Filed 6/11/14 In re No. P. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re NO.P., a Person Coming Under the Juvenile Court Law.	B254217 (Los Angeles County Super. Ct. No. CK76798)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MARIA P., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn K. Martinez, Commissioner. Affirmed.

Law Office of Roger H. Ponce, Roger H. Ponce, Jennifer Park for Defendant and Appellant.

John F. Krattli, County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

This case previously was before us in November 2013, when Maria P. (mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452 seeking review of an order setting a Welfare and Institutions Code section 366.26[1] permanent plan hearing as to her then six-year-old son No.P. (case number B250456). We denied the petition. At the permanent plan hearing, the juvenile court terminated mother's parental rights over No.P., and mother appeals. On appeal, mother contends that she received ineffective assistance of counsel in certain proceedings in 2009 and 2011 that, she claims, led to the section 366.26 hearing and the termination of her parental rights. We affirm.

BACKGROUND

The following summary of facts and procedures is taken from our opinion in case number B250456:

"Mother is the mother of Na.P., a 15-year-old girl, J.P., a 12-year-old girl, C.P., an 11-year-old girl, P.U., an 8-year-old boy, and No.P., a 6-year-old boy. No.P. is the only child who is the subject of the petition.

"**A. History of Child Welfare Issues**

"The Department filed a detention report, dated April 6, 2009, stating that in 2001 mother and her children at that time came to the attention of the Department based on allegations of physical abuse of the children, and from August 2001 through February 2002, the family participated in a voluntary family maintenance program (VFM). In 2008, the Department received another referral alleging that No.P.'s siblings—Na.P., J.P., C.P., and P.U.—were being physically abused, and 'a number of referrals' alleging general neglect and physical abuse of the children. The Department reported that when the children's social worker (CSW) visited the children in October 2008, P.U., C.P., J.P.,

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[1] All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

and Na.P. all had marks and bruises, including lacerations, scratches, and scabs. All the children except Na.P. stated that mother would repeatedly hit them, and C.P. stated that mother hit all of the children, except 'the baby,' No.P. The Department conducted team decision making meetings (TDM), mother agreed to participate in another VFM and additional parenting classes, and the Department decided that the children were to continue to reside with mother.

"**B. Current Allegations**

"The April 6, 2009, detention report stated that on March 27, 2009, a CSW went to the children's school to complete a monthly contact with Na.P. and C.P. During the visit, Na.P. stated that mother continued to physically abuse P.U., C.P., J.P. and Na.P.; Na.P. started to cry and stated she was afraid to go home. C.P. told the CSW that mother would pull her hair and it hurt 'a lot,' and mother continued to hit her and all of her siblings except No.P. J.P. stated that mother sometimes used her hand, and other times used a clothes hanger, to hit them. J.P. did not want to go home. P.U. stated that mother would hit him 'a lot, a lot, a lot, a lot,' and he pointed to his neck to show the CSW where mother had hit him with a hanger. No.P., who was two years old at the time, was too young to provide a meaningful statement.

"The detention report stated that on April 1, 2009, the Department conducted a TDM during which the Department learned that mother would leave the children without proper supervision or sufficient amounts of food, had attended one parenting session, and stopped attending individual counseling. When asked about the allegations made against her during the TDM, mother stated, 'If you want to believe what is being said then go ahead.'

"According to the detention report, mother stated that she did not want her children residing with any family members and would rather have the children placed in foster homes. The Supervising CSW advised mother that it would be very difficult for the Department to find a placement for the children in their area, and stated that placing the children in foster homes could further traumatize the children, especially when there

were family members willing to care for the children. Mother stated, 'I prefer the children [are placed] in a foster home so that they can see if they want to live in a foster home or with me.' Mother also indicated she would not cooperate with services or sign a safety plan. The Department took the children into protective custody.

"On April 6, 2009, the Department filed a section 300 petition on behalf of the children based on, inter alia, the mother's physical abuse of C.P., P.U., Na.P., and J.P., including incidents where mother had physically hit them with her hands, shoes, cables, sticks, and hangers. At the April 6, 2009, detention hearing, the juvenile court found a prima facie case for detaining the children and that they were minors described by section 300, subdivisions (a), (b), (g), and (j). P.U. was released to his father's custody. No.P. and his other siblings—C.P., Na.P., and J.P.—were ordered detained in shelter care. At the April 28, 2009, non-appearance progress hearing, the juvenile court ordered C.P., Na.P., and J.P. detained with their maternal aunt, and that No.P. continue to be detained in shelter care.

"The Department's April 30, 2009, jurisdiction/disposition report stated that No.P. had been placed with L.O., a non-related extended family member. Na.P. stated, 'I feel terrified about my mom. I want her to stop hitting us.' J.P. stated, '[mother] hits us with a hanger, right here (arm) like 8 times . . . . She pulled Na.P.'s hair. She hit [C.P.] too. . . . She hit us with her hand and with her shoe. It's a boot that my mom wears. I want her to stop hitting us. I want to stay with my aunt.' C.P. stated, 'My mom treats us bad.' Mother minimized the allegations of physical abuse, stating that, 'I think [Na.P.] got this idea from school.'

"The April 30, 2009, jurisdiction/disposition report stated that mother said she had visited J.P., Na.P., and C.P. on one occasion since the children were detained. According to mother, she was visiting No.P. almost daily but she stopped visiting with him because she had a confrontation with L.O., No.P.'s caregiver. She also had not visited P.U. due to alleged difficulties in arranging visits with the father.

"At a hearing held on May 27, 2009, the juvenile court sustained the petition and declared the children dependents of the court. P.U. was released to his father's custody

with a family law order granting the father sole legal and physical custody, and jurisdiction over him was terminated. The juvenile court granted mother family reunification services, ordered mother to complete a 20-week parenting course and participate in individual counseling with a licensed therapist to address case issues, including mother's anger management issues, and granted mother monitored visits with the children.

"In its November 25, 2009, status review report, the Department stated that the assigned CSW had trouble contacting mother during the latest period of supervision. According to the report, on August 11, 2009, mother would not provide the CSW with mother's address and mother stated that she had contacted the CSW on a friend's telephone. The CSW only was able to meet with mother on one occasion. Mother reported she was nine months pregnant, scheduled to deliver the child on November 25, 2009, and was living with her boyfriend, the father of her unborn child.

"The November 25, 2009, status review report stated that No.P. continued to reside with L.O. and L.O.'s boyfriend, was meeting his developmental milestones, appeared attached to his caregivers, and called L.O. 'mommy' and L.O.'s boyfriend, 'Papi.' L.O. stated that she would be interested in adopting No.P. should mother fail to reunify with him.

"According to the status review report, on April 15, 2009, the Department set up a schedule with mother to visit No.P. and the other children. When the CSW contacted the children's caregivers, however, they stated that mother had not contacted them to arrange any visits.

"The status review report stated that on November 13, 2009, mother had a monitored visit with the children. During the visit, mother tried 'to get close' to No.P., but he would not acknowledge mother. Mother cried when she spoke to No.P.

"The November 25, 2009, status review report stated that mother said that she had not started her court ordered services due to her pregnancy. According to the report, mother had 'made no progress in Court ordered services. . . . . [Mother] ha[d] failed to enroll in parenting, individual counseling and ha[d] not made any attempt to visit any of

her children. At this time, it would be detrimental to the children's well being to have them return to mother's care.' The Department recommended that the juvenile court terminate mother's family reunification services, and at the November 25, 2009, six-month review hearing, the juvenile court terminated those services.

"On March 24, 2010, the Department filed a section 366.26 report stating that L.O. and her boyfriend were interested in adopting No.P. No.P. was attached to his caregivers and called them 'mama' and 'papi.' L.O., No.P.'s caregiver, was a family friend who had been in frequent contact with the children prior to their detention.

"On January 27, 2011, the Department reported that No.P. had resided with L.O. and her boyfriend since April 2009. No.P. identified L.O. as his mother and had developed a strong emotional attachment toward her and her family. The adoption, however, could not take place because L.O. was legally married to her ex-husband from whom she had separated, and the whereabouts of her husband were unknown. The Department recommended that No.P. remain with L.O. and her boyfriend under a plan of guardianship. The Department stated, 'If the caregiver obtains a divorce or she is able to locate her husband and have the spousal waiver signed, the adoption process can be re-activated.'

"At a hearing held on January 27, 2011, mother was not present and her counsel stated that she had no direction from mother regarding the status of the case. The juvenile court found by clear and convincing evidence that Na.P., J.P., and C.P. were adoptable and terminated mother's parental rights over them. No.P.'s counsel stated that mother had not been visiting No.P. The juvenile court ordered mother to have one monitored visit per year, if mother so desired. Mother's counsel did not object to this visitation order.

"At the hearing, L.O. and her boyfriend stated that they wanted to become No.P.'s legal guardians. The juvenile court stated that they wished to adopt him but because L.O.'s husband could not be contacted to finalize the divorce, L.O.'s home study could not be approved and the juvenile court could not proceed with adoption. The juvenile

court appointed L.O. and L.O.'s boyfriend as No.P.'s legal guardians and stated that it would revisit the issue of adoption at a later time.

"The Department filed a status review report, dated June 30, 2011, stating that No.P. was then four years old, appeared to be a healthy and active child, and was developmentally on track. The Department filed a status review report, dated December 8, 2011, stating that on October 28, 2011, mother had contacted the CSW attempting to schedule a visit with No.P. The CSW scheduled a visit for mother in November, but mother stated she would not be able to see No.P. that week and indicated she would call back to reschedule. Mother did not contact the CSW to reschedule the visit. The Department filed a status review report, dated June 7, 2012, stating that mother had not contacted the CSW to arrange to visit with No.P.

"At the June 7, 2012, review of permanent plan hearing, the following exchange occurred: '[Juvenile court:] According to the report, your child is well cared for by his guardians, and you have not visited him. Do you have any questions or comments? [¶] [Mother:] I want to know if I still have the option of recovering my son? [¶] [Juvenile court:] You always do because I have not terminated your parental rights. You are still the child's mother. When you believe that you have complied with the prior orders of this court, that you are living a sober and stable lifestyle, you may file a [section] 388 petition, and you'll want to advise me of the new evidence and persuade me that it would be in [No.P.'s] best interest to return to you. So the answer is yes. [¶] . . . [¶] It would also be very important that you . . . stay in regular communication with the social worker and keep the social worker advised of your status. [¶] . . . [¶] When I granted the guardianship, you hadn't had any contact with your child; so I ordered once a year. The guardians can authorize more frequently, but you will have to contact the social worker to set up at least your first visit because you haven't had any this year. And, once you set up your first visit, if it goes well, then you may have it more frequently.'

"On June 18, 2012, mother visited No.P. at the Department's office. During the visit, No.P. sat on the sofa, face down, with a serious demeanor. He did not talk to mother. When mother asked No.P. questions, he responded by nodding his head. At the

end of the visit, mother asked for a kiss but No.P. was not responsive. After the visit, No.P. stated that he did not recognize mother.

"On August 9, 2012, mother filed a section 388 petition stating that she had enrolled in a parenting class and was renting a two-bedroom apartment with her fiancé. She asked that the juvenile court grant her overnight weekend visits with No.P. so that she could start bonding with him and obtain custody of him in the future. On September 7, 2012, the juvenile court summarily denied mother's petition, finding that the best interests of No.P. would not be promoted by the requested modification. The juvenile court denied the petition because 'mother just one month ago enrolled in parenting [classes], so she is only at [the] beginning of that course. No other verification for other court ordered prog. and according to the Court Report 6–7–12, mother has not been visiting [No.P.].'

"On October 1, 2012, mother filed another section 388 petition. She reiterated her enrollment in parenting classes and 'reminded' the juvenile court that she only had been granted one visit per year with No.P. She again requested that the court grant her overnight, weekend visits. On October 5, 2012, the juvenile court summarily denied mother's petition, finding that 'the best interest of [No.P.] would not be promoted by the proposed change of order.' The juvenile court denied the petition because '[mother] is still at beginning of parenting & counseling courses. Mother's visits are limited—she cancelled a visit for Nov. 2011 & didn't call social worker . . . to reschedule until about June 2012. [No.P.] is stable with guardians, so request is not in child's best interest.'

"On December 3, 2012, mother filed another section 388 petition. She stated that she had completed parenting classes and individual counseling and wanted to have weekend visits with No.P. On December 6, 2012, the juvenile court denied mother's petition, finding that 'the best interests of [No.P.] would not be promoted by the proposed change of order.'[2] In denying the petition, the juvenile court stated that it 'allowed

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"[2] Mother never appealed the juvenile court's summary denials of her section 388 petitions.

discussion on 12-6-12. Mother has visited only 1/yr. [No.P. is] very bonded to guardian. Per [No.P.'s] therapist mother's requests could be disturbing to [No.P.].' The juvenile court, however, granted mother visits with No.P. every other month, to be arranged through the CSW.

"In its December 6, 2012, status review report, mother stated that both she and her husband had been incarcerated for an 'altercation' but were released and 'able to work through it.' Mother did not provide any additional details regarding the incident.

"The status review report stated that No.P. is receiving mental health services, and his therapist stated, '[No.P.] has established strong emotional bonds and attachment with [L.O. and her boyfriend] whom he refers to as his mother and father. [No.P.] feels loved and safe with [L.O. and her boyfriend] and depends on them for all his needs . . . . Since his placement with [L.O.] 3 1/2 years ago, [No.P.'s] contact with [mother] has been very sporadic and minimal. Given the intensity of [No.P.'s] attachment to his current family and the years he has learned to depend on his current family for his needs to establish trust and self worth, and separation between [No.P.] and his current legal guardian will be experienced as traumatic.' (Italics omitted.)

"According to the June 6, 2013 status review report, in February 2013, mother had another visit with No.P. Mother arrived at the visit with her husband and their baby. Mother brought No.P. a cake and felt bad when No.P. did not want to eat a piece. The visit only lasted 30 minutes, during which mother's 2-year old child, who was being supervised by mother's husband, kept running into the visitation room, asking for cake, and punching and biting mother's arm. Mother was upset at the conclusion of the visit, told the CSW that she drove from Victorville to see No.P., and it seemed as though the child 'was not trying.'

"The Department's status review report, dated June 6, 2013, stated that in April 2013, mother visited with No.P. A Human Services Aid attended the visit because the CSW was not available to attend it. At the beginning of the visit, No.P. stood behind L.O. and stated that he did not want to go into the room to visit mother. No.P. stated that he 'would not mind' if the visit took place in the waiting room, but mother postponed the

visit because she wanted the visit to be 'in private and not in front of people.' Mother believed No.P. did not want to visit because the CSW was not there. A few days thereafter, No.P. informed the CSW that he did not want to visit with mother. The CSW tried to talk to No.P. and ask him why he did not want to visit, but No.P. was not able to give a response and just stated he did not want to see mother.

"According to the status review report, L.O. stated that her marital divorce was now final, and she wished to adopt No.P. Mother stated that should the juvenile court decide not to give her custody of No.P., she would feel sad but she would be alright 'all this is affecting No.P. emotionally.' Mother stated that she was 'looking out' for No.P.'s best interest. The Department recommended No.P. remain with L.O., the juvenile court terminate mother's parental rights, and the juvenile court free No.P. to be adopted by L.O. and her boyfriend.

"The juvenile court held a hearing on June 6, 2013. No.P.'s counsel stated that adoption was the appropriate plan for No.P., and asked that the juvenile court set a section 366.26 hearing and order that No.P. not have any further visits with mother. Mother's counsel stated that 'terminating [mother's] parental rights is extreme, and we would like to preserve the status quo, if possible, where she is allowed visitation and trying to fix the bond with [No.P.]. [¶] [No.P.'s] very young, and I don't think he's quite capable of making decisions to terminate his relationship with [mother], and so we oppose the adoption and would like to have more visitation so my client can see [No.P.] more frequently.'

"At the June 6, 2013, hearing the following exchange occurred: [Juvenile Court:] 'I will set the matter for a 366.26 hearing. [¶] . . . [¶] And in order for me to consider setting the selection and implementation hearing pursuant to [section] 366.26 for contested hearing, I will need an offer of proof, [mother's counsel]. [¶] Do you have anything to add as an offer of proof other than what it is you stated?' [¶] [Mother's counsel:] 'Not presently, your honor.' [¶] [Juvenile Court:] Assuming that is a request to contest the recommendation to terminate parental rights, I find that there is not an offer of proof sufficient to persuade me that if I set the matter for contest, there's any

reasonable likelihood that I would find that it would be detrimental to terminate parental rights or some other reason that would preclude adoption.'

"At the hearing, the juvenile court stated regarding visitation that, 'I've not yet terminated [mother's] parental rights; however, we are well beyond reunification. Once we are beyond reunification, the focus shifts from the relationship between a child and parent, or mother as we have here, to providing the child with permanency and stability. [¶] The last visits, there was one in December and one in February. So the visits are minimal at best. The most recent in February—actually I think there was one also scheduled on April 12th. At the February hearing, mother was about—the visit only lasted 30 minutes because [mother] became very upset, and the visit had to be terminated. [No.P.] was exposed to this. [¶] And I now find that it is detrimental by the preponderance of the evidence for [No.P.] to have contact with his mother. Her efforts to contact him and visit with him have been minimal at best. As I said, one in December. The next one in February turned out badly as her conduct was very upsetting, and the monitored had to terminate the visit such that the next one, April 12th, [No.P.] absolutely refused to visit. [¶] [No.P.] does have some special needs. He's in special education. He's in therapy. His caretakers are ensuring that his needs are met. [¶] We must focus on providing him with permanency and stability and not subjecting him to situations that cause him stress and turmoil. So he shall not have contact with mother pending further order of the court.'"

The following summary of facts and proceedings concerns facts that developed, and proceedings that took place in the juvenile court after the facts and proceedings reflected in our opinion in case number B250456:

In a July 5, 2013, Last Minute Information for the Court, the Department stated that L.O. was legally divorced and was ready to adopt No.P. with her boyfriend. L.O. and her boyfriend had cared for No.P. since April 2009, had treated him as their son, and had developed a strong attachment to him.

In an October 25, 2013, Last Minute Information for the Court, the Department informed the juvenile court that the adoption study for L.O. and her boyfriend had been

approved. The Department recommended that the juvenile court terminate parental rights.

The Department's October 25, 2013, section 366.26 report stated that No.P. had not had any contact with mother since May 2013, when No.P. spoke with a CSW and stated that he did not want any contact with mother. No.P. had established a strong emotional bond with L.O. and her boyfriend, whom he referred to as "mom" and "dad." L.O. and her boyfriend were warm and nurturing towards No.P., and had maintained frequent contact between No.P. and his siblings. No.P. said, "I want to be with my mom and dad (applicants) because they love me." No.P. was aware that he had a biological mother who was not able to care for him.

At the November 1, 2013, section 366.26 hearing, mother's counsel argued that the juvenile court should not terminate mother's parental rights because mother recently had complied with all of the juvenile court's orders; some of her inability to bond with No.P. resulted from the visitation order that allowed only one visit per year; she was then in a stable, loving relationship with a new husband and child; and she was then able to be a fit, loving mother for No.P. The Department and No.P. requested the juvenile court to terminate parental rights.

The juvenile court found, by clear and convincing evidence, that No.P. likely would be adopted. It stated that it had no evidence that termination of parental rights would be detrimental to No.P. The juvenile court terminated parental rights over No.P.

DISCUSSION

Mother contends that her counsel provided ineffective assistance of counsel with respect to the juvenile court's November 25, 2009, termination of family reunification services because counsel failed to object to the termination of services; failed to advocate for reasonable services; failed to ask for a continuance of services; and failed to advise mother to challenge the order terminating services by writ, section 388 petition, or appeal. Mother further contends that her counsel provided ineffective assistance of counsel with respect to the juvenile court's January 27, 2011, visitation order which

allowed mother one yearly visit with No.P. because counsel failed to advocate for a reasonable visitation order or to request a continuance due to mother's absence. These deficiencies, mother argues, led to the section 366.26 hearing and the termination of her parental rights. Mother's contentions fail.

"Where the ineffective assistance concept is applied in dependency proceedings the appellant must meet the standards set forth in *People v. Pope* (1979) 23 Cal.3d 412 [152 Cal.Rptr. 732, 590 P.2d 859, 2 A.L.R.4th 1] and *Strickland v. Washington* (1984) 466 U.S. 668 [80 L.Ed.2d 674, 104 S.Ct. 2052]. (*In re Dawn L.* (1988) 201 Cal.App.3d 35, 37 [246 Cal.Rptr. 766].) First, there must be a showing that 'counsel's representation fell below an objective standard of reasonableness . . . . [¶] . . . under prevailing professional norms.' (*Strickland, supra,* 466 U.S. at p. 688 [80 L.Ed.2d at [p]p. 693-694, 104 S.Ct. at p. 2065]; accord, *Pope, supra,* 23 Cal.3d at pp. 423-425.) Second, there must be a showing of prejudice, that is, [a] 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' (*Strickland, supra*, 466 U.S. at p. 694 [80 L.Ed.2d at p. 698, 104 S.Ct. at p. 2068].)" (*In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711.)

We must reject a claim of ineffective assistance of counsel if the record sheds no light on why counsel acted or failed to act in the manner challenged unless counsel was asked for an explanation and failed to provide one, or unless there simply can be no satisfactory explanation. (*In re Emilye A., supra*, 9 Cal.App.4th at p. 1716.) Ordinarily, a claim of ineffective assistance of counsel is more appropriately considered in a habeas corpus proceeding. (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1253-1254, citing *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 267, disapproved on another ground in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re S.D.* (2002) 99 Cal.App.4th 1068, 1077 ["Although a claim of ineffective assistance of counsel is usually raised by way of a writ of habeas corpus, it may be effectively raised as part of an appeal in the rare case where the appellate record demonstrates 'there simply could be no satisfactory explanation' for trial counsel's action or inaction. [Citation.]"].)

"The establishment of ineffective assistance of counsel most commonly requires a presentation which goes beyond the record of the trial. It is of course possible that the incompetency of counsel will be so gross as to jump out of the record and require no supplemental explanation. Such is not the usual case, however. Action taken or not taken by counsel at a trial is typically motivated by considerations not reflected in the record. It is for this reason that writ review of claims of ineffective assistance of counsel is the preferred review procedure. Evidence of the reasons for counsel's tactics, and evidence of the standard of legal practice in the community as to a specific tactic, can be presented by declarations or other evidence filed with the writ petition. [Citation.]" (*In re Arturo A.* (1992) 8 Cal.App.4th 229, 243.)

A. Termination of Family Reunification Services

Mother contends that her counsel's performance was deficient with respect to the juvenile court's November 25, 2009, termination of family reunification services because counsel failed to object to the termination of services; failed to advocate for reasonable services; failed to ask for a continuance of services; and failed to advise mother to challenge the order terminating services by writ, section 388 petition, or appeal. Mother's contention fails.

1. Background

On May 27, 2009, the juvenile court declared No.P. to be a dependent of the court. The juvenile court granted mother family reunification services. Mother was to complete a 20-week parenting course and participate in individual counseling with a licensed therapist to address case issues, including mother's anger management issues. The juvenile court granted mother monitored visits with No.P. According to the Department's November 25, 2009, status review report, mother had not made any progress in her court ordered services. She had not enrolled in parenting classes or individual counseling. Mother had not made an attempt to visit No.P. even though the Department, in April 2009, set up a schedule so that she could visit her children. Mother

reported that she was nine months pregnant and scheduled to deliver the child on November 25, 2009. She claimed that she did not start her court ordered services due to her pregnancy. When mother had a monitored visit with No.P. on November 13, 2009, she tried "to get close" to him, but he would not acknowledge her. At the November 25, 2009, hearing, the juvenile court terminated family reunification services.

2. Application of Relevant Principles

Mother's claim of ineffective assistance of counsel with respect to the November 25, 2009, hearing at which the juvenile court terminated family reunification services fails for several reasons. First, mother's claims of ineffective assistance of counsel appropriately should have been raised in a habeas corpus proceeding. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1716; *In re Eileen A., supra,* 84 Cal.App.4th at pp. 1253-1254.) This is particularly true with respect to mother's allegation that counsel failed to advise her to challenge the juvenile court's order terminating family reunification services by writ, section 388 petition, or appeal. Such an allegation is the sort of claim that concerns matters outside of the juvenile court proceedings that appropriately is addressed by a declaration in a habeas corpus writ proceeding. (*In re Arturo A., supra,* 8 Cal.App.4th at p. 243.)

Second, although it is true that claims of ineffective assistance of counsel appropriately may be raised on appeal "in the rare case where the appellate record demonstrates 'there simply could be no satisfactory explanation' for trial counsel's action or inaction" (*In re S.D., supra,* 99 Cal.App.4th at p. 1077), mother has not demonstrated that this is one of those rare cases because she failed to make the reporter's transcript for the November 25, 2009, hearing a part of the record on appeal. Thus, we cannot determine if the record sheds light on why counsel failed to act in the manner challenged, or if unless counsel was asked for an explanation and failed to provide one, or if, in light of the entire record, there simply can be no satisfactory explanation for counsel's failure. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1716.)

Third, because mother failed to make the reporter's transcript a part of the appellate record, the record on appeal does not show that mother's counsel failed to object to the termination of services; failed to advocate for reasonable services; failed to ask for a continuance of services; failed to advise mother to challenge the order terminating services by writ, section 388 petition, or appeal; or the reasons, if any, for such failures. Thus, mother has failed to establish the factual predicate for the first prong of an ineffective assistance claim that "'counsel's representation fell below an objective standard of reasonableness . . . . [¶] . . . under prevailing professional norms.'" (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1711.)

Finally, even if mother were able to show that counsel's performance was deficient, mother has failed to show prejudice—that is, a reasonable probability that there would have been a different result if counsel's performance had not been deficient. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1711.) When the juvenile court terminated family reunification services, mother was non-compliant with her services and had visited No.P. only once. In light of mother's poor performance with her services and visitation with No.P., it is not reasonably probable that the juvenile court would have continued family reunification services even if defense counsel had objected to the termination of services; advocated for reasonable services; requested a continuation of services; or advised mother to challenge the order terminating services by writ, section 388 petition or appeal.

B. The Juvenile Court's January 27, 2011, Visitation Order

Mother contends that her counsel's performance was deficient with respect to the juvenile court's January 27, 2011, visitation order that allowed mother one yearly visit with No.P. because counsel failed to advocate for a reasonable visitation order or to request a continuance due to mother's absence. Mother has failed to show ineffective assistance of counsel.

1. Background

Mother did not attend the January 27, 2011, hearing, but was represented by new counsel. The juvenile court stated that it had read and considered the social worker's report and recommendation to terminate parental rights over No.P.'s sisters, Na.P., J.P., and C.P., and to grant a guardianship over No.P. The juvenile court stated that it was still possible that No.P. might be adopted, but noted that the adoptive home study could not be completed at that time because L.O. had not obtained a divorce decree. The juvenile court asked if there were any objections to proceeding with any of the recommendations. Mother's counsel responded, "I have no direction from my client."

The juvenile court found by clear and convincing evidence that Na.P., J.P., and C.P. were adoptable and terminated mother's parental rights over them. The juvenile court then conducted the guardianship proceeding with respect to No.P. In the course of that proceeding, the juvenile court asked No.P.'s counsel about her recommended visitation order. No.P.'s counsel stated that she recommended once a year visits for mother upon mother's request, and no visits for No.P.'s father. The juvenile court asked if the recommendation for father's visits was due to his failure to contact No.P. Counsel responded that it was. The juvenile court asked No.P.'s counsel, "And mother does not contact either; is that correct?" No.P.'s counsel responded, "That is correct."

The juvenile court named L.O. and her boyfriend as No.P.'s legal guardians. Because mother was not visiting No.P., the juvenile court made a "general order that mother will have monitored visits approximately once a year if she so requests and the guardians will have discretion to arrange more frequent should mother request." Mother's counsel did not object to the juvenile court's visitation order.

2. Application of Relevant Principles

Mother's claims of ineffective assistance of counsel appropriately should have been raised in a habeas corpus proceeding. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1716; *In re Eileen A., supra,* 84 Cal.App.4th at pp. 1253-1254.) The record on appeal does not reflect why mother's counsel did not advocate for a more liberal visitation order

or request a continuance. (*In re Arturo A., supra,* 8 Cal.App.4th at p. 243; *In re S.D., supra,* 99 Cal.App.4th at p. 1077.)

Even if mother were able to show from the record on appeal that counsel's performance was deficient, however, mother has failed to show prejudice—that is, a reasonable probability that there would have been a different result if counsel's performance had not been deficient. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1711.) Mother contends that on counsel's request, she "could have been granted a more liberal visitation order . . . . The court could have possibly granted Mother two or more monitored visits, instead of the paltry once per year visit." Mother has failed to show how "two or more monitored" visits would have allowed her to establish the kind of relationship that would justify an exception to the termination of parental rights. (See § 366.26(c)(1)(B)(i) [parental rights will not be terminated and a child freed for adoption if the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 ["Because 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"]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [a relationship sufficient to support the beneficial parental relationship exception "aris[es] from day-to-day interaction, companionship and shared experiences"].)

With respect to counsel's failure to request a continuance, mother contends that the continuance would have allowed counsel to "communicate" with mother. Mother does not state the subject matter of such a communication or how the communication would have caused counsel to request more liberal visitation and the juvenile court to grant such a request. Moreover, even if counsel had requested a continuance, and counsel subsequently advocated for a more liberal visitation order, mother does not show how more liberal visitation would have enabled her to establish the kind of relationship that would justify an exception to the termination of parental rights. (See §

366.26(c)(1)(B)(i); *In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350; *In re Casey D., supra,* 70 Cal.App.4th at p. 51.)

Mother concedes that "[a] more liberal visitation order alone would not have been enough to prevent termination of Mother's parental rights because this event occurred too late in the proceedings." She argues, however, that counsel's deficient performance with respect to the visitation order combined with counsel's deficient performance with respect to the termination of family reunification services to cause her to lose her parental rights over No.P. As we explained above, mother failed to demonstrate ineffective assistance of counsel with respect to the asserted failure to object to the termination of family reunification services. Accordingly, there is no combined prejudice from counsels' asserted deficiencies.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.