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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.L., a Person Coming Under the Juvenile Court Law.	B261317
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.L., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK46624)

APPEAL from a judgment of the Superior Court of Los Angeles County. Veronica McBeth, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Respondent.

This is the second appeal in this dependency matter regarding A.L., who is now three years, four months old. Previously, we affirmed an order denying appellant J.L.'s (father) request that his close friend, T.D., be designated a nonrelated extended family member and that A.L. be placed with T.D. (case No. B244509). In this case, father appeals from the orders denying his Welfare and Institutions Code section 388 petition seeking additional reunification services and the order terminating his parental rights.[1] He contends: (1) his due process rights were violated by the denial of court-ordered, post-reunification visitation; (2) denial of his section 388 petition was an abuse of discretion; and (3) no substantial evidence supports the juvenile court's finding that the beneficial relationship exception to the preference for adoption was not applicable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Jurisdiction and Review Hearings

Father was 57 years old and incarcerated on drug-related charges when A.L. was born addicted to cocaine in February 2012; mother also tested positive for cocaine. A.L. was detained and placed with the foster family/prospective adoptive family with whom she still lived at the time of the challenged orders. Foster parents arranged for A.L. to receive therapy (developmental, speech, physical and occupational) for her various special needs.

As sustained on March 19, 2012, a section 300 petition based dependency jurisdiction on mother's drug use and failure to reunify with several other children, as well as father's failure to protect A.L. (§ 300, subd. (b).) Father's reunification services included monitored visits, which the Department of Children and Family Services (DCFS) had discretion to liberalize. Foster parents brought A.L. to visit father every other weekend until his December 2012 release from incarceration.

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[1] All future undesignated statutory references are to the Welfare and Institutions Code.

By the time of the 12-month review hearing on March 18, 2013, father was close to completing his court ordered services; his visits with A.L. remained consistent and were successful. Finding father in compliance with the case plan, but that A.L. could not yet be safely placed with him, the juvenile court continued the matter for an 18-month permanency review hearing in September 2013. The record does not include a reporter's transcript of the March 18 hearing. It appears, however, that the juvenile court ordered *un*monitored visits for father (consistent with DCFS's recommendation) but the minute order incorrectly stated that the March 19, 2012 order (which gave father monitored visitation with DCFS discretion to liberalize) remained in full force and effect.

A few days after the March 18 hearing, father was understandably upset when the social worker maintained the juvenile court had *not* ordered unmonitored visits, that DCFS had discretion to liberalize father's visits, but would not do so unless father had two negative drug tests and attended one or two of A.L.'s therapy sessions – conditions not placed on father by the juvenile court. Even after the social worker discovered his error that same day, he tried to convince father to delay unmonitored visits until father had participated in A.L.'s therapy sessions. Father expressed willingness to attend A.L.'s therapy sessions, but not to delay his unmonitored visits. Notwithstanding the court order for unmonitored visits, the social worker told father his upcoming weekend visit would have to be monitored pending correction of the minute order and DCFS "wanted" him to attend one therapy session. The social worker also told father the foster parents were no longer willing to alternate with father in selecting a convenient meeting place. Father eventually agreed that his friend, T.D., would monitor another visit and the visit would be extended from five to eight hours. Father told the social worker he (father) was beginning to feel as though DCFS "was working against him, and that [it] wanted to take his child from him."

After two weeks of unmonitored visits, father requested overnight visits. Father saw the social worker's denial of that request as further proof that DCFS was biased in favor of the foster parents and a permanent plan of adoption. Father also expressed doubts that A.L. was being helped by the developmental services she was receiving. He

believed A.L.'s delays could be attributed to her being separated from her family and being raised by people of a different race.

In its report for a May 2013 review hearing, DCFS recommended father participate in individual counseling, including anger management. In a Last Minute Information For The Court, the social worker expressed concern that father had displayed some anger management issues with the foster parents and the social worker on a few occasions. The juvenile court ordered father to be assessed for individual counseling and to participate in such counseling if recommended; DCFS was given discretion to further liberalize father's visits (i.e. from unmonitored to overnight) "on condition father participates in all court ordered services and regional center services with [A.L.]."

The social worker did not provide father with counseling referrals until July 2013, two months after the court order. After some resistance, in a Team Decision Meeting on September 11, father agreed to enroll in an anger management class and did so on September 16, three days before the 366.22 hearing (.22 hearing) on September 19. According to the report for that hearing, father was consistently visiting A.L. and participating in her therapy. At the hearing, the social worker informed the juvenile court of a conversation he had with the foster father. Foster father had said that on September 12 father was accompanied by a male friend when he returned A.L. to the foster family following an unmonitored visit. The friend appeared intoxicated and got into a shoving match with father, but father calmed the friend down and got him back into the car. Because father was not in full compliance with the case plan (he had not yet participated in individual counseling), DCFS recommended termination of reunification services and setting of a section 366.26 permanent plan selection hearing (.26 hearing). The juvenile court continued the matter to October for a contested .22 hearing and ordered: "Nobody is to be with father during his visits."

According to DCFS's report for the continued .22 hearing, there had been no further problems with visits. Father had attended three individual counseling sessions but refused the social worker's request that he voluntarily drug test. Father's counseling services provider told the social worker that father "is very open and willing to discuss all

issues related to his open case with DCFS and any new issues that arise. He appears to have many anger coping skills and the ability to use them affectively and appropriately, which he learned in his previous anger management program." DCFS continued to recommend termination of reunification services. After hearing testimony from father and foster father, the juvenile court found DCFS had *not* provided father with reasonable reunification services. It continued the .22 hearing for another six months (to April 2014, more than 24 months after A.L. had been placed in foster care), and ordered father to continue in individual therapy to address anger management issues.

On January 29, 2014, DCFS filed an ex parte petition seeking to change father's visitation from unmonitored to monitored because father had violated the prior order that nobody be with him during visits. According to the application, when the social worker arrived at father's home to assess a visit, father's adult daughter and granddaughter (who lived with father), godson and an adult female neighbor were present. Father told the social worker that other relatives were often present during visits. Father reacted angrily to being told this was a violation of the order that "nobody" was to be with father during visits. The juvenile court denied the petition and ordered: "As long as the adult daughter LiveScans, the court will vacate the previous order that nobody is to be with father during his visits."

In February 2014, the foster parents informed the social worker that their privately retained attorney had obtained information that father was arrested for possession of cocaine base for sale on October 23, 2013, and subsequently pled guilty to a drug charge. DCFS filed a section 342 subsequent petition alleging jurisdiction under section 300, subdivision (b) based on the danger to A.L. arising from father's on-going criminal conduct demonstrated by the October 2013 arrest and plea. Father denied the petition. On February 25, the juvenile court changed father's visits from unmonitored to monitored and set the section 342 petition for adjudication on April 7 to coincide with the date of the continued .22 hearing. On April 7, the juvenile court sustained the section 342 petition. It ordered father to drug test weekly and continued disposition to April 29, the date set for the contested .22 hearing.

According to the report for the April 29 hearing, father's drug tests were all negative. Father's LiveScan showed an extensive criminal history, including several drug-related offenses. Father was still regularly visiting A.L. and, with some exceptions, attending her therapy sessions. He was sometimes late and not always engaged in those sessions. But visits that occurred at the DCFS office did not go well and father refused to attend visits scheduled to take place there. DCFS reiterated its recommendation for termination of reunification services. Following the .22 hearing on April 29 and 30, the juvenile court found father had been provided reasonable reunification services, ordered those services terminated and set the matter for an August section .26 permanent plan selection hearing (the April 30 order). The juvenile court also ordered the March 19, 2012 Suitable Placement order, which provided for monitored visits for father, to remain in full force and effect.[2]

After father's reunification services were terminated, DCFS reduced father's visits to one hour, every other week (although there had been no order to that effect). In addition, because A.L. began receiving at least some of her therapy at home, father was no longer able to attend those sessions. On August 27, 2014, the juvenile court continued the .26 hearing to October 6 and ordered DCFS to ensure father had monitored visits "two to three times week."

In a Last Minute Information For The Court filed for the October hearing, DCFS stated that the Foster Family Agency and DCFS had initially agreed to alternate monitoring father's twice weekly visits, but father had been so difficult to work with that the Foster Family Agency refused to monitor visits. During visits, father did not interact with A.L. In addition, father had been a "no show" for six drug tests. At father's request,

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[2] Because father did not challenge the April 30 order, he has forfeited any due process challenge to the reunification services he received (or did not receive) prior to that order. (§ 366.26, subd. (l)(1)(A) [order setting .26 hearing may not be appealed unless it is first challenged by extraordinary writ and the writ is summarily denied]; *In re Jasmon O.* (1994) 8 Cal.4th 398, 419-420 [the reasonableness of reunification services is not an issue at the .26 hearing].)

the juvenile court continued the .26 hearing to October 29 and ordered a report addressing why DCFS had not complied with the visitation order.

On October 17, father filed a section 388 petition seeking to modify the order terminating his reunification services. As changed circumstances, father alleged his participation in individual counseling, anger management and a substance abuse program, negative drug tests and consistent visitation with A.L. when not stymied by DCFS. Father maintained it would be in A.L.'s best interests to not have to "search for her heritage and [to] know where she came from, which always benefits a person as they develop in life." In a Last Minute Information For The Court, DCFS reiterated that father's "aggressive and confrontational behaviors" made arranging visits difficult. DCFS also chronicled father's late arrival and early departures from regular visits and A.L.'s therapy sessions. According to DCFS, A.L. would "cry and yell and will not allow the foster father to leave during the visits. Father spends the majority of the visits with the child talking [with other adults present] and not spending the time bonding with the child. Furthermore, father does not bring toys, food or diapers to the visit and relies upon the foster parents to provide these items. Father does not display behavior that he is bonded to the child." The juvenile court set the petition for hearing on October 29, the date of the continued .26 hearing.[3]

In a Last Minute Information For The Court filed the day of the hearing, the social worker reported that father brought snacks and coloring books to the most recent visits, but did not change A.L.'s diaper. A.L. was still hesitant to leave the foster father. Father had attended some but not all of A.L.'s therapy sessions, but was not fully engaged in those sessions. The foster parents reported that A.L. exhibited multiple behavior issues after visits with father. Father was confrontational with visitation monitors. On one occasion, father argued with the monitor about bringing his older daughter to a visit which, according to DCFS, was a violation of the prior order that father not bring anyone to his *unmonitored* visits.

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[3] Foster parents filed a request to be appointed A.L.'s de facto parents, but withdrew that request after parental rights were terminated.

B. Father's Section 388 Petition and the Contested .26 Hearing

Hearing on the section 388 petition and the .26 hearing occurred on October 29 and December 2, 2014. Father, Supervising Social Worker Vanetia Williams and Children's Social Worker Lillian Porter testified on October 29. Father and the foster father testified on December 2.

1. October 29, 2014

Father testified that during the six or seven months of unmonitored visits, he acted as A.L.'s parent: bought her toys and clothes, took her to restaurants and brought her to family events. Father did not bring toys to monitored visits because he did not know it was allowed. Father believed his visits were changed to monitored because of a disagreement he had with the social worker, not because of his October 2013 arrest and conviction. For quite awhile, father received no visits because the social worker told him no monitor was available. At father's first visit after that gap, in October 2014 at the DCFS office, foster father brought his younger son, one-year-old Aiden, to the visit. A.L. spent more time playing with Aiden than with father, but father was reluctant to interfere. Foster father also brought Aiden to the next visit at a park and, as before, A.L. and Aiden played together. Foster father brought Aiden to the next visit, too. Foster father remained at the visits, even though there was a monitor. A.L. was more distant than she had been during father's unmonitored visits. Father complained to his attorney that foster father's presence was interfering with father's ability to bond with A.L. After father's reunification services were terminated in April 2014, his twice weekly visits dwindled to once a week and then once every other week until visits stopped all together. Father informed his lawyer that he was being denied visits. When DCFS stopped giving father transportation funds to get from his home in East Los Angeles to visits and therapy sessions in the San Fernando Valley, father used his own funds. Father believed a child needs a mother, and if he had custody of A.L., he would allow her to see mother unless there was an express order prohibiting him from doing so.

Supervisor Williams was assigned to A.L.'s case in October or November of 2013. Father was so argumentative and combative that social workers came to Williams in tears after encounters with father. Father had used profanity in five of six telephone conversations Williams had with him. Williams had not spoken to father since March 2014. No social worker had recently complained about interactions with father. Asked whether she could understand father's frustration at DCFS putting "roadblocks" in father's path to reunification, Williams denied this was the case. Regarding visits, Williams testified that father arrived late, left early and sometimes cancelled visits. After the Foster Family Agency refused to monitor his visits, father refused foster father's offer to monitor visits and refused to attend visits at the DCFS office. During recent visits, A.L. screamed and cried and clung onto the foster father's leg; foster father remained at visits in an attempt to calm A.L. Williams did not know father objected to Aiden's presence at visits; if she had known, foster father would have been told not to bring Aiden. Father was told when and where A.L.'s therapy sessions were and was never told that he could not attend those sessions; when the location of A.L.'s therapy sessions changed after reunification services were terminated, Williams believed it unnecessary to contact father since father had not contacted DCFS; Williams did not know whether father was ever informed of the change. DCFS stopped giving father transportation money after he refused to provide gas receipts; instead, he was given a bus pass. Williams believed A.L. would not be safe if placed with father. In particular, she was concerned about father's continued criminality, his untruthfulness when confronted about his October 2013 arrest and that he would not protect A.L. from mother.

Children's Social Worker Leslie Porter testified that since she had been assigned to A.L.'s case in August 2014, father had never been argumentative towards her. By August 2014, A.L. was already receiving therapy sessions at home, which father could not attend. Porter never discussed with father his ability to participate in A.L.'s therapy sessions. Father had monitored visits on Wednesdays and Fridays. The Wednesday visits were changed to Thursdays so as not to interfere with A.L.'s therapy. Most recently, visits were occurring on Saturdays. During the three to five visits Porter had

monitored, she observed no bonding between father and A.L. At the first visit, A.L. "was crying and screaming. She did not want to go to the father. She appeared frightful." Foster father remained at the visit because A.L. would not allow him to leave; when father used money to entice A.L. to come to him, A.L. took the money but brought it back to foster father. After the visit, Porter suggested father bring books or toys to the next visit. Father never brought toys to any visit Porter monitored. At a visit in September, foster father brought a book for father to read with A.L. Foster father brought Aiden to three of the five visits Porter monitored; father never complained. Porter thought having Aiden present might help A.L. be more open and willing to bond with father. During visits, father was usually on the phone. Both Porter and the Foster Family Agency monitor had canceled visits at the last minute. When Porter had to cancel a visit in early October, father would not agree to foster father monitoring the visit instead of Porter. Father did not give Porter the necessary information to determine whether his Goddaughter could qualify as a monitor. Father received no makeup visits because he did not respond to Porter's request for dates.

2. December 2, 2014

Foster father testified that A.L. refers to him as "dada," to foster mother as "mama," and to father as "Papa Mike." Foster father was not told father had visitation rights after his reunification services were terminated. When foster father brings A.L. to monitored visits, he remains at the location but goes into another room; within 15 or 20 minutes, A.L. comes looking for him and he brings her back to father. Foster father was never told he could not bring Aiden to A.L.'s visits with father and father always seemed happy to see Aiden. After visits with father, A.L. sometimes behaved aggressively towards Aiden.

Father testified he was not told he had visitation rights after his reunification services were terminated. Since learning he had that right, father had consistently visited A.L. Father denied cancelling visits; he missed one therapy session when the social worker did not inform him of a time change. Father denied talking on the phone during therapy sessions and leaving early. Father had no opportunity to visit A.L. at speech

therapy sessions because he was not physically in the room with A.L. and the therapist and foster father left with A.L. when the session was over. The therapist ignored father's request that she explain what was happening in therapy.

Regarding the section 388 petition, father, joined by mother, argued that any failure to bond was the result of DCFS's failure to provide reasonable services, the remedy for which was additional services. Although counsel for A.L. believed DCFS deliberately thwarted the visitation orders, he argued A.L.'s best interests would not be served by giving father custody or additional reunification services. DCFS noted father's recent arrest for cocaine possession.

Regarding permanent placement, DCFS urged termination of parental rights and selection of adoption as the permanent placement plan. It argued A.L. (then almost three years old) had been living with the foster parents since she was a few days old, she was likely to be adopted (the foster parents wanted to adopt her and had an approved adoption study) and none of the statutory exceptions to the legislative preference for adoption applied. A.L.'s counsel joined with DCFS. Father, joined by mother, argued against terminating parental rights based on the exception for maintaining regular visitation and benefit to the child.

3. The Orders

The juvenile court denied father's section 388 petition. Praising father for his efforts to reunify with A.L. notwithstanding DCFS's conduct, the juvenile court found it would not be in A.L.'s best interests to give father additional reunification services. This was because father's continued criminality (evidenced by the October 2013 arrest and conviction), lack of honesty with the court about that incident at the October 2013 hearing, and father's unresolved anger management issues, showed a continuing lack of judgment.

The juvenile court also concluded that termination of parental rights and a permanent placement plan of adoption were in A.L.'s best interests. Finding DCFS had "acted abominably" with respect to the reunification services it provided father, the juvenile court nevertheless found no evidence that father played a parental role in A.L.'s

life: "I think father's tried to and gone to all these classes. What I'm trying to say is: with the arrest and the anger management, he's not learned enough. Now, we have a two year old, who is totally bonding with – almost three year old – with a family she is living with. She's got special needs. Right now, in spite of anything, the Department might have done – I have to look at [her] best interest."

Father timely appealed.

DISCUSSION

A. Father Was Not Denied Due Process

Because the juvenile court reasonably found that DCFS did not comply with the court's order that father receive at least two visits per week after his reunification services were terminated, father contends that he was thereby denied due process. He argues that due process requires the state to provide reasonable reunification services, including visitation, before it may deprive a parent of the constitutional right to care and custody of his or her child and, as the juvenile court found, DCFS did not do so in this case.[4] Like the juvenile court, we are troubled by DCFS's failure to comply with unambiguous post-reunification visitation orders. Nevertheless, we conclude father was not denied due process.

Due process guarantees apply to dependency proceedings. (*In re A.S.* (2009) 180 Cal.App.4th 351, 359; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.) Once a due process right is found to exist, it must be determined what process is actually due. In

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[4] Although father's contention is set forth under a separate heading in the Opening Brief, there is no correlating section in the Respondent's Brief. DCFS's counter to father's due process challenge is buried in a discussion of the juvenile court's selection of adoption as the permanent placement plan: "[A] parent's due process rights are not violated by a rule that reunification with the parent is not a subject of reconsideration in a termination of parental rights proceeding pursuant to section 366.26." (*In re Jasmon O., supra,* 8 Cal.4th at pp. 419-420.) DCFS appears to have been confused. Father is not challenging the visitation he received prior to termination of his reunification services. His contention is that he was denied due process as the result of DCFS's failure to comply with post-reunification visitation orders.

making that determination, we balance (1) the private interest that will be affected by the official action, (2) the government's interest, and (3) whether there are procedures which sufficiently safeguard against the risk of erroneous deprivation of the private interests. (*Ibid.*; see *In re Allison J.* (2010) 190 Cal.App.4th 1106, 1113 ["To determine whether a statute comports with due process, the court must consider: (1) 'the private interests affected by the proceeding;' (2) 'the risk of error created by the State's chosen procedure;' and (3) 'the countervailing governmental interest supporting use of the challenged procedure.' [Citations.]"].)

In dependency proceedings, the private interests are (1) the parent's interest in the companionship, care and custody of his or her child, and (2) the child's interest in belonging to his or her natural family, which may compete with the child's interest to live free from abuse and neglect in a stable home. The government has a compelling interest in protecting the child's welfare. (*Dakota H., supra*, 132 Cal.App.4th at p. 223.) California's dependency scheme " 'when viewed as a whole, provides the parent due process and fundamental fairness while also accommodating the child's right to stability and permanency.' [Citation.]" (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1507.) This is because the "number and quality of the judicial findings that are necessary preconditions to termination" of parental rights assures that the juvenile court has made the findings of continued parental unfitness and detriment which are necessary before the relationship between a natural parent and his or her child may be severed. (*A.S., supra*, 180 Cal.App.4th at p. 359; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256 ["precise and demanding substantive and procedural requirements the petitioning agency must have satisfied before it can propose termination [which] are carefully calculated to constrain judicial discretion, diminish the risk of erroneous findings of parental inadequacy and detriment to the child, and otherwise protect the legitimate interests of the parents."].)

Among the procedural safeguards are the requirements that the social worker be ordered "to provide child welfare services" to the parents (§ 361.5, subd. (a)) and that the juvenile court review the child's status no less than every six months (§ 366,

subd. (a)(1)). Services include visitation, which "is an essential component of a reunification plan. [Citation.] To promote reunification, visitation must be as frequent as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A); [citation].)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426.) "At each review hearing, if the child is not returned to the custody of his or her parent, the juvenile court is required to determine whether reasonable services that were designed to aid the parent in overcoming the problems that led to the initial removal and the continued custody of the child have been offered or provided to the parent (reasonable services finding). (§ 366.21, subd. (e), (f).)" (*In re J.P.* (2014) 229 Cal.App.4th 108, 121-122.)

But due process is not absolute. (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1129.) It is subject to time limits, at the expiration of which the juvenile court must terminate reunification services – except for visitation – and set the matter for a .26 hearing, at which it must decide whether to terminate parental rights. (See e.g. §§ 361.5, subd. (a)(1)(B), 366.21, subd. (e) [six months]; 366.21, subd. (g)(1) [12 months].) Generally, if the child cannot be safely returned to parental custody within a maximum of 18 months, the juvenile court must terminate reunification services, except for visitation, and set a section .26 hearing. (§ 366.21, subd. (h).)

Until reunification services are terminated and the section 366.26 hearing is set, "the parents' interest in reunification is given precedence over a child's need for stability and permanency. [Citation.]" (*In re Julia U.* (1998) 64 Cal.App.4th 532, 543.) After the reunification services are terminated and the .26 hearing is set, the child's interest in a safe, permanent placement outweighs the parent's interest in preserving his or her relationship with the child, and the child's interest becomes the focus of the juvenile court. (*Dakota H.*, *supra*, 132 Cal.App.4th at p. 223.)

But, even after reunification services have been terminated, parents have a due process right to visitation, absent a finding that visitation would be detrimental to the child. (See *Hunter S., supra*, 142 Cal.App.4th 1497 [reversing denial of mother's section 388 petition and termination of her parental rights based on juvenile court's refusal to enforce its post-reunification visitation order].) The *Hunter S.* court, which

reversed denial of a section 388 petition, explained: "Once reunification services terminate, the 'escape mechanism' provided by section 388 is, effectively, the final opportunity available to a parent to demonstrate the possibility circumstances may have changed enough to warrant further reconsideration of reunification. [Citation.] By virtue of the court's persistent failure or refusal to enforce its visitation order, [the mother] was denied any chance to demonstrate the bond she once held with her son might be salvageable. By failing to rectify its errors and grant the section 388 petition, the court deprived [the mother] of crucial benefits and protections of the dependency scheme, essentially ensuring the termination of parental rights. Through no fault of her own, [the mother] was denied any opportunity to invoke the 'escape mechanism' of section 388 in order to attempt to lay a foundation to establish the pivotal 'best interests' prong of the essential beneficial relationship exception of section 366.26, subdivision (c)(1)(A), which can only be established through consistent contact and visitation. In short, termination of parental rights was a foregone conclusion." (*Id*. at p. 1508.)

Although the *Hunter S.* court found parents have a due process right to post-reunification visitation, it declined to decide whether the mother's due process rights were violated in that case since it found the juvenile court had erred in denying the mother's section 388 petition, which required reversal of the order terminating parental rights. (*Hunter S., supra,* 142 Cal.App.4th at p. 1508.) Since we find no error in the denial of father's section 388 petition in this case, we do not have the same luxury. Although we share the juvenile court's frustration with DCFS's conduct, we find no violation of father's due process rights in this case. First, unlike the child in *Hunter S.*, who lived with his mother for the first several years of his life and with whom he maintained a "loving close relationship" before the mother was incarcerated, father and A.L. had no pre-dependency relationship whatsoever. Father was incarcerated when A.L. was born and when she was placed in foster care a few days later. Although there were some unmonitored visits, A.L. never lived with father (they never even progressed to overnight visits) and there was no evidence they ever developed a "close loving" relationship. Here, father's burden was to create a bond where none existed, not to

demonstrate that an existing bond was salvageable. Second, while the mother in *Hunter S.* was prevented from having any contact with her son for more than two years, father had a significant number of visits with A.L. during the eight months between termination of his reunification services and the orders denying his section 388 petition and terminating parental rights. Third, unlike the mother in *Hunter S.* who was denied any opportunity to establish the beneficial relationship exception to termination of parental rights "through no fault of her own" (*Hunter*, *supra*, at p. 1508), father here is not blameless. Father's October 2013 arrest caused his unmonitored visits to be curtailed; father did not always engage with A.L. during post-reunification visits; he did not bring diapers, food, toys or books to visits; father was so "difficult" that Foster Family Agency staff refused to monitor his visits, as a result of which finding monitors for his visits became problematic. Under these circumstances, father was not denied due process by the failure to enforce the post-reunification visitation order to its full extent.

Father's reliance on *Santosky v. Kramer* (1982) 455 U.S. 745, for a contrary result is misplaced. In *Santosky*, the United States Supreme Court held that the due process clause requires the state to prove by clear and convincing evidence the facts required to support an order terminating parental rights. As relevant here, the facts required to support an order terminating parental rights under section 366.26 are (1) that the child is adoptable and (2) the child has continued to be removed from parental custody under Section 366.21 or 366.22 and reunification services have been terminated. (§ 366.26, subd. (c)(1).) There is no "reasonable services" finding required at the .26 hearing. Here, it is undisputed that that A.L. was adoptable and that father's reunification services were properly terminated on April 30 – the only factual findings required at the .26 hearing.

Even assuming that father's due process right to post-reunification visitation was violated, we find the error harmless. Due process violations in dependency proceedings are subject to harmless error analysis under the "harmless beyond a reasonable doubt" standard articulated in *Chapman v. California* (1967) 386 U.S. 18. (See *Vanessa M., supra,* 138 Cal.App.4th 1121 [no opportunity to be heard]; *In re Justice P.* (2004) 123 Cal.App.4th 181 [delayed notice to incarcerated father]; *In re Angela C.* (2002)

99 Cal.App.4th 389 [lack of notice of a continuance]; *In re Sara D.* (2001) 87 Cal.App.4th 661 [no opportunity to be heard]; *In re Dolly D.* (1995) 41 Cal.App.4th 440 [right to confront and cross-examine witnesses at jurisdiction hearing].) Having reviewed the record under the *Chapman* standard, we find DCFS's failure to provide father two monitored visits per week from April 30 until December 15 was harmless beyond a reasonable doubt. Father's argument is that these additional visits would have enabled him to prove application of the section 366.26, subdivision (c)(1)(A) exception to the preference for termination of parental rights and adoption. But considering father's lack of engagement with A.L. during the visits which did occur, and A.L.'s apparent discomfort with father, we are convinced beyond a reasonable doubt that additional visits would not have been enough to create the kind of parental relationship necessary to establish the exception.

B. Denial of Father's Section 388 Petition

Father contends it was an abuse of discretion for the juvenile court to deny his section 388 petition seeking additional reunification services. In addition to completing the court-ordered services and maintaining consistent contact with A.L., father argues additional services were warranted in light of DCFS's failure to provide reasonable services. We find no error.

The burden is on the petitioner to demonstrate by a preponderance of the evidence both that circumstances have changed and that modifying the previous order would be in the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) A court hearing a section 388 petition after reunification services have been terminated does so in light of the focus having shifted from the parent's and child's shared fundamental interest in reunification, to the child's independent fundamental interest in stability and continuity. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) When the child has been in a placement environment for a significant period of time, his or her need for stability and continuity may "dictate the conclusion that maintenance of the current arrangement

would be in the best interests of that child." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

We review the denial of a section 388 petition for abuse of discretion. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*J.C., supra*, 226 Cal.App.4th at pp. 525-526.) It is rare that denial of a section 388 petition merits reversal as an abuse of discretion. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 521.)

We find no abuse of discretion in the finding that the change requested by father would not be in A.L.'s best interest, notwithstanding father's consistent visitation and completion of various programs. By the time of the hearing, A.L. was almost three years old and had been living with foster parents (who wanted to adopt her) since she was four days old. Father had an extensive drug-related criminal history and committed a drug-related offense while dependency proceedings were ongoing, a fact father concealed from DCFS. On one occasion, father was accompanied by an inebriated companion when he dropped off A.L. at the foster parent's home following an unmonitored visit. Father testified that he believed A.L. did not need protection from mother, and absent a court order expressly prohibiting it, father intended to allow mother access to A.L. This evidence of father's ongoing lack of judgment, despite his completion of court-ordered services and consistent visitation, supports the juvenile court's finding that additional reunification services, which would delay permanency and stability for A.L., would not be in A.L.'s best interest.

C. The Parental Relation Exception

Father contends there is insufficient evidence to support the juvenile court's finding that the section 366.26, subdivision (c)(1)(B)(i) exception to the preference for

adoption did not apply.[5] He argues that but for DCFS's thwarting of the visitation orders, he would have been able to establish a parental bond with A.L. He contends that, both before and after DCFS undermined the visitation orders, father and A.L. "had a closer relationship, one which permitted father to fill his appropriate parental role. His relationship with [A.L.] should continue." We find no error.

It is undisputed that A.L. was adoptable. As such, there is a strong legislative preference for adoption over the alternative permanent placement plans set forth in section 366.26. There are exceptions to this preference. Relevant here is section 366.26, subdivision (c)(1)(B)(i), which states parental rights should not be terminated when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The court in *J.C., supra*, explained: "The 'benefit' necessary to trigger this exception has been judicially construed to mean, 'the relationship 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. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citations.]" (*J.C., supra,* 226 Cal.App.4th at pp. 528-529.)

It is the parent's burden to show application of the exception. (*J.C., supra,* 226 Cal.App.4th at p. 528.) A showing that the parent and child share a friendly, loving relationship is insufficient. The parent must show a "parental relationship." (*Ibid*.) And that the benefits to the child of continuing the parental relationship outweigh the benefits of permanence through adoption. (*Id*. at p. 533.)

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5 Courts disagree on whether the issue is subject to the substantial evidence or abuse of discretion standards of review, or a combination of both. (See *J.C., supra*, 226 Cal.App.4th at pp. 530-531.) We need not choose among standards because, under either standard, we find no error.

Father did not make the necessary showing to warrant application of the exception in this case. There is no showing he had a parental relationship with A.L. While it is true he may have acted in a parental role when he had unmonitored visits, it was father's possession of cocaine which resulted in the change from unmonitored to monitored visits. Much like his challenge to the ruling on his section 388 petition, the gist of father's argument the exception applies is that he should be allowed additional reunification services to make up for DCFS interfering with his visitation. But this is not the standard.

DISPOSITION

The orders are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.