Filed 12/2/14 In re G.B. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re G.B. et al., Persons Coming Under the Juvenile Court Law.	B254782 B257241 (Los Angeles County Super. Ct. No. CK91313)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.D., Defendant and Appellant.	

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

ORIGINAL PROCEEDING; petition for writ of habeas corpus. D. Zeke Zeidler, Judge. Petition denied.

Pamela Rae Tripp for Defendant and Appellant.

Amir Pichvai for Plaintiff and Respondent.

SUMMARY

N.D. (hereafter Mother) appeals from the juvenile court's jurisdictional findings, disposition orders, Welfare and Institutions Code[1] section 366.26 referral order, the summary denial of her section 388 petition, and the termination of her parental rights to G.B. (born 2010) and L.B. (born 2011). Concurrently with her appellant's opening brief, Mother filed a petition for writ of habeas corpus alleging that she was denied effective assistance of counsel as to the above-related hearings and orders. We affirm the orders and deny the petition.

STATEMENT OF FACTS

This dependency case has a long history with multiple contacts between Mother and the Los Angeles Department of Children and Family Services (hereafter DCFS or Department) over several years.

I. Detention Report dated January 4, 2012

In a Detention Report dated January 4, 2012, DCFS stated that the family came to the attention of DCFS on June 28, 2011, when Mother, while pregnant with L.B., reported to her primary care provider that P.B. (hereafter Father) had been verbally and physically abusive to her, shoving and grabbing her. Mother reported she suspected Father used marijuana and that he tried to choke her on one occasion while she was pregnant. Mother suffered anxiety from Father's marijuana use. Father admitted he used marijuana.

Mother wanted help for her family. Mother and Father were initially both cooperative. Father was irritable when he used marijuana. He did not use any other drugs. G.B. was healthy and happy and the home was clean and well stocked with toys and food.

On July 1, 2011, the DCFS completed an Up Front Assessment on Father. He was diagnosed with Anxiety Disorder NOS and cannabis dependence. It was recommended

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

that Father would benefit from a psychiatric evaluation and individual counseling to assess any potential mental health problems. It was also recommended that Father would benefit from seeing a mental health therapist to assist with family challenges, his possible anxiety and his substance abuse. Finally, it was noted that Father would benefit from participating in a domestic violence group and random drug testing, as well as out-patient treatment and a 12-step program.

On July l, 2011, the DCFS also completed an Up Front Assessment on Mother. She was diagnosed with Anxiety Disorder NOS and Diagnosis Deferred on Axis II. The report stated that Mother would benefit from a psychiatric evaluation and individual counseling to assess the potential for mental health problems. The report also stated that Mother would benefit from a community based program with parent support groups, as well as Al-Anon, in home outreach counseling to monitor the children's safety, and a domestic violence group. Neither parent, however, participated in a psychiatric assessment to assess for issues like bipolar or schizophrenia.

A. The Family Agreed to Voluntary Services

On August 5, 2011, the parents agreed to and signed a voluntary family maintenance program (hereafter VFM) case plan with Family Preservation services. They agreed to live apart, with Mother living with G.B., while they participated in counseling to teach them to communicate without domestic violence. Mother agreed to complete a domestic violence program and participate in individual counseling and Father agreed to the same as well as substance abuse counseling and random drug testing. Father tested positive on August 5, 2011 for marijuana.

On September 13, 2011, Mother and Father attended the initial Family Preservation meeting. The case was assigned to a Family Preservation worker (Tuero) and a social worker. By this time, the social worker and the Family Preservation worker (Tuero) were having difficulty reaching Mother. She was not returning calls. While Father reported he would be compliant with his case plan, he was not. Father did not check in with the social workers. Instead, the social worker saw Father during unannounced visits to Mother's home.

In October 2011, Mother informed her Family Preservation worker (Tuero) and social worker that she no longer wanted services claiming she did not need them. The social worker responded that absent Family Preservation, the services would not be free and Mother would benefit from services.

In November 2011, Mother gave birth to L.B. On November 8, 2011, Mother met with her case workers at their offices. At this point Mother was refusing to allow her Family Preservation worker (Tuero) in her home for services and was not compliant with the VFM case plan. At the meeting, Mother and the maternal grandmother (hereafter MGM) stated they no longer wanted the DCFS in their lives and wanted the case to be closed. They informed the social workers that Father was leaving "very soon" for Argentina and he would no longer be a concern. At that time, Father was residing with MGM. Mother explained she was not the problem and Father was the reason the case came to the attention of the Department. Mother asserted that once he was gone, she would not have to complete her plan. The social workers offered Mother individual counseling at her home to address domestic violence to make the case plan easier for Mother and Mother agreed. A new Family Preservation worker (Perez) was assigned to Mother.

On December 18, 2011, the new Family Preservation worker (Perez) visited Mother and L.B. at home. The worker assumed G.B. was asleep in the bedroom. As the Family Preservation worker was leaving, she asked to see G.B. Mother responded that G.B. was outside in the car with her "brother." The worker saw G.B. outside and left. The worker attempted to see Mother again, but Mother no longer wanted to see her. Mother called her social worker and requested a new Family Preservation worker be assigned to her.

A few days later on December 22, 2011, the Family Preservation worker (Perez) made an unannounced visit to Mother's home. Mother's "brother" answered the door. Mother refused to allow the Family Preservation worker (Perez) into the home. DCFS later learned that the "brother" was in fact Father.

B. The Events Leading to the Filing of the Petition

On December 27, 2011, the social worker left a message for Mother asking her to call back to discuss her request for a different Family Preservation worker. Mother returned the call the next day, December 28, 2011, and left a voice message saying she was at the hospital and had bad cell phone reception. The social worker returned Mother's call five minutes later and left a voicemail, offering to meet her at the hospital. Mother did not return the social worker's call. The social worker called MGM who informed the social worker that Mother and baby (L.B.) were fine and that MGM would have Mother call the social worker. MGM also stated that Mother was not in or at the hospital. The social worker tried calling both Mother and MGM later that day, stating that she needed to see the children and speak to Mother and requesting a meeting time. The social worker did not receive a response.

The social worker made an unannounced visit to Mother's home on December 29, 2011. Upon arrival, the social worker heard a baby crying. After knocking several times and waiting, the social worker telephoned Mother but she did not answer. The social worker knocked again and the door, which was apparently not completely shut, opened. Father came to the door not wearing a shirt and was surprised to see the social worker. The social worker asked Father what he was doing in the home and Father stated that he was caring for G.B. while Mother went to Target to buy baby formula. Father explained he was leaving for Argentina later that day, to which the social worker responded that Father had stated this for the past two months. The social worker asked to wait in the home for Mother and Father declined. Father stated that he did not know when Mother would return. The social worker asked that Mother call her when she returned.

Mother telephoned the social worker that day, but her explanation was inconsistent with what Father had stated. Mother stated that she had been in the hospital for three days because of L.B., explaining that while visiting relatives, an adult male had thrown a remote control to another person, but it hit L.B. in the face. L.B. screamed and stopped breathing. Mother reported that the CAT scan and other tests were negative. They stayed in the hospital for observation. The child was now fine. Mother did not recall the

name of L.B.'s doctor or the doctor's telephone number and stated she would call back "right away" with the information but did not. The social worker called five area hospitals but was unable to locate a record for L.B.

C. The Children Were Detained

At that point, on December 29, 2011, the social workers determined the children needed to be detained.

The social workers went to the home with the police. Mother confirmed the adult male the Family Preservation worker had met on visits was Father. Father remarked that he was "taken out of VFM" because he was leaving for Argentina. Father stated he had obtained his passport as he was leaving for Argentina. At the social worker's request, Father produced the passport to confirm his statements.

The social worker expressed concern that Mother kept stating Father was out of her life, and she was moving on with her life and the children. The social worker was concerned as it appeared Father was living there, which both parents denied. Father stated that he lived with MGM.

The social worker noted, however, that, on three occasions, she had found Father at the home; two of the times outside with G.B. Mother responded that she worked and Father was her only babysitting resource[2] and she would use him until he left for Argentina. Mother was candid with the social worker that she "frequently" left the children with Father, despite the fact that Father acknowledged he used marijuana. The social worker thought this posed a danger to the children in the event there was an emergency and Father was under the influence. Because Father was not testing, there was no way to assess risk.

With respect to L.B.'s hospitalization, Mother confirmed that L.B. had been hit in the head, but this time denied he stopped breathing. Mother supplied the discharge

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[2] According to the Detention Report, Mother was offered childcare on September 27, 2011 through DCFS and Mother stated she did not need childcare. Mother also reported to DCFS on December 21, 2011, that MGM's boyfriend had offered to help pay for daycare services for minors as Mother was working then and the social worker provided a referral.

papers, which stated L.B. had been hospitalized on December 28, 2011, for a fever and blunt head trauma. The social worker was concerned about inconsistent hospitalization stories. The social worker initiated a referral to obtain a second opinion as to L.B.'s injury. Mother denied the social worker permission to assess the home for male belongings. After it became difficult to speak to the parents as they were talking at the same time, the social worker informed them the children would be taken into custody and transported to the DCFS offices. The grandparents were to meet at the DCFS offices. The police assisted with detention and noticed male clothing including shoes in the home. One police officer was familiar with Father when Father was hospitalized after a section 5150 referral.[3] Neighbor children reported Father was at the home all the time.

The social workers reported: "there has been approximately 4 ½ months since the signing of the VFM case plan. Both parents have failed to begin or complete any programs, despite many efforts made by DCFS. In the VFM case plan the parents agreed to separate until progress was made in the programs, but the father has been most likely residing in the home which is of great concern due to the domestic violence history reported by the mother, the police calls out to the home regarding the father, the unresolved substance abuse by the father, and the unexplained injury to the child [L.B.]"

The Department would not place the children with the MGM. MGM was aware of the events in question and, in part, assisted Mother with efforts to stop services. The DCFS initiated live scans of the maternal grandfather and his wife. The children were placed in foster care.

On December 30, 2011, the day after detention, the social worker obtained two police reports. The first indicated that two weeks before the children were detained, on December 15, 2011, Mother called the police after the bedroom caught on fire and Father drove away with baby L.B. in the car. Mother told the police Father was bipolar and schizophrenic. The police arrested Father for driving without a license and Mother took custody of the children. The second indicated that five days after this incident, on

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[3] Under section 5150, a person may be held involuntarily for psychiatric observation and evaluation for up to 72 hours. (§ 5150.)

December 20, 2011, the police responded to the home for a domestic disturbance. MGM had called the police and reported her daughter (Mother) and son-in-law (Father) were arguing, that her daughter (Mother) stated she wanted to kill herself because she could not stand it anymore and her son-in-law (Father) used drugs. When the police arrived, the home was locked and Mother and Father had left.[4]

II. Original Dependency Petition

On January 4, 2012, the Department filed a juvenile dependency petition pursuant to section 300, subdivision (b) (failure to protect). The Department detained G.B. (then 19 months) and L.B. (two months) based upon allegations that Father was a current user of marijuana. The petition alleged Father tested positive for cannabinoids on August 5, 2011 and that, on prior occasions, Father was under the influence while the children were under his care.

The petition alleged Mother knew of Father's marijuana use and failed to protect the children. The petition also alleged remedial measures were not successful as Father failed to participate in a substance abuse program and random drug testing. The substance abuse by Father and failure to protect by Mother placed the children at risk of physical harm.

The Department filed a "Last Minute Information," noting its investigation revealed Father had been arrested on February 17, 2011, for domestic violence.

III. Detention Hearing

Both parents appeared at the detention hearing on January 4, 2012. The court found Father was the presumed Father. Father provided his address for when he was in Argentina. Both parents waived reading the petition and entered a general denial. Both parents requested the children be returned to Mother's care. Father wanted to cooperate

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[4] According to a Spanish Speaking Addendum Report filed on January 4, 2012, the Department was unable to reach the parents on January 3, 2012. DCFS was still awaiting its investigation into how L.B. received a head injury and whether Father was bipolar or schizophrenic. The Department recommended Mother and Father each participate in individual counseling as well as parenting classes and that Father also participate in substance abuse rehabilitation program and random testing.

with the Department. He agreed to stay away from Mother. If he moved to Argentina, he wanted to find equivalent programs.

The court ordered low or no cost referrals for Mother for a parenting program and low or no cost referrals for Father to participate in a drug treatment program if he stayed in or returned from Argentina. The court ordered Father to inform the social worker if he left the country.

The juvenile court directed DCFS to consider MGM and maternal grandfather and maternal stepgrandmother (hereafter MSGM) for possible placement and stated that it was "making a priority to have the children returned to some relative." The court ordered two to three visits a week for each parent for two to three hours a visit, but could not visit together. The juvenile court indicated that once the children were placed with MGM or MGF, it had "no problems" with unmonitored visits for Mother.

The juvenile court, however, warned that "if the court's orders are not obeyed, the children will end up with strangers and so what I want to impress upon you is how important it is that you do follow the court[']s orders." The juvenile court also rejected the argument that if Father left the country, there would be no need for DCFS involvement, stating "that is why I am concerned that you think it's necessary for [Father] to leave the country in order to protect the children from his drug use. [¶] . . . Mother is going to protect the children regardless of where the Father is. [¶] . . . [¶] . . . One of the things that this court want[s] to do is assist [Mother] so that she will be able to manage her life and protect her children from their Father or any other outside influences. And [it] isn't . . . always going to be possible [to] remove . . . people [to] another country."

IV. Pre-Release Investigative Report dated January 13, 2012

On January 13, 2012, DCFS filed a Pre-Release Investigation Report in which DCFS reported that MSGM reported that they could not care for the children. MSGM also reported that Mother asked MSGM not to disclose information to the social worker about MSGM's adult children living in the home, but MSGM stated that she "does not want to lie to [the social worker] and therefore she is being honest." MSGM also stated

that "she feels that the parents need to learn a lesson" and that "if the children had been placed with them the parent's would probably not learn anything because they know the children are in good hands."

DCFS reported that MGM preferred that the children be placed with maternal great-grandparents (hereafter MGGP) as it would be difficult for MGM to arrange for childcare. MGM noted that because MGGP do not work, they would be able to care for the children and to monitor Mother's visits.

At a hearing on the same date, Mother and relatives were present. The juvenile court ordered the children placed with the MGGP, absent any safety issues, and ordered monitored visits for Mother and Father.[5] In contrast, the juvenile court ordered unmonitored visits for MGF and MSGM and monitored visits for MGM with DCFS discretion to liberalize her visits to unmonitored.

V. The Amended Petition

On February 6, 2012, the Department filed a "Last Minute Information." There, the DCFS notified the court that maternal great-grandfather (hereafter MGGF) reported that Father had moved to Argentina on January 19, 2012, and that MGGF drove him to the airport.

On February 8, 2012, the Department filed a first amended juvenile dependency petition. There, in addition to the allegations in the original petition, the amended petition alleged a section 300, subdivision (a) count (serious physical harm). The count alleged Mother and Father had a history of engaging in violent altercations, which placed the children at risk of physical and emotional injury. The amended petition also alleged additional section 300, subdivision (b) counts (failure to protect) based upon the alleged history of domestic violence and Father's alleged psychiatric history, including bipolar and schizophrenia disorder.

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[5] The record does not include a reporter's transcript of the January 13, 2012 hearing.

VI. Jurisdiction/Disposition Report

In the Jurisdiction/Disposition Report dated February 8, 2012, the Department noted the family had no prior records in dependency. By this time, L.B. was a healthy baby. The maternal great-grandmother (hereafter MGGM) reported L.B. had no trouble sleeping at night. The MAT assessor concluded L.B. was an alert baby who liked music and someone speaking to him. He was easily consolable and stopped crying when his needs were met.

Likewise, G.B. was, by all accounts, a healthy child and very active. He was developmentally on target. He was "very intelligent" for a child his age and was able to understand directions. He was a sweet and loving child.

With respect to Father's marijuana use, Mother reported Father started using marijuana in 2010 when G.B. was six or seven months old. When asked by Mother if he use marijuana while home with G.B., Father denied using. He told Mother he only used when he was with his friends. Mother started worrying about Father's drug use in October 2011, because she noticed that Father would get "upset for no reason" and was getting "aggressive." When they separated in November 2011, Mother reported Father was using marijuana on a daily basis. Mother did not report ever seeing Father use marijuana in front of the children or actually seeing him under the influence in front of the children.

The DCFS interviewed Father over the phone. He admitted to marijuana use because life in the United States is fast paced and stressful. Father stated that he "never smoked in front of [his] kids," stating that he "would go out and smoke it outside of [the] home." Father stated that he last smoked before he left California and stated he was in a drug and alcohol outpatient program in Argentina. He expressed concern that the DCFS never stated that if the parents broke the voluntary maintenance contract, the children could be taken from them.

DCFS noted both parents were open about Father's drug use.

With respect to the domestic violence, Mother reported two occasions. Once, when she was pregnant with G.B., she became upset when Father came home drunk. He

used profanity and pushed her on the bed. He made a choking gesture but did not choke her. Then, when Mother was four months pregnant with L.B., the parents argued about Father's drug use. Mother told Father to stop it, but he refused. Father pushed Mother and she fell to the floor. Mother called the police. Because there was a bruise on Mother's leg, the police arrested Father. Father used profanity, but he was not derogatory towards Mother.

Father denied any domestic violence. He stated there was one incident during which the parents were arguing. Mother called the police and fabricated that Father had pushed her and she had fallen on the floor. Father claimed the police simply would not believe anything Father stated. Father stated that at that time he was not ordered to participate in any programs and did not go back to court. Otherwise, Father stated that any disagreements with Mother were normal couple arguments and that he never laid a hand on her.

The MGGM reported she had heard that Father used marijuana. She believed this caused the marital problems. She did not know how much or when he used marijuana. She reported Mother did not use marijuana. She never saw any physical fighting, and she would not tolerate it. She did report that Mother and Father argued over topics like whose responsibility it was to care for the children. She also reported that Mother stated she (Mother) was upset with Father because of how he treated her. She also stated Father was a very aggressive person.

Mother stated in her interview that she and Father were separated and he was living in Argentina as they planned to get a divorce. Father, however, reported that "he and the mother have plans on staying married and that the separation they are going through at this time is temporary due to him rehabilitating himself" and Father intended to return to California within six months. The report stated that "[a]t this time the Department is left to believe that either the mother is not being forthcoming with the Department or she is not being forthcoming with [Father], which is a concern and questions mother's ability to follow through with the recommended programs and ability to protect her children from any further abuse." The report also stated that "[a]t this time

the Department feels that it would be beneficial for the mother to attend individual counseling to address the domestic violence in order to ensure that . . . she is not a victim of violence once again." DCFS recommended that Mother continue parenting education, enroll and attend individual counseling to address domestic violence, and enroll and attend Al-Anon.

VII. Jurisdiction/Disposition Hearing

At the February 8, 2012 hearing, Father was in Argentina and had not been served with the first amended petition. Mother entered a denial on the first amended petition. The court did not dismiss the original petition and the matter was continued. Mother was visiting the children daily. The court directed DCFS to "give Mother the programs that she needs to do" and told Mother "you have been given no cost, low cost referrals to the programs and make sure you get into them."

The juvenile court then noted to Mother "it's a long process" and that the "first thing" Mother had to do was complete her programs. The court noted that hopefully at the next hearing some programs would be completed.

On March 22, 2012, the DCFS filed a "Last Minute Information" stating that a notice of hearing and the first amended petition were mailed to Father on February 23, 2012.

For the continued hearing on March 22, 2012, Father remained in Argentina. Mother was not present. Mother's counsel reported that Mother had been in the waiting room earlier in the morning but over the lunch hour learned of a diagnosis of cancer for maternal grandfather and had left to be with her family. The juvenile court noted that it had received a waiver of rights form from Mother and Mother's counsel, under questioning from the court, indicated that Mother had read the form and counsel had made sure Mother "fully understood that and waived her rights to a trial and rights going along with that," Mother signed and initialed the form in counsel's presence, and counsel had explained to Mother that the court would not have a trial and what that meant. The

juvenile court then found the waiver to be knowing and intelligent and freely and voluntarily given, and accepted the waiver.[6]

The court dismissed the original petition. The court admitted a number of exhibits into evidence. The court struck counts A-1 and B-3. The court sustained counts B-1 and B-2 as amended.

Count B-l as amended provides: "The children [G.B.] and [L.B.'s] father, [P.B.], is a periodic user of marijuana, which renders the father incapable of providing regular care for the children. On 08/05/2011, the father had a positive toxicology screen for cannabinoids. On prior occasions, the father was under the influence of marijuana while the children were in the father's care and supervision. The children's mother, [N.D.], knew of the father's marijuana use and failed to protect the children. The mother allowed the father to have access to the children. Remedial measures to alleviate the problem have been unsuccessful in that the father has failed to participate in a substance abuse rehabilitation program and random drug testing. Said substance abuse by the father and the mother's failure to protect the children endangers the children's physical health and safety and places the children at risk of physical harm and damage."

Count B-2 as amended provides: "The children [G.B.] and [L.B.] parents [P.B.] and [N.D.] have a history of periodically engaging in domestic disputes. The domestic disputes include but not limited to the father shoving and grabbing the mother in the presence of the children while under the influence of marijuana. Such conduct on the part of the mother and the father endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm and damage."

With respect to disposition, the juvenile court noted, "you have explained to her as well to do a department approved program of Alanon and to do a parenting class, individual counseling, monitored visitation with both children with discretion to liberalize," apparently based on the Court Ordered Class Plan form that Mother had

[6] The juvenile court misspoke and stated that it "accepts the plea" when discussing the waiver.

signed.[7] The court then found by clear and convincing evidence that return of the children to the home of Mother would be detrimental. The court explained that the Department's placement with the MGGM was appropriate. The case was continued for a six-month review.

VIII. Six-Month Review

For the September 20, 2012 status review report, the DCFS reported the children remained placed with the MGGP and were thriving. Mother continued to visit the children on a daily basis and had monitored weekend overnight visits.[8] MGGP declined the social worker's offer to set up a visitation schedule as they believed Mother should be responsible for the children and should come every day to help with them.

Mother recently began working and was living with MGM and there were "concerns regarding the relationship between Mother and MGM" as the social worker received a police report of a "struggle" between Mother and MGM. From the information the social worker gathered, Mother became angry after being told that MGM was no longer willing to help with the children as it was not MGM's responsibility and Mother was extremely upset and began throwing things around MGM's home.[9] The

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[7] With respect to Father, the court ordered no visits for Father until he contacted DCFS upon his return to California and then monitored visits with a DCFS monitor, not the mother. The court ordered Father to enroll in parenting and a DCFS approved drug and alcohol treatment program with random testing. The court also ordered him to enroll in anger management, mental health counseling and psychological assessment and no visits until he contacts the DCFS. The court permitted Father to have "SKYPE" visits with the children from Argentina. Finally, the court ordered the DCFS to assist Father in Argentina to the extent possible.

[8] The monitored overnight visits were apparently requested by MGGM, and approved by DCFS, in an April 2012 telephone call to DCFS, asking if Mother could sleep over to help with the children in light of MGGM needing to care for MGGF during his cancer treatment and DCFS gave its approval.

[9] According to a delivered service log, MGM stated that MGM was doing more to help care for the children than Mother herself and that when MGM told Mother she was no longer going to help given that Mother was not working or doing anything to make her life better, Mother reacted by becoming extremely upset, yelling, cursing and throwing

social worker received reports that on more than one occasion Mother has had anger problems and that Mother could be controlling and manipulative.[10] Mother minimized the incident and claimed "things between her and [MGM] are better than ever." MGGM reported that Mother was a difficult person and has an anger problem.

Mother also indicated that if the children were released to her, MGGP "would be more than happy" to have her move into her home and she wanted to move there as the children were comfortable there. MGGP, however, stated they did not want Mother moving in with them and MGGM described Mother as extremely difficult and controlling and, while they were more than willing to care for the children, Mother would not be allowed to reside in their home. When told of this, Mother stated that she would continue living in MGM's home if the children were returned to her they would live with MGM as well. The social worker noted that it was unclear if this was an option[11] and, even assuming it was an option, such an arrangement might not be a healthy environment for the children given reports that mother and MGM disagree and clash quite often.

Mother was in partial compliance with her case plan. Mother enrolled in a 10-week domestic violence class in April 2012 but was on a waitlist for individual therapy. On September 11, 2012, Mother stated she had completed the domestic violence class but was unable to get her certificate of completion. When the social worker contacted the

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things around the home. MGM called the police and when police spoke to Mother she was yelling at and disrespectful to the police.

[10] Specifically, MGM reported that on "many occasions" when Mother is upset and not "getting her way," Mother will threaten to kill herself or move out of state so that MGM "can be fully responsible for the children." MGM stated that Mother would not really kill herself and the statements were a way of "blackmailing" MGM to do what Mother wanted.

[11] According to a delivered service log, MGM had apparently met with the social worker privately and stated that MGM was "going to probably evict mother because she feels that [Mother] depends on her as she is paying for everything and is fed up" and stated she hoped that by letting her be out on her own Mother "will learn what it is to become responsible." MGM also stated that "the children are not safe with the mother at this time as she is not ready and does not know if she will ever be ready to take on the responsibility . . . ."

domestic violence program provider, the provider reported that it needed to confirm with the instructor but believed Mother had one more class to complete and that the provider had not handed a certificate of completion to Mother. Mother also enrolled in a 10-week parenting class in April 2012 and Mother on September 11, 2012, stated that she previously left a certificate of completion with DCFS reception desk, but the social worker never received any documents. The social worker contacted the parenting program service provider and was told that Mother left a June 7, 2012 class, and did not come back and the provider would provide a certificate of completion to DCFS when Mother attended the rescheduled class. Mother also reported that she was attending Al-Anon meetings and would provide verification of her participation which the social worker stated she would forward to the court when received.

As to Father, the Department set forth its attempts to communicate with Father, which had not been successful. Mother reported she had contacted Father. She did not believe he was doing well based upon his conversations and also believed Father was using drugs. Father told Mother he was working, but not in any classes. According to Mother, Father had not spoken to the children and he would not attend the upcoming court hearing.

The Department concluded that the issues that brought the family to the attention of the court and the Department had not been remedied, Mother and Father were not fully compliant with the case plan, and Mother needed to fully make progress in therapy. In addition, DCFS recommended that Mother address anger management in her therapy. DCFS recommended six more months of reunification services for Mother.[12]

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[12] According to a delivered service log entry dated September 19, 2012, "Mother stated that she is in agreement that she does need six more months of FR services because she is not stable at this time. She stated that she does not have housing for her children and stated in six months she will have her own place and will be working more by then and will feel prepared to take her children in. She stated that the family discussed this and they all felt that mother was not fully ready at this time. Caregivers agreed that the children should continue residing with them until [DCFS] feels that mother is ready to have the children in her care." Mother also spoke to the social worker privately and stated that she was dating someone really nice who was "loaded with money" and she

Father had made no efforts to contact the Department, no efforts to speak with the children, and had not provided any enrollment verification in any programs. The Department recommended family reunification services be terminated for Father.

In a Last Minute Information to the court filed September 20, 2012, DCFS stated that it received confirmation that Mother completed her parenting program on September 14, 2012. A letter dated September 14, 2012, from the domestic violence program provider also indicated that Mother had completed a 10-week domestic violence class and started individual therapy.

The juvenile court noted that DCFS was recommending that the court continue Mother's family reunification services and that Mother had completed her parenting program. Mother stated that she had also completed her domestic violence program and had attended two Al-Anon meetings but that it was very difficult because of her busy schedule. The court expressed concern about the problems between Mother and MGM. The court found that continued jurisdiction was necessary as conditions existed which justified the court continuing to exercise jurisdiction. The court noted Mother's progress and visitation and continued her case for a 12-month review hearing.

As to Father, the court scheduled a contested hearing with respect to terminating his reunification services.[13]

IX. Twelve-Month Review

In the March 4, 2013 status review report, DCFS reported that while the children continued to remain stable under the care of MGGM, MGGF had recently passed away[14] and both MGGM and MGM planned to move to Florida by the end of March or end of

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agreed to six more months of service because she wanted to wait and see what happened with him because they were looking to buy a home together.

[13] The juvenile court terminated Father's reunification services after the November 2, 2012 contested hearing.

[14] MGGF passed away in November 2012.

April.[15] The report stated that Mother "at this time does not have a home for the children" as MGM's residence "is not an option for Mother and children" and Mother was found "ineligible" to take over MGGM's apartment after a criminal history search.[16] The plan is for maternal uncle to apply to take over MGGM's apartment and, if he is approved, Mother to live with him and the children.

DCFS also expressed concern that, aside from housing, Mother was only in partial compliance after receiving one year of family reunification services. As previously reported at the six-month review, Mother had completed a parenting class and a domestic violence class. Although Mother had begun individual counseling as of the last status report, Mother "stopped attending since the last court hearing" in November 2012. Mother stated she was unable to resume therapy due to MGGF's death but stated on January 30, 2013, that "she would be calling to schedule an appointment and resume her therapy." Mother provided no verification of attendance at Al-Anon meetings.

Mother continued to visit the children daily and live with MGM, and Mother's relationship with MGM continued to be distant and under tension.

DCFS recommended an additional period of reunification services for Mother and that the children remain dependents of the juvenile court.

At the 12-month review hearing,[17] Mother's counsel argued that Mother was in full compliance having completed the domestic violence and parenting programs. The juvenile court noted that Mother was ordered to be in individual counseling to address the case issues and domestic violence, but that the 10-week domestic violence program was not ordered. Mother's counsel requested a contested hearing, asking for a supplemental report because Mother would be providing a letter from her individual counselor updating

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[15] MGGM stated that it was best for her to move out of state with MGM as they had given Mother so much help but that Mother did not appreciate it.

[16] MGM stated, "that at this point the mother does not have a potential home for the children if they were released to her."

[17] Due to caseload adjustments, the case was transferred to a different judge before the 12-month hearing.

Mother's progress and that MGGM had indicated that she was willing to allow Mother to reside in their home and this would "square away" the housing concerns.

X. Section 366.21, Subdivision (f) Contested Hearing

In a supplemental report filed on March 28, 2013, DCFS reported that Mother's individual counselor stated on March 8, 2013 that, although she has met with Mother, "'I've not seen her in a therapeutic way. I was her therapist but she is no longer in therapy'" and Mother was "'not in therapy at this time.'" The individual counselor left a message for the social worker on March 12, 2013, stating that Mother wanted the counselor "'to let you know that she was here for the past 3 weeks, however, it was not necessarily in a therapeutic manner, it was more as a follow up to address in terms as to what [Mother] needed in the letter.'" The individual counselor then stated that Mother had not given the counselor permission to discuss the social worker's questions and that the counselor could not fax the social worker the letter as Mother asked to pick up the letter.

According to the supplemental report, Mother stated on March 22, 2013, that she had started attending Al-Anon meetings and on March 27, 2013, stated that she would provide verification, which the social worker stated she would forward to the court when received.[18]

In terms of housing, the social worker reported that she spoke to Mother and MGGM, and MGGM stated that she had no problems having Mother move into the home once the children are released to her and that MGGM would delay her move out of state until the court released the children to Mother. MGM indicated that she will move out of state on April 1, 2013, which would leave Mother with no home.

DCFS recommended that the children remain in the care of MGGM until Mother completes individual therapy and Al-Anon and that an additional period of reunification services be offered to Mother. DCFS also recommended that the "minute order dated

[18] The Last Minute Information for the Court filed the day of the hearing did not include any Al-Anon verifications.

01/04/12 of unmonitored visits in placement be changed to unmonitored visits outside of placement."[19]

In a March 28, 2013 Last Minute Information for the Court, DCFS reported that MGGM reported that she had her airline ticket to leave for Florida on April 4, 2013, and that all of her belongings had been delivered to Florida. Maternal uncle still had to be approved for placement and stated that he would be taking over MGGM's apartment but MGGM reported that the apartment manager already stated that he "will approve the maternal uncle but with no children."

In terms of Mother's individual counseling, DCFS received a March 13, 2013 letter, stating that the counselor met with Mother for "three individual intake sessions" which occurred on September 6, 2012, September 10, 2012, and October 3, 2012.

DCFS noted that the matter had been open since August 2011 and Mother had not completed her court ordered programs in the 18 months that services had been provided, despite a very supportive maternal family. DCFS stated it was very concerned by Mother's "lack of motivation to comply with her court orders" and her and maternal family's "lack of appropriate planning" concerning placement of the children given MGGM and MGM's plans to leave the state.

At the contested hearing on March 28, 2013, Mother's counsel indicated that Mother would submit on DCFS's recommendation (for additional reunification services) and stated that Mother had been "actively trying to enroll in individual counseling" and that she was on several waiting lists. After accepting various reports into evidence, the juvenile court found continued jurisdiction to be necessary, Mother in partial compliance, that reasonable reunification services had been provided, ordered DCFS to provide Mother with counseling referrals, and continued that matter for the 18-month review hearing under section 366.22 set for July 2, 2013.

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[19] The DCFS supplemental report did not address the January 13, 2012 minute order, which unlike the earlier January 4, 2012 order, ordered monitored visits only for Mother.

XI. Placement with Maternal Uncle

On April 10, 2013, DCFS filed a section 387 supplemental petition alleging that MGGM was unable to provide the children care and supervision as she moved to Florida on April 4, 2013, placing the children at risk. The supplemental petition recommended a modified disposition for placement with a foster caretaker.

In a detention report filed on April 10, 2013, DCFS reported that on April 5, 2013, the social worker verified that MGGM had moved out of her apartment and the children were placed in foster care. The report also indicated that maternal uncle had taken over MGGM's apartment but that maternal uncle still needed to be evaluated for placement. DCFS expressed "concern that the mother may find it easy to move into the home without the Department's approval. . . . The maternal uncle reports that he is willing to protect the children and understands that the mother is not allowed to move into the home or have overnight visits unless approved by the Department." Mother reported that she would like unmonitored visits inside and outside of placement. DCFS noted that "[o]n the 03/28/13 hearing, the Department recommended that the minute order dated 01/04/12 of unmonitored visits in placement be changed to unmonitored visits outside of placement. As of the writing of this report, this order has not been changed."[20]

At the April 10, 2013 hearing, the juvenile court ordered the children placed with maternal uncle pending an assessment of maternal uncle's home and ordered monitored visits for Mother in "a neutral setting, meaning not in the children's home and not at her home."

In an April 25, 2013 Interim Review Report, DCFS reported that an assessment of maternal uncle's home was scheduled for April 24, 2013. DCFS also again recommended that the "minute order date 01/04/12 of unmonitored visits in placement be changed to unmonitored visits outside of placement." The juvenile court set the matter either for dismissal of the section 387 petition as moot if placement with maternal uncle

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[20] See footnote 18, *ante*.

was possible once the assessment was complete or for contested disposition of the section 387 petition.

In a May 7, 2013 Interim Review Report, DCFS reported that the assessment of maternal uncle's home was still under review and again recommended that the "minute order date 01/04/12 of unmonitored visits in placement be changed to unmonitored visits outside of placement." The court continued the adjudication hearing for the section 387 petition.

On a Last Minute Information for the Court filed on May 29, 2013, DCFS reported that maternal uncle's home had been approved and requested the section 387 petition be dismissed without prejudice since the children were being placed with another relative. The juvenile court dismissed the petition without prejudice.

XII. Eighteenth-Month Review

In a July 2, 2013 Status Review Report, DCFS reported that Mother had re-enrolled in individual therapy and had had her first session on June 17, 2013. The counseling center reported that Mother was asking for two counseling sessions a week as a court date was coming up. The center described Mother as "erratic," noting she had previously come in right before the March 4, 2013 hearing date, frantic and crying, saying she needed to enroll in counseling immediately because of the upcoming hearing date but then did not follow through with counseling. The counseling center also reported that Mother stated she was not working when asked to pay for counseling sessions but stated she was working when trying to schedule appointments. The report noted that Mother had not provided any verification of Al-Anon attendance.

The nurse practitioner at a May 2013 HUB appointment reported that both G.B. and L.B. were "disheveled, dirty, and ordorous." L.B. was observed as having little eye-contact, difficulty following directions and sharing, easily frustrated and cries, throwing objects, irritable throughout visit and difficult for the caretaker to console. Maternal uncle indicated L.B. was clingy and cried for more than an hour when uncle leaves. G.B. was observed as having difficulty following directions and sharing, easily frustrated and

cries, and irritable throughout visit and difficult for the caretaker to console. Maternal uncle indicated that G.B. was clingy, aggressive and defiant.

Maternal uncle reported to the nurse practitioner that Mother had "monitored visits with children 4 times per week" under his supervision. The nurse practitioner reported that she was concerned about the children's behavior and the maternal uncle, stating that he would benefit from support.

Maternal uncle indicated that he was not willing to provide a permanent plan for the children if reunification fails.

DCFS recommended termination of reunification services for Mother and permanent placement services in the form of adoption for the children.

At the July 2, 2013 hearing, due to a problem with notice, the court continued the section 366.22 hearing to August 1, 2013.

On July 25, 2013, DCFS filed a section 387 petition, indicating that maternal uncle reported on July 17, 2013 that he had been evicted. Maternal uncle stated that he loaned money to Mother because her car was impounded and she never paid him back and so he was unable to pay rent. Maternal uncle suggested splitting up the children for placement in foster care as they were a "handful." After being evicted, the uncle and children spent a few days staying with a neighbor before maternal uncle had children dropped off at the DCFS office on July 22, 2013 with a message that he could no longer care for them. The children were placed in a "fost-adopt" home as of July 22, 2013.

In a Last Minute Information for the Court filed on August 1, 2013, DCFS reported that Mother's individual counseling center reported that she had not completed individual therapy. Of the 13 scheduled therapy sessions between June 17, 2013 and July 22, 2013, Mother had attended seven sessions, cancelled two sessions, and was a "No Show" for four sessions. Mother's therapist reported that Mother had begun "her sessions openly and wholeheartedly as she expressed her desire to discuss how she's coping with life's circumstances." DCFS also provided the court a "Meeting Attendance Log" from the "Windsor Club" indicating that on June 28, 2013, Mother was at a meeting called, "Friday Night Fellowship," on June 29, 2012, was at a meeting called, "Phone

Alanon Hot Line" and later on the same day "Phone Line," on June 30, 2013, at "Hot Line Alanon" and again on that day "Phone line" and on "6/31/13 [*sic*]" was at "Alanon Hot Line."

At the August 1, 2013 contested hearing pursuant to section 366.22, the juvenile court received reports into evidence and then Mother testified.[21] Mother testified that she was participating in individual counseling sessions twice a week since June 17 and had participated in 10 or 11 sessions.[22] In terms of her therapy on domestic violence, Mother stated that she talked about the "one time" that her husband "shoved" her when she was five months pregnant, and how she had learned that domestic violence could be physical, verbal, mental, and even involve money situations. Mother further stated that she learned how "harmless" things such as "let me take care of you" could turn into possession over you. Mother had occasionally dated since separation from the Father, and, on one occasion, when the man told her to shut up, she ended the relationship. Mother testified that she was still married to the children's Father, but had no plan of reconciling with him.

In regard to her participation in Al-Anon, Mother testified that she had been to 20 sessions, and had learned how another person's dependency could impact one's life. She had taken the principles she had learned in Al-Anon and applied them even to her relationship with MGM since, according to Mother, MGM was the only person she ever clashed with.

Mother stated that she had completed a parenting program and learned how to talk to children and explain things to them. She testified that she had visited the children daily, and that the children did not know she was not living in the same home. Mother finally testified that she had moved into her own residence two days earlier, although she

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[21] The section 387 petition filed July 25, 2013, was dismissed without prejudice as all counsel stipulated to general suitable placement orders.

[22] As noted previously, between June 17, 2013 and July 22, 2013, Mother attended seven individual therapy sessions, and cancelled or was a "No Show" for six sessions. Thus, although scheduled for twice a week, Mother was attending once a week.

did not have the address at the hearing. Mother denied that maternal uncle loaned her money to fix her car and failed to pay him back.

Mother's counsel argued for release of the children to Mother. Minor's counsel argued against release to Mother and asked for termination of her reunification services. The court found Mother had "partially complied" with the case plan and terminated her reunification services. Although the juvenile court noted that Mother seems to "have very impressively internalized and learned and is able to articulate the domestic violence concept," the court also noted that it had taken her "quite some time to start regularly participating in counseling," and that "it really takes more counseling to really deal with the underlying roots of the issues." The court stated that in the end, Mother still had many aspects of instability, noting that she had just moved yet again to different housing.

The court advised the Mother that it was terminating her family reunification services and there was a possibility of guardianship or adoption, was setting a hearing to determine a permanent plan for the children and that "[i]f you wish to preserve your right to appeal the findings and orders made today, you must file a Notice of Intent to File Writ Petition and Request for Record within seven days." The court then stated that "[t]he clerk's providing the mother with the writ information in writing at this time.

The juvenile court set the matter for a November 26, 2013 hearing, for a permanent plan pursuant to section 366.26.

XIII. Section 366.26 Report and Hearing

On November 25, 2013, DCFS filed a Section 366.26 Report recommending termination of parental rights. The report indicated that the children remained in foster care with an approved foster family that wished to adopt them. DCFS reported that the adoption home study was complete and approved and recommended adoption as the most appropriate permanent placement goal for the children.

At the November 26, 2013 hearing, the juvenile court set the matter for a contested section 366.26 hearing on the selection and implementation of a permanent plan for the children on February 27, 2014.

The day before the contested hearing, on February 26, 2014, Mother filed a section 388 petition for modification, arguing that there was a substantial change of circumstances in her situation and asking for the children to be placed in her custody. Specifically, Mother's counsel listed that Mother had "participated in counseling, including parent education classes, individual counseling & Alanon meetings," had "relocated & have an appropriate permanent residence where the children can reside with me," was "employed & have a support group of person [*sic*] who will assist me with the care & socialization of my children," and was "ready to raise my children full time." Attached to the petition was a letter from Mother describing her relationship with Father, the history of the case and her relationship with her children. Attached to the petition was also a February 21, 2014 letter, from a caseworker/LVN at Mother's church, which she joined in December 2013, indicating that the caseworker has "had the equivalent of at least 10 sessions of individual counseling" with Mother and that in the caseworker's opinion Mother was "in a place where her kids will not only be completely safe in her care, but also thrive."

Also attached to the section 388 petition was a letter dated November 26, 2013, from Mother's individual therapy counselor indicating that, in addition to attending the previously reported seven sessions between June 17, 2013 and July 22, 2013, Mother had attended another 14 sessions from July 31, 2013 to November 13, 2013.[23] The individual therapist indicated that Mother was making progress but did not indicate that the therapy was complete. The petition also included various letters of support from Mother's community as well as a letter from MGM asking the court to return the children to Mother and stating that MGM believed that Mother was more than able to care for the children.

On February 27, 2014, DCFS filed a status review report indicating that the children were doing well together in their pre-adoptive home and sought and received the

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[23] In addition to the six sessions Mother had cancelled or was a "No Show" between June 17, 2013 and July 22, 2013, Mother cancelled or was a "No Show" for four more session.

attention and affection of their prospective adoptive parents. DCFS reported that Mother had twice weekly monitored visits, one hour on Tuesday and three hours on Saturday and would send a relative in her place if she is not able to attend.[24] DCFS reported that during monitored visits, Mother "often does not supervise the children during her visit; mother will talk with other people or talk on her cell phone" prompting maternal uncle to state during a visit that "he is not here to watch her children for her." During visits, Mother also tells the children that "they are going home with her soon."

The report indicated that G.B.'s therapist stated that G.B. was doing "exceptionally well" at this point, G.B.'s behavior has drastically improved and he is thriving in his prospective adoptive home. G.B.'s therapist reported that he has observed G.B. and L.B. "to be very attached" to their prospective adoptive parents and G.B. "feels emotionally secure" in their home. Both children, previously diagnosed as obese prior to placement with prospective adoptive parents, had also improved their physical health and were noticeably slimmer.

At the permanency planning hearing on February 27, 2014, the juvenile court denied Mother's section 388 petition without hearing, finding that it "did not state a sufficient change of circumstances for best interest of children." The court noted that it was "premature to go from monitored twice weekly visits one hour one day and three hours another day to a home of mother order." In addition the court noted that there was no statement in the individual counselor's letter stating that Mother had removed the risk so that children could be safely returned to Mother or have unmonitored visits.

The juvenile court then indicated that it would be considering the entire contents of the court file for the section 366.26 contested hearing. Mother testified about her relationship and bond with her children. DCFS argued that Mother's testimony was largely self-serving and represented an idealized picture that was not consistent with what was described in the reports by caretakers and others, and the juvenile court concurred. Minor's counsel argued for termination of parental rights and adoption by the foster

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[24] The DCFS report did not indicate how many visits Mother missed.

family. The juvenile court noted that Mother had regular and consistent visitation and a parental role with children but that this was outweighed by the benefits of permanence and adoption. The court found the children to be adoptable and terminated parental rights.

On March 3, 2014, Mother filed a notice of appeal, stating that her counsel was "not properly taking urgent action. Filing appeal by maternal instinct." Mother indicated she was appealing the section 360 removal of children from her custody, the section 366.26 termination of parental rights and the planned permanent living arrangement, and the section 366.28 order designating specific placement after termination, as well as the February 27, 2014 denial of her section 388 petition. On March 28, 2014, Mother's counsel filed a notice of appeal from all orders and findings made by the juvenile court in connection with the denial of her section 388 petition and the 366.26 permanency planning hearing terminating her parental rights.

DISCUSSION

On appeal and in her writ petition, Mother contends that she received ineffective assistance of trial counsel at the jurisdictional hearing, the disposition and after her 18-month review (§ 366.22). In addition, Mother contends that the juvenile court abused its discretion in summarily denying her petition for modification and terminating her parental rights because she had made a prima facie showing of changed circumstances and best interest of the child. We disagree and affirm, and deny the writ petition.

I. There Was No Ineffective Assistance of Counsel at the Jurisdictional Hearing, Disposition and Eighteenth Month Review

Generally, "'an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.'" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018 ["An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed"].)

Although a parent may "raise the issue of ineffective assistance of counsel by petition for writ of habeas corpus filed concurrently with an appeal from a final order. . . . [t]he claim of ineffective assistance of counsel must relate to the order appealed from. [Citation.] Habeas corpus may not be utilized to challenge antecedent final orders. [Citation.] Thus, for example, a claim of ineffective assistance of counsel in connection with jurisdiction and disposition orders may be raised in a petition for writ of habeas corpus filed in connection with an appeal from the disposition order. [Citation.] The same claims may not be raised by a habeas corpus petition filed in connection with an appeal from an order terminating parental rights." (*In re Carrie M.* (2001) 90 Cal.App.4th 530, 534, citation omitted.)

In other words, "resort to claims of ineffective assistance as an avenue down which to parade ordinary claims of reversible error is also not enough and that it is never enough, alone, to argue that counsel rendered ineffective assistance by not raising potentially reversible error on" writ review or by earlier appeals. (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208-209.) A limited exception to this rule on nonappealability is when application of the rule would offend due process. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.) Here, Mother's claims here "are not excused from the waiver rule by any apparent defect that fundamentally undermined the statutory scheme so that she was kept from availing herself of its protections as a whole." (*In re Janee J.*, *supra*, 74 Cal.App.4th at p. 209.)

In any event, if we were to consider the merits of Mother's ineffective assistance of counsel claims, we would find them to be unavailing. An appellant claiming ineffective assistance of counsel must show "(1) counsel's performance was deficient, falling below an objective standard of reasonableness under prevailing professional norms; and (2) the deficient performance resulted in prejudice." (*People v. Montoya* (2007) 149 Cal.App.4th 1139, 1146-1147; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) There is a strong presumption that counsel's conduct falls within the wide range of adequate professional assistance. (*People v. Stanley* (2006) 39 Cal.4th 913, 954.) A reviewing court may reverse on the ground of inadequate assistance on appeal

only if the record affirmatively discloses no rational purpose for counsel's act or omission. (See *People v. Lucas* (1995) 12 Cal.4th 415, 436-437; *People v. Osband* (1996) 13 Cal.4th 622, 700-701.)

To establish prejudice, the appellant must show that there is a reasonable probability, sufficient to undermine confidence in the outcome, that the result of the proceeding would have been different but for counsel's unprofessional errors. (*People v. Montoya*, *supra*, at p. 1147; see *In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1668.) The appellant must prove prejudice as a demonstrable reality, not merely by speculation as to the effect of counsel's errors or omissions. (*People v. Williams* (1988) 44 Cal.3d 883, 937.) A court "'need not determine whether counsel's performance was deficient before examining the prejudice suffered by [the appellant] as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . , that course should be followed.'" (*In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 503; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.)

With respect to Mother's jurisdictional and disposition hearing claims of ineffective assistance of counsel, Mother has not shown that trial counsel's conduct fell below an objective standard of reasonableness by submitting to jurisdiction when Father had left for Argentina by the time of the jurisdiction hearing on March 22, 2012, and therefore no further risk to the safety of the children existed. While in hindsight Father never returned from Argentina during the dependency proceedings, at the time of the jurisdictional hearing Father had stated to DCFS in the Jurisdiction/Disposition Report that he and Mother planned to stay married, their separation was merely temporary while he rehabilitated himself, and he planned to return to Mother and children within six months (or by late July 2012). Although Mother claimed that she and Father planned to divorce and Father would live in Argentina, there were questions about Mother's credibility. The Detention Report noted that despite Mother's statements that Father was out of her life and Mother and Father's claims that they did not live together, the Father appeared to be living with Mother, the police saw male clothing and shoes in the home

when the children were detained, and Mother had admitted that she used Father as her babysitter and planned to continue doing so until he left for Argentina.

Moreover Mother's characterization of the past domestic violence issues to being limited to being pushed on two separate occasions while pregnant fails to acknowledge two police reports in December 2011–after parents entered into a VFM agreeing to live apart–in which Mother called police because the bedroom was on fire and Father, who did not have a license, had driven off with then six-week old L.B. and a second incident five days later in which MGM called the police reporting that Mother and Father were arguing and Mother was stating she wanted to kill herself because of Father. In light of this record, Mother has not shown trial counsel's performance was deficient when she submitted to the jurisdictional finding and disposition.

Mother also contends that trial counsel provided ineffective assistance of counsel at disposition when counsel submitted to monitored visits when Mother had previously had unmonitored visits granted at the detention hearing. Specifically, at the detention hearing, the juvenile court stated that once the children were placed with MGM or MGF, the court had "no problems" with unmonitored visits for Mother.[25] The record, however, shows that after the detention hearing, the juvenile court entered another visitation order when it placed the children with the MGGP's. At a January 13, 2012 hearing, the juvenile court ordered placement with the MGGP's and monitored visits for Mother, but did not give DCFS discretion to liberalize Mother's visits to unmonitored.[26] At the same time, the court ordered unmonitored visits for MGF and monitored visits for MGM with DCFS discretion to liberalize to unmonitored. In contrast, at disposition, the court ordered Mother to have monitored visits with DCFS discretion to liberalize. In this context, Mother has not shown that trial counsel's conduct fell below an objective standard of reasonableness by submitting to the visitation order.

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[25] Both MGM and MGF asked for the children not to be placed with them.

[26] As previously noted in footnote 5, *ante*, the record does not include a copy of the reporter's transcript from the January 13, 2012 hearing, so the court's reasoning is unknown.

Next, Mother contends that trial counsel provided ineffective assistance of counsel when counsel failed to advise Mother of her right to a hearing and to present evidence and cross-examine the preparer of the report. In support, Mother submits a declaration stating that trial counsel gave her two forms to sign and did not discuss them with Mother and only told Mother to do the classes and she would be fine. Mother, however, has not demonstrated that there is a reasonable probability, sufficient to undermine confidence in the outcome, that the result of the proceeding would have been different but for counsel's unprofessional errors. (*People v. Montoya*, *supra*, at p. 1147.) Mother had not indicated what evidence or cross-examination counsel could have presented at a hearing that would have resulted in a different outcome.[27]

Finally, Mother contends that her trial counsel at the section 366.22 hearing failed to seek writ review of the referral order "where the mother was in full compliance with her case plan." However, the record does not demonstrate that Mother was in full compliance. Although Mother testified that she was in twice weekly individual counseling since June 17, 2013, the documentation from her counseling center showed that Mother had missed almost half of her sessions. Moreover, despite 18 months of reunification services, and additional services under VFM, there was no statement from her individual counselor indicating that Mother had completed her therapy. Likewise, Mother had provided very limited documentation of participation in Al-Anon meetings for four or five days at the end of June 2013, but provided no other documentation of other attendance. Under these circumstances, Mother has not shown that counsel's performance was deficient by not filing an extraordinary writ or that the failure to file such a writ prejudiced Mother.[28]

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[27] We have previously addressed Mother's argument that Father had left for Argentina.

[28] Mother's declaration states that her trial counsel never explained to her her right to seek writ review. The record, however, shows that the juvenile court informed Mother at the conclusion of the hearing of her right to writ review and that the clerk gave Mother written information on writ review at the hearing.

II. The Juvenile Court Did Not Abuse Its Discretion in Dismissing Mother's Section 388 Petition

Mother argues on appeal that the juvenile court committed reversible error when it summarily rejected her section 388 petition without a hearing in light of substantial change in her circumstances and of the "crisis" the children were undergoing because the maternal uncle had lost his housing. In particular, Mother notes that even with the uncle's housing crisis, DCFS did not consider moving children back to Mother despite her "outstanding" progress and therefore, "shortly" after uncle's housing crisis, Mother filed the instant section 388 petition.[29]

Preliminarily, Mother's characterization of the chronology of events, however, overlooks the fact that Mother did not file her section 388 petition until seven months after the uncle's July 2013 eviction, and the juvenile court conducted an evidentiary section 366.22 hearing on August 1, 2013 – approximately two weeks *after* maternal uncle was evicted – at which Mother had the opportunity to testify and present evidence. The juvenile court, however, terminated Mother's reunification services at the section 366.22 hearing because it found that Mother had only "partially complied" with the case plan and, while Mother had started therapy and could "impressively" articulate what she had learned, Mother required more counseling. Thus, at the time of the uncle's eviction, Mother was found to be only partially compliant and, instead of ordering a home of parent as Mother suggests on appeal would have been appropriate, the court terminated her reunification services. Mother, however, did not seek writ review of this order and,

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[29] Mother's brief also includes some contentions that appear to not apply to her case and were perhaps erroneously included. Specifically, Mother argues that her section 388 petition was filed "nearly one year after the child [*sic*] was removed from her" and the "petition did not only ask for the return of the child, but included an alternative plan of implementing family reunification services so that the child [*sic*] could also benefit from a plan tailored to meet her [*sic*] needs for a smooth transition . . . ." In this case, the children were removed from Mother in December 2011 and her section 388 petition was filed in February 2014, or more than two years later—not one year later. Likewise, Mother's section 388 petition only asked the juvenile court to "place my children in my custody pursuant to a home of parent-mother order" and did not offer an alternative plan of family reunification services.

as discussed above, we are not persuaded by her attempt to revive arguments related to the section 366.22 order with an ineffective assistance of counsel claim.

Also noteworthy is the evidence in the record that it was Mother's own conduct that led to maternal uncle being evicted and resulting in the need for the children to be placed in foster care. Maternal uncle reported to DCFS that Mother had borrowed money from him but did not pay him back and so he did not have enough money to pay his July rent.

In any event, we do not find that the juvenile court abused its discretion in summarily denying Mother's section 388 petition.

Under section 388, the dependency court should modify an order if circumstances have changed such that the modification would be in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) Section 388 provides in pertinent part that a parent "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . The petition shall be verified and . . . shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order . . . . [¶] . . . [¶] (d) If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ."

"A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) But, in order to obtain a hearing, the parent must show both changed circumstances and promotion of the child's best interests; failure to show either of these elements defeats the prima facie showing. (*Id.* at pp. 806–807.) When the petition is brought after termination of reunification services on the eve of a section 366.26 permanent plan hearing, the parent's burden is particularly weighty because at that point "a parent's interest in the care, custody and companionship of the child is no

longer paramount" and "the focus shifts to the needs of the child for permanency and stability." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

If the allegations of the petition, even liberally construed, fail to make a prima facie showing of either changed circumstances or that the proposed modification would promote the child's best interests, the court need not order a hearing on the petition. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451.) "A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) A petition containing only general or conclusory allegations does not rise to the level of a "prima facie" showing. (*Ibid.*) Rather, the petition must set forth specific allegations describing the evidence that constitutes the proffered new evidence or "changed circumstances." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

We review a denial of a hearing on a section 388 petition for abuse of discretion. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.) Discretion is abused when the court's ruling is arbitrary or capricious or exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Applying the foregoing principles, we cannot say that the juvenile court abused its broad discretion by denying Mother's section 388 petition without hearing. On appeal, Mother contends that her section 388 petition with its attachments showed "consistent and on-going compliance with the case plan." The petition and its attachments, however, do not make a prima facie showing of changed – rather than changing – circumstances. The attached parenting and domestic violence class certifications were from September 2012 and previously submitted to the court over a year earlier at the six-month review. Seven of the individual counseling sessions were previously reported to the juvenile court at the August 1, 2013 section 366.22 hearing. Although Mother had attended an additional 14 individual therapy sessions, there was no indication from the individual counselor's letter that Mother's therapy was complete and no recommendation that

children be returned to Mother's care.[30] Mother's Al-Anon attendance forms showed that she attended six meetings in the seven months since the August 1, 2013 section 366.22 hearing. Thus, Mother did not meet her burden of demonstrating sufficiently changed circumstances.

Likewise we find no abuse of discretion in the juvenile court's determination that Mother failed to carry her burden under section 388 to present prima facie evidence that granting the petition would promote the child's best interest. G.B. and L.B. had been with the prospective adoptive parents for seven months and were approximately three and a half and two years old at the time Mother filed her section 388 petition. G.B.'s therapist reported that he was "doing exceptionally well" and thriving in his prospective adoptive home and that his behavior had improved dramatically. The therapist also reported that G.B. felt "emotionally secure" in his prospective adoptive home and he and L.B. were very attached to their prospective adoptive parents.

Once reunification services are terminated, the focus shifts from reunification to the child's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) For a parent "to revive the reunification issue," the parent must prove under section 388 that circumstances have changed such that reunification is in the child's best interest. (*In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 309-310.) "[O]ur Supreme Court made it very clear in [*In re Jasmon O.* (1994) 8 Cal.4th 398, 408, 414-422] that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion." (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.)

Moreover, time is of the essence, especially to young children; when it comes to securing a stable, permanent home for children, prolonged uncertainty is not in their best interest. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674 ["'There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in

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[30] As the juvenile court noted, the church caseworker who opined that Mother was in a place where the children would be completely safe in her care, was a licensed vocational nurse and not a therapist.

his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged'"].) "Childhood does not wait for the parent to become adequate." (*In re Marilyn H., supra*, 5 Cal.4th at p. 310; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "[I]n order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate." (*In re Marilyn H., supra*, 5 Cal.4th at p. 308; § 352, subd. (a) [juvenile court required to "give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor from prolonged temporary placements"].) In the case of a child under the age of three,[31] the limitation could be as little as six months where the parents "fail[] . . . to participate regularly and make substantive progress in court-ordered treatment programs . . . ." (§ 366.21, subd. (e).)

In deciding where a section 388 petition makes the required prima facie showing, a court may consider the entire procedural and factual history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) Although MGM wrote a letter attached to the section 388 petition in support of returning the children to Mother's care and claiming that DCFS had incorrectly reported her prior statements about reunification, the entire procedural and factual history of the record shows that MGM was not the only one who expressed concern throughout the case. Mother was described by family members as manipulative and controlling. Family members also described Mother as having anger issues such that family members expressed concern or asked DCFS not to tell Mother what they had reported and in one instance the police had to be called. A counselor described Mother as erratic in following her case plan, showing up at the counseling center right before her March 4, 2013 court date "very frantic, crying, reporting that she needs to enroll in counseling immediately because she has an upcoming court hearing"

[31] When the children were detained in December 2011, G.B. was one and a half years old and L.B. was two months old.

but not following through and then in June asking for sessions twice a week "because another court date is coming up."[32]

In this context, even construing Mother's section 388 petition liberally, the allegations do not make a prima facie showing of changed circumstances or that granting the petition was in children's best interest. Accordingly, the juvenile court did not abuse its discretion in summarily denying the petition.[33]

DISPOSITION

The orders on appeal are affirmed. The petition for writ of habeas corpus is denied.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

MILLER, J.*

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[32] The section 366.22 hearing was originally scheduled for July 2, 2013 but was continued to August 1, 2013 because of an issue with notice.

[33] Mother makes no arguments regarding the court's ultimate decision to terminate parental rights.

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