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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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

B279798, B282773

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK07888

Plaintiff and Respondent,

v.

JENNIFER P.,

Defendant and Appellant.

CONSOLIDATED APPEALS from orders of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Juvenile Court Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Minor.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Julia Roberson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In her first appeal (B279798), Jennifer P. (mother) challenges the juvenile court's December 9, 2016 order denying her modification petition seeking to return her then three-year-old son, Jonas S., to her custody and to reinstate reunification or family maintenance services. In her second appeal (B282773), mother challenges the court's April 21, 2017 order terminating her visitation with Jonas and the court's April 25, 2017 order terminating her parental rights. On our own motion, we consolidate the appeals for purposes of decision. We conclude mother's challenge to the April 21, 2017 visitation order is not properly before us because she never appealed from that order. Finding no error, we affirm the court's orders denying mother's petition and terminating her parental rights.

FACTS AND PROCEDURAL BACKGROUND¹

1. The Department's Involvement and Jurisdictional Findings

Mother has a long history of mental health problems, with diagnoses of depression, Narcissistic Personality Disorder, Histrionic Personality Disorder, and Bipolar Disorder dating back to her teenage years. She was hospitalized over six times since she was thirteen years old due to suicidal ideations and being a danger to herself and, on one occasion, a danger to others.

¹ We previously took judicial notice of our prior opinion in *Jennifer P. v. Superior Court* (Nov. 17, 2016, B275563 [nonpub. opn.]). At mother's request, we also take judicial notice of our prior opinion in *In re Jonas S.* (Mar. 3, 2016, B264569 [nonpub. opn.]). The facts and procedural summary are drawn, in part, from those opinions.

Mother does not have custody of her three older children, largely due to her mental health problems.

Mother gave birth to Jonas in October 2013; at the time, the identity of Jonas's father was unknown.² Mother and Jonas came to the attention of the Department of Children and Family Services (Department) on October 13, 2014, after mother was involuntarily hospitalized after expressing suicidal ideation while caring for Jonas. On October 16, 2014, the Department filed a petition under Welfare and Institutions Code³ section 300 with the juvenile court, seeking to detain Jonas from mother due to her unresolved mental health issues and previous dependency case involving those same issues. That day, the juvenile court detained Jonas from mother and ordered monitored visitation for her. In the ensuing months, mother was uncooperative with or hostile to social workers and Jonas's foster parents.

In January 2015, the juvenile court sustained jurisdiction under both section 300, subdivision (b) and (j) counts, which stated:

“b-1

The Child [Jonas's] Mother . . . has a history of mental and emotional problems, including Depression and Suicidal Ideation, which renders [M]other incapable of providing regular care and supervision of the child. On 10/11/2014, [M]other was involuntarily hospitalized for the evaluation and treatment of [M]other's psychiatric condition. On

² In late 2016, a man named Joshua P. contacted the Department, claiming he was Jonas's father. The court found Joshua was Jonas's biological father in April 2017. Joshua P. is not a party to this appeal.

³ All undesignated references are to the Welfare and Institutions Code.

prior occasions, [M]other failed to take [M]other's psychotropic medication as prescribed. The child's sibling Ethan . . . received permanent placement services due to [M]other's mental and emotional problems. [M]other's mental and emotional condition endangers the child's physical health and safety and places the child at risk of physical harm and damage."

"j-1

The Child [Jonas's] Mother . . . has a history of mental and emotional problems, including Depression and Suicidal Ideation, which renders [M]other incapable of providing regular care and supervision of the child. On 10/11/2014, [M]other was involuntarily hospitalized for the evaluation and treatment of [M]other's psychiatric condition. On prior occasions, [M]other failed to take [M]other's psychotropic medication as prescribed. [M]other has dependency court history in Kern County wherein the court sustained counts concerning the child's half sibling, due to [M]other's mental and emotional problems, including suicidal ideation. [M]other failed to comply with reunification services were terminated [sic]. The child's sibling Ethan . . . received permanent placement services due to [M]other's mental and emotional problems. [M]other's mental and emotional condition endangers the child's physical health and safety and places the child at risk of physical harm and damage."

This Court affirmed, concluding the court's jurisdiction finding was supported by substantial evidence.

In April 2015, the juvenile court addressed disposition and ordered mother to complete a hands-on parenting course, a psychological assessment, a psychiatric evaluation, individual

counseling, and to take all prescribed psychotropic medication. The court also ordered monitored visitation for mother and gave the Department discretion to liberalize visits. Mother engaged in therapy, visitation, and parenting classes.

2. Subsequent Reunification

In December 2015, after a successful period of visitation, the court ordered Jonas to be placed with mother, under the supervision of the Department, and terminated the April 2015 suitable placement order. The court conditioned the home-of-parent order on mother continuing in therapy and other case plan services, on mother participating in family preservation services, and on the Department making unannounced home calls.

3. The Department's Section 387 Petition and Jonas's Removal from Mother's Custody

During December 2015 and January 2016, mother largely complied with the home-of-parent order. She also made Jonas available for unannounced home visits and kept the Department apprised of where she and Jonas were living.

In February 2016, however, mother again became hostile toward the Department's social workers after one of mother's roommates reported mother appeared to be on drugs, Jonas had lice and head sores, Jonas was dirty, and mother failed to regularly change Jonas's diaper. Mother refused to allow the Department to investigate the roommate's referral and told the Department that she would not submit to any drug tests or to take Jonas to a medical examination.

On February 19, 2016, the Department obtained an expedited removal order from the court. Mother refused to contact the Department or return Jonas to the Department's

custody. On February 25, 2016, the Department filed a section 387 petition seeking to remove Jonas from mother's custody. Based on mother's ongoing mental health issues, oppositional behavior toward the Department, and failure to comply with court orders, the Department recommended that Jonas be detained from her care and that she be ordered to complete another Evidence Code section 730 evaluation.

On February 25, 2016, the court found there was a prima facie case for detaining Jonas under section 300, subdivisions (b) and (j). The Department then returned Jonas to the previous foster caregiver's custody.

4. Difficulties with Mother's Therapy, Visitation, and Housing

4.1. Therapy and Mental Health Issues

In March 2016, mother's therapist, Christopher Lawver, reported that mother had been inconsistent in attending bi-weekly therapy after Jonas was returned to her care in December. Although Lawver set up a \$30 co-pay arrangement with mother, she nonetheless stopped showing up regularly or paying the co-pay in full, averaging one therapy visit per week in January and February, despite the court-ordered two visits per week minimum.

According to Lawver, mother appeared to have an "underdeveloped personality; as she present[ed] with strong Borderline personality traits and also, strong paranoid, suspicious, and some narcissistic traits." Lawver stated that mother did "experience [a]nxiety and [d]epression, though [she did] not appear to have SMI (serious mental illness), such as schizophrenia or bipolar illness or another major mental health

condition.” Lawver believed the best thing for Jonas would be for him to remain in foster care because mother was not stable on any level, including her housing and complying with her services.

In the spring of 2016, mother began treatment with her former therapist, Lisa Hills, after she claimed she felt threatened by Lawver. Hills reported that mother had major depression and anxiety with some indication of borderline and narcissistic personality traits. Although mother asked Hills to write a letter stating that mother was a “fit mother,” Hills declined to do so and ended treatment because Hills did not believe she could provide mother the services mother required. Mother returned to Lawver’s care, but she had trouble completing the treatment plan he made for her.

4.2. Visitation Issues

After Jonas was removed from her custody, mother had difficulty complying with visitation guidelines, including not speaking about the dependency case in front of Jonas. Mother also had difficulty focusing on Jonas during most visits. The visitation monitors observed that mother’s behavior during visits was inconsistent: sometimes she would be calm and focused on Jonas, and other times, she would become upset and display paranoid, agitated, and anxious behavior, without the ability to calm down.

In addition, mother was repeatedly hostile to the foster caregiver, asserting she felt unsafe and threatened by her. Mother often made negative comments or threatened the caregiver, including telling the caregiver that mother had obtained the caregiver’s address from Jonas’s medical paperwork. In violation of visitation rules, mother communicated her feelings about the foster caregiver to Jonas during visitation. The

Department made efforts to ensure mother did not encounter the caregiver during visits because mother's behavior devolved when she was around the caregiver.

4.3. Unstable Housing

Throughout 2016, mother's living situation remained unstable. Beginning in February 2016 mother couch-surfed or slept in her car. On May 25, 2016, a week before the section 387 hearing, she began living at Collette's Children's Home in Placentia, California. Within days, mother expressed discomfort with this residence due to the religious emphasis of the home.

5. The Court Sustained the Section 387 Petition

On June 2, 2016, the juvenile court sustained the section 387 petition as pled:

[Mother] has failed to cooperate with [the Department] efforts to provide supervision of the child. . . . Mother has failed to inform [the Department] of the whereabouts of [mother] and the child and of changes in the child's residence. [Mother] has failed to cooperate with [the Department's] efforts to conduct visits to ensure the child's safety. On 2/17/16, [M]other refused to allow an investigating Children's Social Worker to access the child in response to an immediate child abuse referral. [M]other refused to take the child to the Medical HUB for an examination requested by the Children[s] Social Worker in response to the child abuse referral. [M]other has failed to cooperate with [the Department] efforts to obtain Family Preservation Services for the family. Such conduct by [M]other endangers the child's physical health and safety and places the

child at risk of serious physical harm, damage and danger.

The court found mother was no longer entitled to reunification services and ordered Jonas removed from her care. The court set a permanency planning hearing under section 366.26 for September 29, 2016. The Department returned Jonas to the custody of his former foster caregivers, who wished to adopt Jonas and with whom the child had lived from January through December 2015.

In November 2016, this Court affirmed the juvenile court's orders sustaining the section 387 petition and removing Jonas from mother's custody.

6. The Permanency Planning Phase

Between June and September 2016, mother's visits with Jonas were "inconsistent in tone and quality." Some of the visits went well, with Jonas showing mother affection, and mother providing Jonas snacks and changing his diaper. On numerous occasions, however, the visitation monitor had to redirect mother's attention during visits, as she would often focus on issues in her personal life and her concerns about Jonas's case.

For example, during a visit that took place on June 13, 2016, mother complained about Jonas's foster mother to Jonas and the visitation monitor. When mother showed Jonas a photograph of one of mother's other sons, she told Jonas, "[foster mother] doesn't want you to be with him, she wants you to be with her." When Jonas later told mother he wanted to go to "mommy," referring to his foster mother, mother replied, "mommy'[s] right here." Jonas said, "no, mommy [D.]," to which mother replied, "I know they're programming you to say that." Toward the end of the visit, Jonas again said he wanted to return

to his foster mother. Mother then referred to the foster mother as a “monster” in front of Jonas.

On June 29, 2016, mother became upset with the Department and the visitation monitor because no one had reserved a room for her visit with Jonas. When a room became available, mother said, “the visit is already a bust because [the monitor was] going to write down that I had a meltdown.” Jonas then became upset and started to cry. When mother tried to comfort him, Jonas said he wanted to go to his foster mother’s house. Mother corrected Jonas’s use of the word “mommy” to refer to his foster mother, telling him the foster mother was not his mother. The monitor ended the visit early because Jonas continued to cry and would not calm down. Following that visit, the Department reduced mother’s visits to once per week, citing mother’s “challenging behaviors, inappropriate comments . . . and her history of inconsistent behavior and mood during visits.”

In July 2016, mother started living at her friend’s home in Rancho Santa Margarita, where she slept on the couch. Mother was looking for permanent housing and making regular income working as a driver for Lyft.

In August 2016, the Foster Family Agency reported Jonas was happy and thriving in his foster parents’ home. Jonas slept and ate well and had become “clingy” with his foster mother. After returning to his foster parents’ home, Jonas sometimes refused to speak to mother over the phone, either saying “no” or running away from the phone when he would hear it ring.

Mother’s visits with Jonas started to improve in late September 2016, after the Department started to prevent mother from having any interaction with Jonas’s foster mother during visits. Jonas became more excited to see mother, and he started

to engage with her more during visits. According to the visitation monitor, mother showed “noticeable improvement in demeanor, mood stability, appropriateness, and willingness to accept direction/redirection.” Mother also appeared more aware of her actions and comments during visits, and she spoke less about case issues in front of Jonas.

Due to mother’s improved behavior, the Department twice increased the frequency of her visits, first to two times per week, then to three times per week. The Department also allowed mother to start visiting Jonas at locations other than the Department’s offices. According to the visitation monitor, mother’s visits were going “very well” as of November 2016.

7. Mother’s Section 388 Modification Petition

On November 8, 2016, mother filed a petition under section 388 seeking to modify the court’s June 2, 2016 order. In her petition, mother asked the court to return Jonas to her custody, reinstate reunification services, and order the Department to provide her housing referrals. Mother asserted it was appropriate to return Jonas to her custody because she was “very bonded” with him and he was “consistently requesting to go home with mother again.” She also claimed she had started to participate in services without being ordered to do so and had been declared “safe to parent” by psychologists. Mother attached to her petition a certificate demonstrating she completed a parenting class in August 2016 and a letter from her therapist, Dr. Claire Vines, dated November 3, 2016.

Mother started seeing Dr. Vines on a weekly basis in September 2016. The treatment focused on improving mother’s parenting and coping skills, with mother striving toward “being the best, loving biological parent of [Jonas].” Dr. Vines reported

that mother's participation in therapy had "shown positive outcomes," with mother focused on providing Jonas a safe and loving home. In Dr. Vines's opinion, mother no longer posed a danger to herself or to Jonas. Mother showed "no signs of impairment in thought processing or communication," and she behaved appropriately during therapy sessions. Mother had not yet, however, established a consistent work schedule. Dr. Vines concluded, "It is my belief that [mother] and [Jonas] would thrive emotionally with an increase of positive attachment and Psycho-education, between mother and child. This would be to the benefit of [Jonas]."

The Department interviewed mother on November 22, 2016. By this point, mother had completed a 10-week parenting program. Mother claimed the parenting class provided her "different strategies on how to deal with parenting issues" and involved more "hands-on" problem-solving than other classes she had taken in the past. When the Department contacted the parenting program, one of the program's staff members reported that mother had instructed the program not to release any information about mother's participation to the Department.

When asked about her mental health issues that led to Jonas being declared a dependent of the court, mother claimed the Department's allegations were based on diagnoses of Narcissistic Personality Disorder and Bipolar Disorder made when she was 18 years old. She contended the diagnoses no longer applied to her because they were made "years ago." Mother believed it was unfair for the Department to continue "to view her in the light of those prior diagnoses."

On December 1, 2016, the Department submitted a response to mother's section 388 petition. The Department

recommended denying mother's request to have Jonas returned to her custody. The Department believed it would not be in Jonas's best interests to remove him from his current placement because he had become closely bonded to his foster parents and was thriving in their care, and mother had yet to find stable housing. The Department did, however, recommend granting mother three additional months of reunification services based on mother's recently improved behavior.

On December 6, 2016, Dr. Vines submitted a second letter addressing mother's treatment. Mother had become more guarded, cautious, and selective in her responses since Dr. Vines drafted her first letter in November 2016. Mother believed she was being victimized "by what she believed [was] an injustice for not having Jonas . . . reside with her." According to Dr. Vines, mother displayed mild depressive symptoms, as well as traits of reserve narcissism and borderline personality disorder, but she did not display any signs of mood disorder or suicidal ideations.

Dr. Vines reported mother struggled to find stable housing and had difficulty paying for therapy, even though Dr. Vines had substantially discounted her fees for mother. In Dr. Vines's opinion, mother needed "help from a family preservation program and assistance in emergency housing as well as[] a lower cost psychotherapy treatment" to help mother be able to afford to provide "a stronger foundation and security" for Jonas. Dr. Vines continued to believe that if mother were provided financial aid and help obtaining "psycho-education," mother would be able to provide Jonas a safe and loving home.

8. The Contested Hearing on Mother's Modification Petition

The court held a contested hearing on mother's section 388 petition on December 9, 2016. The court admitted into evidence several of the Department's reports dating back to June 2016, as well as Dr. Vines's December 6, 2016 letter. The following witnesses testified.

8.1. Mother

Mother acknowledged Jonas had been detained from her custody in October 2014 based on allegations concerning her mental health issues, but she denied that those issues ever put Jonas at a risk of harm. She also denied ever neglecting Jonas while he was in her custody between December 2015 and February 2016. Mother denied suffering from depression, but believed she was experiencing sadness that was commensurate with the "level of what [she was] going through."

Mother claimed she had been traumatized by the Department's primary social worker, who mother accused of lacking "empathy, professionalism, and ethical conduct." According to mother, the social worker ignored mother's phone calls, refused to see mother in person, falsified reports to "push things forward," and failed to "listen emphatically to [mother's] concerns and requests." Mother also did not get along well with Jonas's foster parents. She claimed the foster parents were "very unethical" and tried to manipulate Jonas's dependency case to ensure they obtained custody of the child.

Mother blamed her failure to reunite with Jonas on the Department, claiming it never provided her any clear goals to work toward. Mother did acknowledge, however, that the court's

December 2015 home-of-parent order established clear goals, but she was reluctant to admit she had failed to comply with that order. When asked whether her failure to comply with the order was the reason why Jonas had been removed from her custody in February 2016, mother responded, “I will plead the fifth.” After the court told mother she could not “plead the fifth,” mother stated she did not want to answer the question. Mother then claimed she never denied the Department access to Jonas while he was in her custody between December 2015 and February 2016.

8.2. The Visitation Monitors

Two visitation monitors testified about mother and Jonas’s visits between July and December 2016. During the summer, mother frequently discussed case issues in front of Jonas, often telling him his foster parents were not his real parents. In September 2016, one of the monitors instructed mother to stop talking about case issues during visits, after which point mother’s behavior improved, with her focusing more of her attention on engaging with Jonas. Mother interacted well with Jonas during visits, providing him snacks and showing him photographs of himself when he was younger. Jonas also appeared happy to see mother at the start of visits once she stopped talking about case issues in front of him. Nevertheless, Jonas tended to be more excited at the end of visits when he was allowed to return to his foster mother.

8.3. The Foster Mother

Jonas’s foster mother testified that her relationship with mother has been contentious since Jonas entered her custody. Mother has tried to undermine the foster parents’ relationship

with Jonas, telling the foster mother, “give up on Jonas. You’re not his mother. I’m his mother. He has a real family. Don’t take him on vacations.”

Jonas typically is reluctant to speak to mother on the phone, and the foster mother often has to chase him around the house before he will agree to talk. When Jonas does talk to mother, however, their conversations usually are positive. With respect to in-person visits with mother, Jonas sometimes becomes aggressive and suffers nightmares after he returns to his foster parents’ home.

8.4. The Department’s Social Worker

The Department recommended awarding mother additional reunification services in its December 1, 2016 report because mother’s behavior and relationship with Jonas had improved since August 2016. The social worker was concerned, however, that Dr. Vines’s December 6, 2016 letter could change the Department’s recommendation to provide mother additional services because the letter indicated mother was not making adequate progress addressing the issues that led to Jonas being declared a dependent of the court.

8.5. The Court’s Ruling

On December 9, 2016, the court denied mother’s section 388 petition, finding mother failed to demonstrate a sufficient change in circumstances. The court explained that Dr. Vines’s December 6, 2016 letter revealed mother had yet to take responsibility for her conduct or to adequately address the issues that led to Jonas being declared a dependent of the court. The court observed that mother continues to engage in a pattern of cooperating with the Department and making positive progress in therapy when she

agrees with the Department's or her therapists' opinions, only to revert to engaging in disruptive or inappropriate behavior when she believes the Department or her therapists are not looking out for her best interests. The court found returning Jonas to mother's custody and reinstating mother's reunification services would not be in Jonas's best interests. The court reasoned mother had yet to obtain stable housing or demonstrate that there existed a sufficient parental bond between herself and Jonas. The court also observed that Jonas was thriving in a stable placement and appeared to be closely bonded to his foster parents.

Mother filed a timely appeal from the court's order denying her section 388 petition.

9. Issues with Mother's Visitation Leading up to the Selection and Implementation Hearing

As of March 2017, mother continued to visit Jonas three times a week at one of the Department's offices. During February and March 2017, mother missed one visit due to car problems, and she was 30 minutes late to two other visits. Jonas missed one visit in early March because he did not have transportation to the Department's office.

Mother again had difficulty complying with the Department's guidelines for visits during the period after the court denied her section 388 petition. For example, on March 7, 2017, the Department terminated the visit early because mother discussed case issues in front of Jonas and told Jonas, " 'pretty soon I won't see you anymore.' " The monitor terminated the March 14, 2017 visit after only 20 minutes because mother refused to stop recording the visit, even though the monitor and the Department's social workers had warned her during the

previous visit that she was not allowed to record her visits with Jonas. When the monitor ended the visit early, mother picked up Jonas and told the monitor to call the police. After the monitor took out her phone, mother dropped Jonas, got in the monitor's face, and started yelling and cussing at the monitor, calling her a "fucking cunt."

On March 15, 2017, the Department explained to mother that she was not allowed to record her visits with Jonas unless she received express permission to do so from the court. Mother replied that she would no longer visit with Jonas if she could not record the visits.

On March 16, 2017, mother again made inappropriate remarks in front of Jonas, asking him if he would rather live with her or his foster parents. When Jonas responded that he wanted to live with his foster parents, mother became upset and threatened to leave. Mother again asked Jonas whether he wanted to live with his foster parents instead of her, at which point the monitor intervened and told mother to stop asking Jonas such questions.

On March 23, 2017, the court granted Jonas's counsel's request to decrease mother's visits with Jonas to once per week. The court reminded mother that, despite having been advised of the visitation guidelines on numerous occasions, she continued to violate those guidelines. The court warned mother that if she continued to do so, the monitoring agency would have the right to terminate mother's visits.

On March 30, 2017, the monitor terminated mother's visit early after mother made inappropriate and racially insensitive remarks in front of Jonas about his foster parents and the Department's social worker. When Jonas arrived at the visit

carrying a colorful bag shaped like a food truck with the words “tacos,” “enchiladas,” and “tortillas” printed on it, mother stated that the foster parents were turning Jonas into a “Mexican.” Later, after the monitor told mother to stop recording the visit, mother responded that she felt like the monitor was talking down to her because she was white and the monitor was black. Mother then said that the monitor was not “Black” but a “Negro,” at which point she picked up a stuffed animal with black coloring, pointed at it, and told Jonas the color black was “negro” in Spanish.

On April 21, 2017, the court held a hearing on whether to terminate mother’s visits after the Department reported that mother continued to violate visitation rules. After the court informed mother’s counsel⁴ it intended to grant the Department’s request, counsel submitted on the Department’s report. The court then terminated mother’s visits, finding her behavior during visits created a “substantial risk of detriment to [Jonas’s] safety and protection and the safety and protection of all the individuals around.” Mother did not object to the court’s ruling.

10. The Selection and Implementation Hearing⁵

On April 25, 2017, the court held a selection and implementation hearing under section 366.26. The court

⁴ A different attorney than the one who usually represented mother appeared on mother’s behalf at this hearing.

⁵ We note that between January 18 and April 25, 2017, mother and several of her friends filed at least 15 modification petitions under section 388, all of which the court denied without a hearing. Because none of those petitions are at issue in the two appeals that are currently before us, we do not discuss them in detail in this opinion.

admitted several reports filed by the Department dating back to September 2016, as well mother's exhibits, which included several groups of photographs of her and Jonas during a number of their visits and some photographs of Jonas with one of his half-brothers.

Mother testified at the hearing. According to mother, she regularly visited Jonas during the periods he was not living with her, missing only one or two visits. Jonas always was excited to see mother at the beginning of visits, giving her hugs and kisses, and he sometimes would be sad when their visits ended. Jonas would engage with mother during their visits, and he would frequently tell mother he loves her. Jonas always referred to mother as "mom," and not by her first name. Jonas also often told mother he loves her when they spoke over the phone.

Mother also testified about Jonas's relationship with his three step-siblings. Jonas had never lived with any of his siblings, but he had seen one of his step-brothers about five or six times, and he had some interactions with his two other siblings before he was first detained in January 2015.

Mother's counsel argued the beneficial parent-child and sibling relationship exceptions to the termination of parental rights applied. Counsel acknowledged mother had engaged in inappropriate behavior during some of her visits with Jonas, but asserted Jonas's bonds with mother and his siblings were so strong that terminating mother's parental rights would be detrimental to Jonas's well-being.

The court found mother failed to establish any of the exceptions to the termination of parental rights. With respect to the beneficial parent-child relationship exception, the court found mother and Jonas did not share a sufficient parent-child bond

and Jonas would not benefit from maintaining his relationship with mother. The court then terminated mother's parental rights and found Jonas was adoptable.

Mother filed a timely appeal from the court's order terminating her parental rights.

DISCUSSION

Mother's First Appeal (B279798)

In her first appeal, mother challenges the court's denial of her November 8, 2016 modification petition. Mother argues her completion of a parenting class, her improved behavior during visits between September and November 2016, her progress in therapy, and the fact that she had a supportive group of friends with whom she and Jonas can live constituted a substantial change in circumstances warranting modification of the court's June 2, 2016 order. She further argues returning Jonas to her custody and awarding her additional services would have been in Jonas's best interests because Jonas was bonded to her and would benefit from maintaining a child-parent relationship with his biological mother. As we explain below, the court properly denied mother's petition.

1. Applicable law

Under section 388, a parent may petition the juvenile court to change, modify, or set aside a prior order based on changed circumstances or new evidence. (§ 388, subd. (a)(1).) To warrant modifying a juvenile court's order under section 388, "there must be a substantial change in circumstances regarding the child's welfare and the requested modification of the prior order must be in the child's best interests." (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577.)

“Not every change in circumstance can justify modification of a prior order. The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate.” (*In re S.R.* (2009) 173 Cal.App.4th 864, 870.) Further, it is not sufficient to show that circumstances are merely “changing” or that the parent has only begun to take steps toward addressing the problems that led to dependency. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081.)

To determine whether the proposed change would be in a child’s best interests, courts look to three factors: (1) the seriousness of the problem leading to the child’s dependency and the reason for its continuation; (2) the relative strength of the bonds between the child and both his biological parent and his caretaker, as well as the relative lengths of time the child has spent with his biological parent and his caretaker; and (3) the nature of the change of circumstance, the ease by which the change could be brought about, and the reason the change was not made earlier. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685 (*Amber M.*).

The parent carries the burden of demonstrating that circumstances have changed and that modifying the prior order would be in the child’s best interests. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) “ ‘Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*Amber M., supra*, 103 Cal.App.4th at pp. 685–686.)

2. The court did not abuse its discretion in denying mother's modification petition.

The court found mother failed to demonstrate a sufficient change in circumstances because she refused to take responsibility for her conduct that led to Jonas being declared a dependent of the court and continued to try to undermine the Department's efforts to provide Jonas a stable home. This finding is amply supported by the record.

As of the time of the hearing on her modification petition, mother had made some improvements to her behavior during visits. She had stopped discussing case issues in front of Jonas, which appeared to have a positive impact on his mood, as he was more excited to see mother during the visits that occurred between September and November 2016. Mother also completed a parenting class without being required to do so by the court or the Department, and she appeared to be making progress in therapy, as reflected by Dr. Vines's November 3, 2016 letter.

As the court recognized, however, mother failed to demonstrate she had adequately addressed the issues that led to Jonas being declared a dependent of the court or that she could sustain her positive behavior for an extended period of time. Throughout Jonas's case, mother regularly alternated between being cooperative with the Department when she believed Jonas's case was progressing in her favor and attempting to undermine Jonas's case when she believed the people involved, such as the Department's social workers, Jonas's foster parents, the visitation monitors, and her therapists, were not working toward her best interests. We agree with the court that although mother's behavior improved for several months in 2016, that improvement, when compared to her inconsistent and sometimes

hostile behavior over two years, was not sufficient to warrant returning Jonas to her custody.

Perhaps most importantly, mother continued to deny that she was in any way responsible for the juvenile court's intervention in Jonas's life. During her interviews with the Department in November 2016 and at the hearing on her petition, mother denied her mental health issues ever placed Jonas at a risk of harm or that she neglected Jonas after he was briefly returned to her custody in December 2016. Instead, she placed the blame on the Department, which she claimed never provided her clear goals to work toward, and Jonas's foster parents, who she accused of trying to manipulate Jonas to ensure he would remain in their custody. By refusing to take any responsibility for the circumstances that contributed to Jonas being declared a dependent of the court, mother could not establish that she had achieved a substantial change in circumstances that would warrant returning Jonas to her custody or reinstating her reunification services. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1142–1143 [a parent's failure to acknowledge and take responsibility for her own conduct that led to her child's removal, despite her attendance of therapy and visitation with her child, supports the conclusion that the reasons that necessitated the child's removal have not been adequately addressed].)

The court also was well within its discretion when it found it would not be in Jonas's best interests to return him to mother's custody or delay his placement in a permanent adoptive home by reinstating mother's reunification services. Once a parent's reunification services have been terminated, the primary focus of the dependency proceedings turns toward the need for

a permanent and stable home for the child. (*In re K.L.* (2016) 248 Cal.App.4th 52, 62.) At that stage of the proceedings, a rebuttable presumption arises that stability in an existing placement is in the child's best interests, especially where, as here, the child is placed with caretakers who wish to adopt him. (*Ibid.*; *In re Angel B.* (2002) 97 Cal.App.4th 454, 464–465 (*Angel B.*)). Accordingly, a parent who seeks to reinstate reunification services or change the placement of her child through a section 388 modification petition must demonstrate the new or changed circumstances would be in the child's best interests. (See *Angel B.*, *supra*, 97 Cal.App.4th at p. 464; *In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) As explained in *Angel B.*, this is a difficult burden to meet once reunification services have been terminated because “a parent's interest in the care, custody and companionship of the child is no longer paramount.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

At the time the court heard mother's modification petition in December 2016, Jonas had lived with his foster parents for a total of nearly two years, or about two-thirds of his life. The foster parents had consistently provided Jonas a stable and nurturing home environment during that period, and Jonas was closely bonded to his foster parents, especially his foster mother. Importantly, Jonas's foster parents expressed a commitment to adopting him. (See *Angel B.*, *supra*, 97 Cal.App.4th at pp. 464–465.) Mother, on the other hand, had yet to obtain her own housing and was living on a friend's couch, and she had recently reported to the Department that she intended to move to another friend's home in the near future. Mother presented no evidence that she had secured stable housing for Jonas or that she was in the process of doing so.

To be sure, there was evidence that mother and Jonas's relationship had improved and that they started to become more closely bonded during the few months leading up to December 2016. Jonas was more excited to see mother and displayed more affection toward her during visits that took place between September and November 2016 than he had during most visits that occurred earlier in his dependency case. Nevertheless, Jonas continued to show a stronger bond with his foster parents. Jonas clearly viewed his foster mother as his real mother, as he regularly referred to her as "mommy," and he demonstrated a preference to return to her custody after nearly every visit with mother.

Mother's Second Appeal (B282773)

In her second appeal, mother challenges two orders: (1) the April 21, 2017 order terminating her visitation with Jonas; and (2) the April 25, 2017 order terminating her parental rights. As we explain below, mother failed to appeal from the court's order terminating visitation. As a result, her challenge to that order is not properly before us. With respect to the order terminating mother's parental rights, we conclude the court did not abuse its discretion in finding the beneficial parent-child exception did not apply in this case.

1. Mother failed to appeal from the court's April 21, 2017 order terminating her visitation with Jonas.

1.1. Relevant background

On April 25, 2017, mother filed a notice of appeal, in which she states she appeals from the juvenile court's order of the same date terminating her parental rights and establishing a permanent plan of adoption for Jonas. The April 25, 2017 notice

of appeal does not identify any other orders issued by the court, nor does it specify any other dates on which the court issued an order in Jonas's case.

On April 26, 2017, mother's counsel filed a notice of appeal, which states mother appeals from the court's "366.26 termination of parental rights" order issued on April 25, 2017. The notice of appeal goes on to state mother also appeals from "Denial of 388 petitions filed 4/25/17, 3/2017, 2/2017, [and] 1/2017." On the second page of the April 26, 2017 notice of appeal, counsel checked the box indicating mother appeals from the orders issued at the section 366.26 hearing and listed the following dates, "4/25/2017 – 9/2016." In a space below those dates, counsel also listed "12/1/2016." In addition, counsel checked the box indicating mother appeals from "[o]ther appealable orders relating to dependency . . . : DENIAL OF 388 PETITIONS FILED 4/25/2017." In the space immediately below that section, counsel listed the following dates, "4/25/17, 3/2017, 2/2017, 1/2017, [and] 12/1/2016."

1.2. Mother failed to appeal from the April 21, 2017 order terminating visitation

"A timely notice of appeal vests jurisdiction in the Court of Appeal." (*Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864.) Section 395 specifies what orders are appealable in a dependency proceeding. That section provides in relevant part: "[a] judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment." [Citations.] (*In re Michael H.* (2014) 229 Cal.App.4th 1366, 1373.) " " "Juvenile dependency law does not abide by the normal prohibition against interlocutory appeals" [Citation.]

[Citation.] ‘[T]he general rule in juvenile dependency cases is that all orders (except for an order setting a section 366.26 hearing), starting chronologically with the dispositional order, are appealable *without limitation*.’ [Citations.]” (*Ibid.*)

The notice of appeal must identify the particular order or judgment being appealed. (Cal. Rules of Court, rule 8.100, subd. (a)(2).) While courts are required to liberally construe notices of appeal (*ibid.*), “it is well ‘beyond liberal construction’ to view an appeal from one order as an appeal from a ‘further and different order.’ [Citation.]” (*Baker v. Castaldi* (2015) 235 Cal.App.4th 218, 225; see also *Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041, 1045 [a notice of appeal is inadequate if it omits any reference to the judgment being appealed].)

Here, mother failed to appeal from the April 21, 2017 order terminating her visitation with Jonas. As noted, mother filed two notices of appeal after the court issued the order terminating visitation: one on April 25, 2017, and one on April 26, 2017. Neither notice of appeal states that mother appeals from the April 21, 2017 order terminating visitation, lists the date on which that order was issued, or otherwise makes any reference to an order terminating visitation that reasonably could be construed as encompassing the order challenged in this case. Because neither notice of appeal identifies the April 21, 2017 order terminating mother’s visitation with Jonas, we lack jurisdiction to review that order.

In any event, mother failed to show that she was prejudiced by the termination of visitation with Jonas on April 21, 2017. At most, mother would have received an additional visit with Jonas before the April 25, 2017 section 366.26 hearing. Mother does not explain, however, how an additional visit with Jonas would have

helped her establish that the beneficial parent-child relationship exception applied.

2. The court did not abuse its discretion in finding the beneficial parent-child relationship exception does not apply to Jonas’s case.

2.1. Applicable law and standard of review

Section 366.26 governs the court’s selection and implementation of a permanent plan for a dependent child whose parents’ efforts at reunification have failed. The express purpose of section 366.26 is to “provide stable, permanent homes” for dependent children, and the legislature has expressly designated adoption as the preferred permanent plan once reunification services have been terminated. (§ 366.26, subd. (b).) To implement a plan of adoption, the court must find by clear and convincing evidence that the dependent child is adoptable. (§ 366.26, subd. (c)(1).) Once the court has done so, it must terminate parental rights, unless it finds termination of those rights would be detrimental to the child under one or more statutorily defined exceptions. (§ 366.26, subd. (c)(1)(A)-(B).)

“Section 366.26 provides an exception to the general legislative preference for adoption when ‘[t]he court finds a compelling reason for determining that termination would be detrimental to the child’ (§ 366.26, subd. (c)(1)(B)) because ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).) The ‘benefit’ prong of the exception requires the parent to prove his or her relationship with the child ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ [Citations.] No

matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ [Citation.] Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*).

The parent seeking to prevent termination of her parental rights carries the burden of establishing the beneficial-parent child relationship exception applies. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) We review the juvenile court’s determination whether a beneficial parent-child relationship exists for substantial evidence and the court’s conclusion as to whether termination of that relationship would be detrimental to the child under the abuse of discretion standard. (*K.P.*, *supra*, 203 Cal.App.4th at p. 622.)

2.2. Analysis

In this case, mother failed to establish she occupied a parental role in Jonas’s life. By the time of the selection and implementation hearing in late April 2017, Jonas had spent more than a total of two years (or more than half of his life) in his foster parents’ custody. Although mother had regained custody of Jonas for a two-month period, she had not spent any time alone

with him during the 14 months leading up to the selection and implementation hearing, having never progressed beyond monitored visitation after the court removed Jonas from her custody for a second time in February 2016. Thus, throughout the majority of his life, the foster parents provided Jonas's essential needs, such as food, shelter, nurturing, and behavioral redirection.

That Jonas viewed his foster caretakers, and not mother, as his parents is evidenced by that fact that he consistently referred to his foster mother as "mommy," always looked forward to returning to his foster mother's care after visiting with mother, and repeatedly expressed his desire to continue to live with his caretakers. Although mother and Jonas had some positive visits leading up to the selection and implementation hearing, with Jonas sometimes being excited to see mother, telling her he loved her, and displaying physical affection toward her, that evidence demonstrates mother occupied a role more akin to a friendly visitor or a non-parent relative as opposed to a parent. Such a relationship is insufficient to prevent the adoption of a dependent child. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Mother also failed to demonstrate that terminating her parental rights would be detrimental to Jonas's well-being. At the time of the selection and implementation hearing, Jonas was closely bonded with his foster parents, who had provided him a nurturing and stable home for more than two years of his life. Mother, on the other hand, had yet to demonstrate that she was able to provide Jonas the type of stability, attention, and care he was receiving in his foster parents' custody. As Jonas's case progressed toward the selection and implementation hearing, mother became more disruptive during visits. While in Jonas's

presence, she often accused the Department, the visitation monitors, and the foster parents of conspiring against her and manipulating Jonas into wanting to live with the foster parents. In addition, mother continued to refuse to accept any responsibility for her conduct that resulted in Jonas being declared a dependent of the court or to demonstrate that she was able to place Jonas's best interests ahead of her own. The court was therefore well within its discretion to conclude it would not be in Jonas's best interests to delay his permanent placement in a stable home while mother continued to refuse to address, let alone acknowledge, the issues that led to Jonas being declared a dependent of the court.⁶

⁶ In light of our holding, we do not address mother's argument concerning the disentitlement doctrine.

DISPOSITION

The December 9, 2016 order denying mother's section 388 petition and the April 25, 2017 order terminating mother's parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.*

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