

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

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

B284879
B287104

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK17620)

Plaintiff and Respondent,

v.

KATRINA K.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Robert S. Draper, Judge. Conditionally reversed and remanded.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

In a matter that has been before this court numerous times, Mother Katrina K. appeals from the juvenile court's orders made between July 18, 2017, and December 5, 2017, involving her son, dependent child M.F. We conditionally reverse the court's orders made on and after July 18, 2017, because the juvenile court improperly denied Mother's motions for substitution of appointed counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) without affording her the opportunity to state the reasons for her dissatisfaction with her attorney.

FACTUAL AND PROCEDURAL BACKGROUND

I. Prior Events

In 2016, the juvenile court declared Minor (born in 2014) a dependent child of the court under Welfare and Institutions Code¹ section 300, subdivision (b) and removed him from Mother's custody. We affirmed the jurisdictional and dispositional orders on appeal, as well as the juvenile court's refusal to appoint a specific person as Minor's guardian. (*In re M.F.* (Nov. 6, 2017, B277535, B280849) [nonpub. opn.]). Mother's December 2016 appeal from the court's orders that Minor undergo a forensic sexual abuse examination and that Mother not be present during the examination was dismissed as moot. (*In re M.F.* (June 5, 2017, B280431).)

¹ All further statutory references are to the Welfare and Institutions Code.

II. Events Leading to Present Appeals

A. May Through Mid-July 2017

On May 12, 2017, the juvenile court continued the six-month review hearing (§ 366.21, subd. (e)) at Mother's request so that she could obtain private counsel. On May 26, 2017, at the request of prospective private counsel, Barry Cohen, the court continued the six-month review hearing to June 6, 2017. Also on this date the juvenile court suspended Mother's visitation and telephone contact with Minor, who had been placed with his paternal aunt. Mother filed notices of appeal on May 12 and 26, 2017, to challenge these orders. We dismissed Mother's appeal pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, 843, 866, and *In re Sade C.* (1996) 13 Cal.4th 952, 994, on February 8, 2018. (*In re M.F.*, *supra*, B283384.)

At the June 6, 2017 hearing, Mother's appointed counsel gave her the case file and the court ordered her to give it to Cohen. The court set a progress hearing for July 18, 2017, for the court to "determine appointment of Mother's counsel." Mother's visitation was reinstated: the court ordered Minor to be brought to Los Angeles twice per month for a two-hour visit with Mother at a DCFS office. The juvenile court also set the six-month review hearing for August 1, 2017.

Mother's counsel requested a walk-on hearing on July 11, 2017, asking the court to remove Minor from his placement because the caregivers were not feeding Minor nutritious food or taking proper care of him. Mother advised the court that Minor had lost weight, his complexion had become grayish-blue, and that his hair was no longer as shiny or voluminous as it had been

in the past. The juvenile court denied the request without a hearing.

B. July 18, 2017 Hearing

On July 18, 2017, the court began the proceedings in the absence of County Counsel and others, stating, “I understand that there is a request for a *Marsden* [hearing].”² Mother’s counsel confirmed that Mother had filed a motion requesting a *Marsden* hearing.³ The court asked Mother if she had retained Cohen. Mother, whose first language is not English, asked, “May I ask—speak something?”

“Could you answer my question, please,” said the court.

Mother said, “Mr. Cohen is—is coming. And he—” The court began to speak, and Mother continued, “And I’ll—I’ll ask the court it’s possible to have testimony with me right now to come and be present during the hearing.”

The court asked again, “[H]ave you hired Mr. Cohen?”

“I—I—right now we—we are dealing with a *Marsden* hearing because—” Mother began. The court interrupted, “No. Ms.—” but Mother continued speaking, trying to state her reasons for dissatisfaction with her counsel. “I did not—I did not have a lot of information that they were given to me, and I came to know several times that paperwork were hold and were not given to me.”

² We quote freely from the *Marsden* hearing transcript because the full text of the hearing was disclosed to all parties by Mother in her letter brief of February 21, 2018.

³ No motion is included in the record on appeal.

The court told Mother, “I need you to answer my question. Okay? Listen to my question. Have you retained Mr. Cohen? Yes or no?”

“I have speak with Mr. Cohen,” Mother answered. The court asked if that meant that Cohen was going to represent her. Mother responded, “He’s going to represent me, but I’m—I’m short in money. So he is asking the court for—helping me during the case.”

The court said, “Okay. The *Marsden* motion is denied. When Mr. Cohen gets here, we’ll talk to Mr. Cohen about the representation. That’s what we’re here for today. Okay?”

Mother tried again to tell the court why she was unhappy with her attorney. “*Marsden* is denied, sir, but I all the times have made complaints because paperwork were not given to me and I came to know at last moment things that I—” Mother said.

The court said, “Ms. K[], the motion is denied. And we’ll talk to Mr. Cohen when he gets here.”

Cohen never arrived. Instead, he sent an assistant and a letter to the court. Cohen’s letter explained that he wished to represent her at the upcoming hearing, which he incorrectly believed was a hearing on termination of parental rights. He said he believed he could be of assistance to Mother, “particularly as she has claimed the ineffective assistance of court appointed counsel has prevented her from presenting some or all of her claims.” Cohen, however, wished to be limited scope counsel and to represent Mother at only this one hearing because she lacked the financial resources to retain him indefinitely. Cohen identified six witnesses he intended to cross-examine and indicated that he expected the hearing to take four to five hours.

The court refused to permit Cohen's assistant to remain in the courtroom. The court explained, "I ordered Mr. Cohen to be present. He's not present. He gave me a letter that said he wanted to be retained just for the [section 366].21[, subdivision] (e) hearing. That's not possible. [O]nce you're retained as an attorney in this department, you're retained until I release you. And I don't release attorneys until you have another alternative. So I don't think that Mr. Cohen [will be representing Mother] at this point, and so I will exclude the paralegal from Mr. Cohen's office."

The court proceeded to modify Mother's visitation with Minor in response to a section 388 petition filed by Minor's attorney. The court ordered that if Minor was transported to Los Angeles for visitation, visits would be once per month for four hours. If Mother traveled to San Francisco, where Minor's caregivers lived, she could visit him twice per month for four hours each time.

Mother then asked to be heard and attempted to give the court a document indicating that her preferred caretaker for Minor was properly certified and that Minor could be placed in her home. The court refused the document, and Mother's counsel said, "He said no." Mother tried to explain, "It's a certification—" but her attorney interrupted her: "He said no."

Mother continued to speak. "You can see that is a full certified, and it was on—on June while she was—my son was sent to San Francisco while—it was a removal from Ms.—"

The court interjected, "Ms. K[], we're not going to relitigate everything I've done every time you come in. Okay?" Mother said no, and the court said, "I've made my order. That's it. We're done."

Mother filed a notice of appeal on July 21, 2017 (Case No. B284879).⁴

C. Late July 2017

On July 28, 2017, Mother filed a petition under section 388 asking the court to rescind its previous order authorizing vaccinations for Minor over her objection.

On July 31, 2017, Mother filed two section 388 petitions. In the first, she requested that the court recognize her as Minor's presumed mother and discontinue its prior order requiring her to prove she was Minor's mother by taking a DNA test.⁵ She attached an emergency medical services report, a newborn screening request form, and a hospital newborn admission

⁴ As she has done in the past, Mother designated on her notice of appeal that she appealed not only the orders made at the July 18 hearing but also all of the court's orders from 2016 and 2017. As Mother's most recent previous appeal, Case No. B283384, concerned proceedings through May 26, 2017, we consider Mother's appeal to relate to orders made after that date.

⁵ Over the course of the dependency proceedings the juvenile court repeatedly expressed its suspicion that Mother was not Minor's mother despite her production of documents relating to Minor's out-of-hospital birth and subsequent hospital care for Minor on the day of his birth. At one point, the court limited Mother's visitation with Minor as a penalty for refusing to take a DNA test. (*In re M.F.*, *supra*, B277535, B280849.) On another occasion, the court refused to let Mother attend the sexual abuse examination (arising from a prior foster care placement) of Minor, then two years old, until she took the DNA test. Maternity is no longer at issue in this matter: at oral argument, DCFS conceded that the record establishes that Mother is Minor's mother.

assessment from the date of Minor's birth, as well as other documents showing her care of Minor prior to his removal from her custody.

In the second July 31, 2017 petition, Mother requested that Minor be removed from his placement with paternal aunt in Northern California and placed with Mother's preferred caregiver in Los Angeles. Mother attached to her petition her preferred caregiver's Resource Family Approval Certificate, apparently the document she had attempted to present to the court at the July 18, 2017 hearing.

D. August 1, 2017 Hearing

During Mother's testimony at the section 366.21, subdivision (e) review hearing on August 1, 2017, she acknowledged that "[g]enerally speaking," she had failed to comply with the court's orders at disposition. Mother had visited with Minor regularly, participated in a program called Parents in Partnership, and took classes in parenting and foster licensing. Mother had not, however, undergone the court-ordered psychological evaluation, stating, "I do not have any mental problems." She had not obtained a delayed birth certificate for Minor because "it's not vital." She had not signed the consent forms the court had ordered her to sign so that Minor could receive a mental health assessment and Regional Center services. She had not undergone the court-ordered DNA test because she gave birth to Minor. She said she had undergone individual counseling to address case issues, but did not provide the therapist's name and said the therapist was not a certified therapist with Los Angeles County but was someone who

understood her background and was able to guide her through the dependency process.

The court found that returning Minor to Mother would place him at substantial risk of detriment, explaining its reasoning as follows: “[W]hen the case was brought here, the picture we had was the child in a tent in one of the worst streets in Los Angeles with razor blades and drugs well within reach. I’ve worked with Mother as much as I can. I’ve tried very hard to help her to understand we need her to do some things. One of the things we needed her to do from Day One because there is a question as to whether Mother is the mother, it’s very simple, could not be more simple, take a DNA test. Give a little blood. And she’s refused adamantly to do that all along. She’s not cooperative. I think the child would be in great danger to be placed and returned to the mother.” The court also found that Mother had made no progress at alleviating the causes that necessitated placement; she had not participated in and made substantive progress in court-ordered treatment programs; and there was no substantial probability that Minor could be returned to her in the next six months. The court terminated Mother’s reunification services and set a hearing pursuant to section 366.26 for November 28, 2017.

Also at this hearing, the court denied Mother’s three section 388 petitions. Mother’s counsel asked if the court had received Mother’s section 388 petition seeking to be deemed Minor’s presumed mother. The court responded, “If I did, I’m denying it. I think I did see that, and, yes, I’m denying it. As soon as she takes a DNA test, I’d be happy to take another look at that.”

The court also modified the visitation order to end Minor's travel for visitation, granting Mother two visits per month for two hours at the DCFS office in San Francisco.

Mother filed a notice of appeal on August 1, 2017 (Case No. B284879). Mother's counsel acknowledges that orders made at a hearing in which a hearing under section 366.26 is ordered must be challenged by writ petition. (§ 366.26, subd. (d); *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1024; *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 817.) Mother filed a petition for extraordinary relief by writ on September 28, 2017; it was dismissed as inadequate on October 4, 2017. (*In re M.F.*, *supra*, B284872.)

E. August 24, 2017 Hearing

At a walk-on hearing held August 24, 2017, the court authorized Mother's visits to take place in the Oakland area rather than in San Francisco, and ordered DCFS to attempt to arrange the visits in a child-friendly location. Mother did not oppose the location change. Over Mother's objection, the court also gave permission for Minor's caregivers to cut his hair. Mother filed a notice of appeal from these orders on August 29, 2017 (Case No. B284879).

F. October 10, 2017 Requests for Hearing

On October 10, 2017, Mother submitted two walk-on requests that appear to have been prepared by Mother rather than by her counsel. In the first, Mother alleged that she had observed an open wound on Minor's chin at an August visit and that Minor complained of being pushed and having his hair pulled. Mother stated that at the September visit, she and the

social worker found a bite mark on Minor's chest and scratches on his legs. In neither case had the caregivers reported the injury. She also complained that a September visit had been canceled because DCFS caused her to arrive on the wrong date, and she could not afford to return to Northern California or to stay there until the visit occurred. She alleged that this event conveyed to Minor that he was not important enough for his mother to visit and constituted emotional abuse. She requested that Minor be removed from his placement and placed in a home that "specialize[d] in my son's age developmental and emotional issues in order to have maximum support[], unconditional love and care—all things he really needs to grow up [into a] healthy and sane adult."

In the other request, Mother sought a hearing concerning travel funds for her visits with Minor in Northern California. The court denied both of Mother's requests without a hearing.

G. November 28, 2017 Hearing

When the hearing began on November 28, 2017, Mother stated, "Mother is here in special appearance."

"Mother is not in special appearance," the court responded. "Mother is represented by counsel."

Mother repeated that she was "in special appearance." The court did not respond and began speaking to County Counsel. Mother continued to speak, saying, "I filed papers. You want to read them?"

The court twice began to address Mother's counsel, but Mother continued to state that she was making a special appearance and asked, "Everybody hear that?" The court asked

Mother's counsel to state his appearance for the record, and Mother interjected, "No. Mother is here in special appearance."

After the court and the bailiff threatened Mother with removal, she stopped speaking and her attorney explained that Mother sought the substitution of appointed counsel and was requesting a *Marsden* hearing.

The court responded, "The Mother has already had the *Marsden* hearing. I'm denying that request."

Mother said, "No. Mother doesn't have the *Marsden* hearing. Mother filed the papers."

Mother's counsel advised the court that Mother had attempted to file documents with the court that were not accepted by the clerk, but he did not know what the documents were. The court told counsel that if he obtained the documents from Mother to give them to the court directly, and the court would "take a look at it." Mother and the court then spoke simultaneously, with the court turning to another subject and Mother beginning to describe at least one document she had sent to the court.

The court did not permit Mother to continue, but instead began to discuss with counsel the sufficiency of notice of the hearing and the question of Minor's contested paternity. Mother interrupted and said, "Mother is on special appearance, Your[] Honor, and I have—"

Mother's counsel said, "Just please listen."

"No," said Mother. I'm not going to proceed something that you have already the papers. So who got the papers here they have been mailed?"

"Stop," Mother's attorney told her.

Mother said, “No. I’m not. I’m not going to proceed something that—” Mother’s attorney resumed argument to the court about appropriate paternity findings, during which time Mother interjected, “No.”

County Counsel requested a continuance of the section 366.26 hearing until January 30, 2018, to permit the completion of the caregivers’ home study. The court asked if there was any objection to a continuance. Mother’s counsel began, “There is not an objection to the continuance, Your Honor, but—”

Mother interrupted: “The mother objecting everything because, first of all, this court is doing wrongful way judging me when I am not part of the county. I do not receive, I do not follow any of the proceeding that the county have for their residen[ts] because I am not a resident in this county.”

The court said, “All right,” and Mother continued, “So you are stealing something that is mine, and I require to have what is mine because I am not part of your proceeding. I was never was, but you are proceeding against me, against my will, and to gain my everything, and I require what is mine because I am the mother and I have the right to have it.” Mother then tried to hand documents to the court, but the court told her to file them with the clerk. Speaking over the court, Mother said, “No, no, no,” and that these documents were for the court because the court had said it had not received them.

The court threatened Mother with removal from the courtroom. “No. What I’m saying—” Mother continued.

“I understand what you’re saying, but I’m telling you that we are proceeding here in a court of law,” said the court. “You stated your position.”

Mother continued to speak and was told by the bailiff and the court to leave the courtroom. She protested against leaving while the hearing was in progress, but the bailiff told her to gather her belongings and go. In a series of statements punctuated by instructions from the court and the bailiff to leave the courtroom, Mother told the court that she needed an answer from the court and that papers had been given to the court but the clerk had informed her that they would not be given to the judge.

The court told Mother to “[s]top talking and leave” or “we’re going to have to put you in jail.”

Mother said, “I want these papers out. Why you have to hide the papers?”

The court stated, “I believe we need some help. [¶] You are going to leave.”

“I want an answer from you and you are the judge so you have these papers. Who have these papers? Bring them out?” Mother insisted.

“Remove the mother,” the court ordered. After a recess, the court stated for the record that Mother had been removed “because she refused to comply with the court’s orders or to stop disrupting the court.”

In Mother’s absence, the court ordered a DNA test for the paternal aunt to ensure she was biologically related to Minor. The court also ordered that the location of Mother’s visits be staffed sufficiently to terminate visits if Mother acted inappropriately and authorized the caretakers to obtain a passport and social security number for Minor.

On December 5, 2017, Mother filed a notice of appeal (Case No. B287104).

H. Subsequent Proceedings

On December 1, 2017, Mother filed a document with the court stating that she intended to waive counsel and represent herself.

We take judicial notice of the court's minute order from January 30, 2018. On that date, the court conducted the permanency planning hearing pursuant to section 366.26. The court found that the conditions that justified the court in taking jurisdiction over Minor had continued; that Minor was adoptable; that although Mother had maintained regular visitation with Minor, she had not established a bond with the child; that any benefit accruing from his relationship with Mother would be outweighed by the benefits of adoption; that adoption was the permanent plan; and that no exceptions to adoption applied. The court terminated parental rights and designated the paternal aunt and her spouse as the prospective adoptive parents. Finally, the court terminated all visitation for Mother and ordered that she have no contact with Minor.

Mother's appeal from the January 20, 2018 orders is presently pending before this court as Case No. B288200, but the briefing has been suspended due to an incomplete record.

DISCUSSION

I. *Marsden*

"In a dependency case (Welf. & Inst. Code, § 300 et seq.), the juvenile court may terminate a parent's interest in a child's companionship, care, and custody after the child has been removed from the parents' home, efforts to reunify the family have failed, and adoption has been identified as the permanent

placement goal. [Citations.] Because a basic civil right of the parent is thus at stake [citation], significant due process safeguards have been built into the dependency scheme [citation], including a right to court-appointed counsel for a parent who cannot afford to retain counsel (Welf. & Inst. Code, § 317).” (*In re James F.* (2008) 42 Cal.4th 901, 904.) “All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel.” (§ 317.5, subd. (a); see Cal. Rules of Court, rule 5.660(d).)

Under *Marsden*, *supra*, 2 Cal.3d 118, “[i]n a criminal case, when a defendant requests substitute appointed counsel, the trial court must permit the defendant to explain the specific reasons why the defendant believes current appointed counsel is not adequately representing him. [Citation.] Juvenile courts, relying on the *Marsden* model, have permitted the parents, who have a statutory and a due process right to competent counsel, to air their complaints about appointed counsel and request new counsel be appointed. [Citation.]” (*In re V.V.* (2010) 188 Cal.App.4th 392, 398.) Accordingly, when a parent in dependency proceedings requests a *Marsden* hearing, the juvenile court must permit the parent to explain the basis of his or her contention and to relate specific instances of inadequate performance. (See *In re Z.N.* (2009) 181 Cal.App.4th 282, 293.) The juvenile court’s failure to conduct a *Marsden* inquiry in this case was error and requires a conditional remand.

The court denied Mother’s request for a *Marsden* hearing in a cleared courtroom at the July hearing because at that time she was understood to be in the process of hiring a private attorney to represent her, and the court appeared to believe that the retention of private counsel would make it unnecessary to inquire

into the basis of Mother's dissatisfaction with the performance of her appointed counsel. However, on the same day, before the case could be called again in open proceedings, it became clear that prospective attorney Cohen would not appear as ordered and that he was only willing to represent Mother for a single upcoming hearing. The court indicated, when the hearing reconvened with all parties present, that it would not accept Cohen's proposal for limited scope representation. As a result, in a single court session the juvenile court declined to consider Mother's request for substitution of appointed counsel because she was hiring private counsel and then refused to permit that attorney to represent her. Mother's attorney failed to raise the *Marsden* issue again, and the court did not revisit the issue at that hearing.

Mother renewed her *Marsden* request at a subsequent hearing, at which point the court denied her request without permitting her to state the reasons for her request for the substitution of appointed counsel because she "already had the *Marsden* hearing." This was factually incorrect, as the court had not permitted Mother to articulate her complaints about her appointed counsel when she asked for a hearing in July 2017. With this ruling the juvenile court deprived Mother of the hearing to which she was entitled on the basis of its prior denial of the hearing to which she was entitled.

The end result was that Mother never received the *Marsden* hearing she asked for in July 2017. Despite multiple requests Mother was never allowed to explain the basis of her contention of ineffectiveness and to relate specific instances of inadequate performance. (*In re Z.N.*, *supra*, 181 Cal.App.4th at p. 293.)

Mother argues that we should review the erroneous denial of a *Marsden* motion in a dependency proceeding as criminal courts do, using the harmless beyond a reasonable doubt standard set forth in *Chapman v. California* (1967) 386 U.S. 18. (*Marsden, supra*, 2 Cal.3d at p. 126; see *In re Z.N., supra*, 181 Cal.App.4th at p. 296 [if denial of *Marsden* hearing was error, it resulted in “no prejudice, even by the heightened federal constitutional standard of harmless beyond a reasonable doubt”].) County Counsel, noting the “[d]ifferent interests . . . at stake in criminal prosecutions and dependency proceedings” (*In re M.P.* (2013) 217 Cal.App.4th 441, 459), contends that we should review the error under the harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818 and conclude that the error did not result in a miscarriage of justice.

Under either standard we cannot say it was harmless error for the juvenile court to neglect its duty to hear Mother’s complaints and determine whether she was receiving representation consistent with her statutory and due process right to effective assistance of counsel. It would be difficult to overstate the magnitude of the findings and orders the juvenile court made after depriving Mother of the *Marsden* hearing she sought: The court curtailed her visitation.⁶ It denied her section 388 petitions and hearing requests, including two requesting a

⁶ As of June 2017 Mother was visiting with Minor in Los Angeles twice a month for two hours. On July 18, 2017, the court granted Mother two visits per month for four hours each if she traveled to San Francisco; if Minor was brought to Los Angeles, her visits remained at four hours per month but were modified to a single longer visit. The court subsequently cut Mother’s visitation to two hours per visit, twice monthly, and ordered no further visits in Los Angeles.

change in Minor's placement—one of which alleged that Minor was being physically abused. The court terminated Mother's reunification services. It set and conducted the hearing to select a permanent plan for Minor. The court declared Minor to be adoptable, selected a permanent plan of adoption, and designated his caregivers as prospective adoptive parents. The court found that Mother had no bond with Minor despite regular visits. Finding that no exception to adoption applied and that any benefit Minor would receive from a continued relationship with Mother was outweighed by the benefits to him of adoption, the court terminated Mother's parental rights. Finally, the court ordered that Mother have no further contact with Minor.

Mother was entitled to present her complaints about counsel and have the court consider whether new counsel should be appointed before these orders were entered. In the absence of that review, the juvenile court's orders issued on July 18, 2017, and thereafter must be conditionally reversed. On remand, Mother shall be afforded the opportunity to state her grievances with her appointed counsel.⁷ If, after the *Marsden* hearing, the juvenile court determines Mother's counsel was not representing Mother in a competent manner, including communications with Mother, substitute counsel shall be appointed (unless, as discussed below, Mother desires to represent herself, as she later requested). If not, the conditionally reversed orders shall be reinstated.

⁷ We take judicial notice of the fact that the judicial officer previously assigned to this matter no longer sits in dependency court. (Evid. Code, § 452.) We need not address Mother's request that the matter be heard on remand by a different judicial officer because a new judicial officer will have to be assigned.

II. Self-Representation

A parent who is unable to afford counsel and whose child has been placed in out-of-home care is entitled be represented by counsel “unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel” (§ 317, subd. (b).) Mother argues that the juvenile court erred when it failed to conduct an inquiry into and issue a ruling on self-representation for Mother either at the November 28, 2017 hearing or once she filed a written request to represent herself on December 1, 2017.

At the November 28, 2017, hearing, Mother did not advise the court that she wished to represent herself or invoke her right to self-representation. Although she argues that her conduct in court that day indicated that she had decided to proceed without counsel and was attempting to represent herself, Mother’s behavior at the hearing was consistent with her usual court conduct, which involved frequent attempts to articulate her positions directly to the court. We cannot say that her conduct constituted a request that her counsel be relieved or otherwise obligated the court to inquire whether she wished to represent herself. (See *In re Richard K.* (1994) 25 Cal.App.4th 580, 590 [“As a general rule, a party is precluded from urging on appeal any point not raised in the trial court”]; *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603 [“A party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do”].)

On December 1, 2017, Mother notified the court in writing that she intended to represent herself. Mother complains that the court did not address this self-representation request, but her notice was independent of any court proceeding—the next

hearing was not scheduled until January 2018. Mother filed the notice of appeal in Case No. B287104 on December 5, 2017, well before the next court date and only a few days after she had filed her notice with the court. As there was no court proceeding between December 1, 2017, and December 5, 2017, at which the court failed to address Mother's desire to represent herself and take her waiver of her statutory right to counsel pursuant to section 317, subdivision (b), Mother has not raised an issue cognizable in the present appeal. If, on remand, the juvenile court concludes that substitute counsel should be appointed, Mother may request at that time to waive counsel if she continues to wish to represent herself.

III. Travel Funds Hearing

On August 1, 2017, the court ordered Mother to travel to Northern California for visits with Minor and instructed DCFS to provide transportation funds. On October 10, 2017, Mother filed a request with the juvenile court for a hearing, complaining that she was not receiving her travel funds far enough in advance; that one September visit had been canceled after DCFS caused her to travel on the wrong date and she lacked the funds to stay in Northern California or to return for the visit; and that her round-trip travel took 16 hours per visit but she was not given funds for meals or a hotel stay. The court denied the request without a hearing.

Relying on *In re Hunter S.* (2006) 142 Cal.App.4th 1497, Mother argues that the court erred when it denied her a hearing to address her travel funding issues. In *Hunter S.*, "the court granted visitation in theory, [but] none was permitted in reality." (*Id.* at p. 1505.) There, the juvenile court ordered visitation "as

can be arranged,” and the child ultimately was given virtually complete discretion to control his contact with his mother. (*Ibid.*) The mother spent more than two years asking the court to enforce the visitation order, but the court did nothing in response. (*Ibid.*) The juvenile court in *Hunter S.* “did not believe it had the power or duty to ensure visits actually took place.” (*Ibid.*)

Based on *Hunter S.*, *supra*, 142 Cal.App.4th 1497, Mother argues that by failing to hold a hearing on Mother’s request the juvenile court failed to enforce its visitation order, and that this constituted reversible error. *Hunter S.* is inapposite, however, because there is no evidence here of a failure to enforce the visitation order. While it is obvious that visiting Minor in Northern California was physically and emotionally difficult for Mother, the record provided by Mother indicated that visitation was occurring regularly pursuant to the court’s order and that no party was imposing obstacles to visitation. She acknowledged visiting Minor in Northern California on August 25, 2017, and September 28, 2017. As of October 10, 2017, when Mother filed her request with the court, her two October visits had been scheduled and she had already received the travel funds for those visits. Although a complication led to the cancellation of Mother’s mid-September visit, in general Mother was receiving her travel funds and successfully visiting her child. Accordingly, Mother has not demonstrated that the juvenile court failed to enforce its visitation order as in *Hunter S.* Moreover, even if it was error for the juvenile court to fail to grant Mother a hearing on travel funding, any error would be harmless in light of Mother’s consistent visitation and the absence of evidence of DCFS or any other party obstructing visitation.

DISPOSITION

The orders of the juvenile court made on and after July 18, 2017, are conditionally reversed and the matter remanded to the juvenile court with instructions that the newly-assigned judicial officer conduct a *Marsden* hearing. If, after the *Marsden* hearing, the juvenile court determines that the appointment of new counsel is not merited, the orders shall be reinstated.

If, after the *Marsden* hearing, the juvenile court determines Mother has demonstrated that new counsel should be appointed, the court shall appoint substitute counsel (unless Mother desires to proceed without an attorney and makes a knowing and intelligent waiver of counsel pursuant to Welfare and Institutions Code section 317, subdivision (b)); all orders in this matter made on and after July 18, 2017, shall remain reversed; and the juvenile court shall conduct a new progress hearing to set dates for further statutory hearings and to make orders that take into account the child's current circumstances.

Until the *Marsden* issue is resolved, M.F.'s placement shall not be changed without a further court hearing on the issue of placement.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.