good faith effort to develop and implement a reunification plan. Even if DCFS failed to do enough to facilitate visits for Kenneth and mother once the social worker learned mother was incarcerated, this failure occurred less than one month before the 12-month review hearing. For nearly eight months before that mother failed to apprise DCFS of her whereabouts. Substantial evidence supported the trial court conclusion that adequate reunification services were provided to mother under the circumstances.

III. The Juvenile Court Did Not Err in Failing to Apply the Beneficial Parent-Child Relationship Exception

Finally, mother contends the juvenile court erred in failing to apply the beneficial parent-child relationship exception to adoption. We disagree. Although mother objected to the termination of her parental rights, she did not ask the court to apply the beneficial parent-child relationship exception. Mother therefore forfeited the issue on appeal. "The juvenile court does not have a sua sponte duty to determine whether an exception to adoption applies. [Citations.] The party claiming an exception to adoption has the burden of proof to establish by a preponderance of the evidence that the exception applies." (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295.)

At the section 366.26 hearing, mother's counsel argued: "[M]y client is opposed to the termination of parental rights. She would ask that the court order a less – I'm going to say less permanent plan of legal guardianship. Although my client's incarcerated, she's participated in many programs, completed rehab, parenting, et cetera. But for her

incarceration, I believe she would have a good 388 petition available at this time, but again she's opposed to the termination of her parental rights." This fell far short of asserting any exception to adoption was applicable and did not preserve the issue for appellate review. A determination concerning the beneficial relationship exception raises factual questions that are unsuitable for resolution for the first time on appeal. (*Daisy D., supra,* 144 Cal.App.4th at p. 292.)

Moreover, even had mother preserved the issue for appellate review, we would find no error. The beneficial relationship exception to adoption applies only when the parent establishes she or he has maintained regular visitation and contact with the child, and the child would benefit from continuing his or her relationship with the parent. (§ 366.26, subd. (c)(1)(B)(i).) The record did not support a finding that mother established even the first prong of the exception. Mother ceased regular visitation with Kenneth several months before she was incarcerated. DCFS reports indicated mother's visitation was sporadic and irregular, then stopped entirely, *before* she was arrested. This was insufficient to establish the regular visitation required for application of the beneficial relationship exception. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) We would not conclude the juvenile court erred in failing to apply the beneficial parent-child relationship exception to adoption in this case.

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.