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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KINGSTON W. et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ROOSEVELT W. et al., Defendants and Appellants.	B277764 (Los Angeles County Super. Ct. No. CK89770)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Roosevelt W., in pro. per., for Defendant and Appellant Roosevelt W.

K.W., in pro. per., for Defendant and Appellant K.W.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Roosevelt W. (Father) and K.W. (Mother), each self-represented, appeal the juvenile court's order terminating parental rights over their children Kingston and "Ky." For the reasons discussed, we affirm the court's order, concluding the court did not err in finding that the children were adoptable and that there was no compelling reason to believe termination of parental rights would be detrimental to them.

Appellants seek to raise a number of other issues, including subject matter and personal jurisdiction and right to self-representation. The issues are not properly briefed with citation to relevant legal authority. Nonetheless, we address them and conclude the court had jurisdiction, and did not abuse its discretion in disallowing appellants to represent themselves. Finally, appellants seek review of their unsuccessful attempts to disqualify the presiding judicial officer and of the order terminating reunification services with respect to a third child ("Kim"). Such orders are not reviewable at this time; review should have been

sought by way of timely petition for extraordinary writ. Accordingly, we may not consider them.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Proceedings and Appeals*

1. *Kingston*

The family came to the attention of the Department of Children and Family Services (DCFS) in July 2011, when their oldest child, Kingston, was almost four.[1] Mother had a mental breakdown, claiming she was God, that God was talking to her, and that the police officers and medical personnel who came to evaluate her were devils. Mother was placed on a psychiatric hold, and Kingston was left in the care of his maternal grandparents. A DCFS caseworker interviewed Mother in the hospital, where she was diagnosed with a form of schizophrenia. When Mother was released in August 2011, she fled with Kingston to Alabama, where Father lived. Contacted by the caseworker, Father agreed Mother was behaving bizarrely, and stated he did not want Mother caring for Kingston or Kingston exposed to her behavior.[2] In September, he returned the boy to his maternal grandparents in California and sent a letter to the

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[1] Kingston was born in California and had lived there with Mother in the home of his maternal grandparents.

[2] Among other things, Mother went out of the house naked, threw away many of Father's belongings, saying she had been told to do so by the Lord, threw knives at Father, and spanked Kingston for inappropriate reasons.

caseworker consenting to Kingston's being placed with the grandparents. The dependency petition (Welfare & Ins. Code, § 300) was filed September 21, 2011.[3] Notice was sent to Mother and Father in Alabama. Father was represented by counsel at the detention and jurisdictional hearings.[4]

At the original jurisdictional hearing, the court found that Mother displayed mental and emotional problems which rendered her incapable of providing regular care for Kingston. Her reunification plan required her to undergo a psychiatric evaluation, participate in counseling and take all prescribed psychotropic medication. Father was deemed non-offending. In February 2012, Mother returned to California. In March, Father, still in Alabama, filed a section 388 petition seeking custody of Kingston. Mother immediately filed a section 388 petition of her own, alleging that while they were in Alabama, Father had threatened her with a knife, choked her until she blacked out, tied her to a chair, forced her to take medication, raped her and regularly beaten her.[5] Mother also admitted throwing boiling water

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[3] Undesignated statutory references are to the Welfare and Institutions Code.

[4] Counsel was tentatively appointed for Mother, but she refused to communicate with the attorney, and the court rescinded the appointment.

[5] Mother's petition described Father as "never around" for Kingston and said that he had never paid child support. Father admitted tying Mother to a chair, slapping her, hitting her legs with a rope and forcing her to take medication. Kingston
(Fn. continued on the next page.)

on Father, threatening Father with knives, and hitting Kingston with a belt. In April, DCFS filed a subsequent petition (§ 342), followed in May by an amended subsequent petition. After a hearing in July 2012, at which both Mother and Father were present, the court sustained allegations that Mother and Father had a history of engaging in violent altercations, specifically finding true that Father struck Mother with a rope, tied her to a chair, and slapped her, that Mother threw boiling water at Father, and that Mother inappropriately physically disciplined Kingston by striking him with a belt.

Mother's reunification services with respect to Kingston were terminated in January 2013.[6] Father's

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reported being hit by Mother and seeing Father hit Mother. Kingston stated he did not want to live with Father. In May 2013, Kingston began therapy to "help[] him process his feelings regarding the conflict he witnessed between his parents."

[6] Mother's compliance vacillated during the initial period reunification services were provided. Mother began attending an anger management group, parenting classes and group counseling for people suffering from schizophrenia. She was evaluated by a psychiatrist in April 2012, who diagnosed a psychotic disorder, but prescribed no medication because she was pregnant (with Ky). Subsequently, Mother claimed she had no need to participate in counseling or change her behavior and cut off all contact with the caseworker. After the court terminated reunification services, Mother began participating in a counseling program, and in May 2013, filed a section 388 petition for modification, seeking additional reunification services. However, prior to the hearing on the motion, Mother was terminated from
(Fn. continued on the next page.)

reunification services with respect to Kingston were terminated in November 2013. Father had participated in four weeks of counseling in Alabama, which DCFS and the court found insufficient to meet the requirements of his reunification plan. Father sought review by way of petition for writ. We denied relief. (See *In re K.W.* (Mar. 24, 2014, B252748) 2014 Cal.App. Unpub. LEXIS 2058.)

2. *Ky*

In 2012, while the proceeding involving Kingston was pending, Mother gave birth to a daughter, Ky, in California. Ky tested positive for marijuana. Mother appeared at the jurisdictional hearing and conceded jurisdiction. She began participating in counseling, doing well for a period of time. However, she started to make bizarre claims about the grandparents and to threaten Kingston during visitation, and was discharged from her counseling program for misbehavior.

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the program for being aggressive and hostile toward staff members. She thereafter withdrew her petition. In May 2014, Mother filed a second 388 petition seeking additional reunification services with respect to Kingston. The court granted the petition and Mother was afforded additional reunification services. Kingston, through his attorney, appealed the court's decision, but by the time the matter was fully briefed, the additional period of reunification had expired and we dismissed the appeal as moot. (See *In re K.G.* (Nov. 2, 2015) B259048 [nonpub. order].)

Mother initially identified another man as Ky's father. In April 2013, the court found that Father was Ky's presumed father.[7] At a November 2013 hearing, the court initiated reunification services for Father but denied his request for a home-of-parent placement, and ordered six additional months of reunification services for Mother. Mother and Father appealed the court's November 2013 orders, seeking return of Ky or unmonitored visitation. In October 2014, this court affirmed the orders. (*In re K.G.* (Oct. 14, 2014, B252758) 2014 Cal.App. Unpub. LEXIS 7290.)

3. *Kim*

In August 2013, while still residing in Los Angeles County, Mother gave birth to a third child, Kim. Because the baby was being well cared for, Mother was living with relatives and complying with her case plan, and Father appeared to have returned to Alabama, DCFS did not intervene until April 2014, when it received reports that Father had either moved into the home or was a daily

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[7] The court instructed DCFS to initiate an ICPC (Interstate Compact on the Placement of Children) evaluation of Father's home in Alabama. Alabama's Department of Human Resources was unable to complete the requested home study because Father appeared to have moved to California and was not available to be interviewed in Alabama. Father subsequently explained that he had remained in California to care for an ailing parent, but maintained an address in Alabama.

visitor, that he had been heard yelling at Mother in the home, and that while accompanying Mother to a medical appointment for one of the children, he had become combative and verbally aggressive. After several unannounced visits by caseworkers, a caseworker found Father at Mother's home. Father behaved in a threatening manner, yelling for an extended period. He claimed to have sent Mother and Kim to Alabama. The caseworker called law enforcement.

After Kim was detained, Father left messages for the caseworker that were described in the reports as "threatening and argumentative."[8] A new caseworker was assigned, but Father remained hostile and refused to communicate over the telephone. At the jurisdictional hearing, the court found true that Mother and Father had a history of engaging in violent altercations and instructed Father to participate in a 52-week domestic violence program and individual counseling to address anger management and domestic violence. It ordered Mother to participate in individual counseling to address domestic

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[8] On May 12, 2014, prior to the detention hearing, Father filed a peremptory challenge (Code Civ. Proc., § 170.6), removing Judge Carlos Vasquez from the case. That same day, Mother filed a peremptory challenge, removing Judge Rudolph Diaz from the case. The case was assigned to Judge Marguerite Downing, who issued the detention order.

violence and empowerment. It ordered both parents to undergo Evidence Code section 730 psychiatric evaluations.[9]

In October 2014, three years after Kingston's detention, Father commenced the required domestic violence program. He was visiting the children regularly. The monitors described him as caring, loving and affectionate. His counselor said he was doing well and recommended that Father be permitted unmonitored visitation. However, the caseworker reported that Father remained belligerent and uncooperative toward him.

At a contested review hearing in June 2015, Kim's attorney expressed concern that Father continued to exhibit "anger and inappropriate reactions" and that his "pattern of dishonesty" concerning his living arrangement and relationship with Mother would lead to a cover up of any future domestic violence. The court found that both parents had made significant progress in resolving the issues that led to Kim's removal, and extended reunification services. It granted Father unmonitored day visitation with Kingston and Ky, and gave DCFS discretion to liberalize visitation

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[9] Father's evaluation revealed no mental illness. Mother's evaluation concluded she met the criteria for a diagnosis of psychotic disorder not otherwise specified. The evaluator stated Mother would benefit from psychiatric treatment and anti-psychotic medication, and recommended that liberalization of visitation with the children be contingent on compliance with psychiatric treatment.

with Kim.[10] In July 2015, the court issued a restraining order against Father, after the caseworker presented evidence that Father had threatened him in a telephone conversation the day after he testified at the review hearing. Father appealed, contending Kim should have been placed in his custody at the June 2015 hearing, or that he should have been allowed unmonitored visitation. Father also appealed the restraining order, contending it was not supported by substantial evidence. In August 2016, this Court affirmed the court's orders. (See *In re K.G.* (Aug. 15, 2016, B265472) 2016 Cal.App. Unpub. LEXIS 5952.)

B. *Underlying Proceedings*

1. *Termination of Parental Rights (Kingston and Ky)*

In October 2015, DCFS filed a section 366.26 report for Kingston and Ky, recommending termination of parental rights so the children could be adopted by the maternal grandparents.[11] DCFS submitted further reports stating

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[10] At the June 2015 hearing, the court also terminated reunification services with respect to Ky and the additional reunification services it had granted Mother with respect to Kingston. Father was permitted unmonitored visitation with all three children at some point in 2015. The precise date is not clear from the record. Mother's visits with all three children continued to be monitored.

[11] A section 366.26 report for Kingston had been prepared on March 3, 2014, prior to the court's granting Mother additional reunification services. The maternal grandparents reported their

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Kingston and Ky were adoptable because the maternal grandparents with whom they had lived for nearly all their lives wished to adopt them. The grandparents' home study had been complete for some time. Kingston stated he wanted to reside with his grandparents.

In April and May 2016, Kingston reported that Father, who for approximately a year had been having unmonitored visitation with all three children for four hours every weekend, spanked him and hit him in the stomach multiple times.[12] On May 17, 2016, the court changed Father's visits to monitored. Father had no further visits. The caseworker found it impossible to set up a visitation schedule because Father would not communicate with him directly.

The matter was set for contest. The hearing commenced on May 17, 2016. Mother testified Kingston lived with her the first three years of his life and that she and Father were his primary caregivers during that period.[13]

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desire to adopt him, as well as his siblings if necessary. Kingston, then six, said he wanted to remain in his grandparents' home, where he had lived his entire life except for the brief period when Mother took him to Alabama. He said he did not want to live with Father.

[12] Kingston also reported seeing Mother at visits, although it was unclear whether he was referring to seeing her in person or through Skype. DCFS took the position that any contact with Mother during Father's visits was not permitted.

[13] On cross-examination, Mother acknowledged that she and Kingston lived with her parents and Father did not live with them, but occasionally visited from Alabama.

At their last visit, in November 2015, they played a game, ate, hugged each other and said how much they loved each other.[14] Kingston called her "Mommy." He always was excited to see her. Mother acknowledged that she never lived with Ky. At her last visit with Ky, also in November 2015, they played. Ky was affectionate with her, was always excited to see her and called her "Mommy." Mother testified she tried to call the children every day, but the grandparents did not always answer her calls. By the time of the hearing, Mother and Father had married and were living together.

Kingston testified he enjoyed visiting his Mother and would like to have more visits with her. He said he would be sad if he could not see Mother. He did not recall any details about their visits. Kingston enjoyed his visits with Father and said he would be sad if he could no longer visit him. He called his parents "Mommy" and "Daddy." He confirmed telling his grandmother that Father spanked him and hit him in the stomach. He said he would be unhappy to be removed from his grandparents' care.

The caseworker testified Father's visitation with Kingston and Ky had been consistent through May, and that she had not noticed any inappropriate behavior. However, Kingston had never indicated he wanted more visits. The caseworker did not liberalize Father's visits to overnights because Father did not allow her to assess his home or even

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[14] In November 2015, Mother gave birth to a fourth child. She did not thereafter visit the children.

acknowledge that he had a home in California. In addition, she had concerns about his continuing aggression, his ability to implement the training he received during the reunification period, and his willingness to comply with court orders.

Father testified that during his unmonitored visits with his children, they engaged in family activities such as going to the park or the mall. He fed them and talked to them about school. He taught Kingston to play soccer. They told him they loved him and called him "Daddy." They ran to him when they saw him. They were sad when the visits ended. Father denied ever spanking Kingston or hitting him in the stomach.[15]

In closing argument, DCFS's counsel asked the court to terminate parental rights to allow the grandparents to adopt Kingston and Ky. Counsel for the children took the same position. She contended the evidence established the children were adoptable, and that there was no evidence Mother or Father had assumed a parental role in their lives. She pointed out that Mother had failed to visit consistently,

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[15] During Father's testimony, the court repeatedly admonished him to answer questions without making extraneous comments, and called multiple recesses so his attorney could speak to him about proper courtroom behavior. When Father's testimony concluded, the court proposed striking all of it because he did not properly answer questions on cross-examination. After hearing argument of counsel, the court stated it would instead take Father's lack of cooperation into consideration in weighing his testimony.

had never had unmonitored visits, and had had no visits at all since the birth of her fourth child. Mother's counsel argued the section 366.26, subdivision (c)(1)(B)(1) exception had been established, as Mother had lived with Kingston the first three years of his life, and either consistently visited or maintained telephonic contact, and Kingston testified he enjoyed Mother's visits and would be sad if they ended. Father's counsel similarly argued that the evidence established regular visitation and contact, and that the children would benefit from continuing the relationship. She contended the activities they engaged in during his unmonitored visitation established his assumption of a parental role.

On August 16, 2016, the court terminated parental rights over Kingston and Ky. The court observed that Ky had been raised by her grandparents her entire life, and that it was the grandparents, not Mother and Father, who had provided the parenting for both Ky and Kingston. The court explained that the guardianship alternative would be detrimental to the children because they would be subject to their parents' erratic behavior.

2. *Termination of Reunification Services (Kim)*

In the November 2015 status report for Kim, the caseworker reported Mother was not taking medication, but that Father had completed court-ordered services. Father had unmonitored visitation with Kim until May 2016. However, the caseworker was unable to initiate overnight

visitation during that period because Father's housing could not be evaluated. DCFS recommended termination of reunification services for Kim.

At the review hearing, the caseworker testified that she was unable to evaluate Father's residence for overnight visitation because Father consistently maintained that his residence was in Alabama. In her interactions with Father, he had exhibited neither patience, cooperation, nor the ability to control his aggression. After a recent hearing, he had followed the caseworker into the parking lot and called her an obscenity. After the court-ordered monitored visitation in May 2016, Father did not contact the caseworker to set up visitation until the end of July. Mother told the caseworker she was going to Alabama to give birth in November 2015 and had not visited the children since. Mother was uncooperative when the caseworker attempted to set up a new schedule, and after the caseworker made several attempts, Mother and Father told her not to contact them anymore. Mother and Father refused to allow the caseworker to assess the new baby.[16]

In closing, Kim's attorney urged the court to terminate reunification services and set a section 366.26 hearing, arguing that the parents had failed to visit regularly and failed to demonstrate evidence of growth and integration of

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[16] Father's counsel called him to the stand during the review hearing, but rather than answering his counsel's questions, Father continually challenged the court's jurisdiction.

their programs. She contended Father's behavior toward Kingston was evidence of unresolved anger management issues. Counsel for DCFS joined in the argument of Kim's attorney. Counsel for Father and Mother contended the evidence established they had met the goals of the reunification program and that Kim should be returned to them.

The court found by clear and convincing evidence that returning Kim to her parents' custody would create a substantial risk of detriment to her safety, protection, and physical and emotional well being. The court found that despite participating in the requisite programs, Mother and Father had failed to make sufficient progress. The court set a section 366.26 hearing to consider termination of parental rights over Kim. The court stated on the record that to preserve any right to appeal its order, the parties must seek an extraordinary writ by filing a notice of intent to file a writ petition, and provided written notice to Father in court.[17]

3. *Procedural Matters*

On October 19, 2015, the date first set for the section 366.26 hearing for Kingston, Father made a *Marsden*-type motion, seeking appointment of a new attorney.[18] The court

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[17] Mother had left the courtroom prior to the end of the proceedings.

[18] *People v. Marsden* (1970) 2 Cal.3d 118 provides the procedure a trial court must follow when an indigent criminal defendant requests that his or her court-appointed attorney be

(Fn. continued on the next page.)

denied the motion, but granted his request for a continuance to seek private counsel. In November, Father filed a peremptory challenge to Judge Downing, which the court rejected.[19] Later in November, Father's counsel asked to be relieved because Father had brought suit in federal court against her. Counsel filed a second motion in December, stating Father was refusing to cooperate with her. The court granted the motion and appointed new counsel at a hearing on December 15, 2015.

In February 2016, Father and Mother filed motions to disqualify Judge Downing under Code of Civil Procedure section 170.1. Father claimed the judge could not be impartial because he had filed a complaint against her with the Judicial Council in July 2015 and a lawsuit against her in June 2015. Mother claimed Judge Downing was biased in favor of the maternal grandfather because they attended the same law school. The court filed an order striking the statements of disqualification because "the statement[s] of

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relieved. It is not clear that this procedure is required in dependency proceedings when parents are dissatisfied with appointed counsel. (See *In re M.P.* (2013) 217 Cal.App.4th 441, 458 ["inappropriate" to "rigidly and unthinkingly" apply *Marsden* to dependency proceedings].) However, the court here followed the procedure on several occasions and referred to the hearings as *Marsden* hearings and appellants' motions for new counsel as *Marsden* motions. We will do the same.

[19] Father and Mother filed additional peremptory challenges to Judge Downing in February and March 2016, which also were rejected.

disqualification on [their] face disclose[] no legal grounds for disqualification . . . ."[20]

At a hearing on February 23, 2016, Mother asked to represent herself. The court denied the request, noting that Mother had no constitutional right to represent herself in a dependency proceeding, and stating that allowing her to do so would impede the court's ability to conduct the hearing as Mother had been unable to control herself in court, talking out of turn and interrupting the court. However, after conducting a *Marsden* hearing, the court appointed Mother new counsel.

In March 2016, Father filed a motion challenging the court's jurisdiction over him, stating he was not a resident of California and did not have substantial contacts with the state. Our review did not locate a formal order resolving this challenge, but the court repeatedly rejected appellants' claims that it lacked jurisdiction at the hearings on termination of parental rights and Kim's review hearing.

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[20] The court's order informed the parties that the matter was not appealable, but could be reviewed only by a petition for writ of mandate. Father filed a writ petition seeking review of the order on February 19, 2016. The petition was summarily denied on the ground petitioner had not stated "facts or legal authorities sufficient to demonstrate entitlement to extraordinary relief." (See *Roosevelt W. v. Superior Court* (Feb. 22, 2016) B270341 [nonpub. order].) Mother did not seek writ review.

At a hearing on April 19, 2016, the court denied Mother's request for new counsel after a *Marsden* hearing. On July 12, 2016, the day Father testified, Judge Downing denied Father's oral request that she recuse herself and denied Father's request for a *Marsden* hearing.

In August 2016, Father's new counsel (appointed in December 2015) asked to be relieved, stating that Father refused to cooperate with her and repeatedly told her she was fired. On August 16, 2016, the final day of the section 366.26 hearing, the court denied counsel's request.[21] The court denied Father's *Marsden* request, made at the same hearing, finding that it was made for purposes of delay. The court also denied Mother's counsel's request to continue the matter for Mother to be present.

On August 30, 2016, after the court rendered its decision on termination of parental rights over Kingston and Ky, Father filed a substitution of counsel form. The court accepted the substitution prior to the final review hearing for Kim. On September 14, 2016, the date the court terminated reunification services with respect to Kim, the court denied Mother's request for a *Marsden* hearing, finding

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[21] At the hearing, Father stated it was his "constitutional right" to represent himself, although it does not appear Father ever clearly asked to represent himself. After Father repeatedly interrupted the proceedings to ask the judge to remove herself and to accuse her of bias, the court removed Father from the courtroom. The court allowed Father to return, but he continued to interrupt the proceedings.

it was made for purposes of delay, and denied Father's oral request that Judge Downing recuse herself.

On September 14 and 15, 2016 Mother and Father filed separate notices of appeal from the August 16, 2016 order terminating parental rights to Kingston and Ky.

DISCUSSION

A. *Preliminary Matters*

To challenge a judgment or order, an appellant "'must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim." (*Flores v. Calif. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 204 (*Flores*).) "[H]e [or she] must raise claims of reversible error or other defect [citation], and 'present argument and authority on each point made.'" (*In re Sade C.* (1996) 13 Cal.4th 952, 994; accord, *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 ["An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority"].) "It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) "The same rules apply to a party appearing in propria persona as to any other party." (*Flores*, *supra*, at p. 205.)

Appellants have filed lengthy briefs invoking the Bible, the United States Constitution, and myriad news articles

and Web sites, with scant citation to appropriate legal authority or argument. Where "an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority," we generally treat the point as forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; accord, *Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) Nonetheless, we will briefly address the legal principles appellants put forth to support their contention that the court's orders should be reversed.

B. *Subject Matter Jurisdiction*

Appellants assert that they and all the children were residents of the state of Alabama and that the juvenile court had no authority over them. For the reasons discussed, we disagree.

The Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq., "UCCJEA") provides the basis for jurisdiction over custody issues, including those involving dependent children. (See *In re A.C.* (2005) 130 Cal.App.4th 854, 859-860; *In re C.T.* (2002) 100 Cal.App.4th 101, 106.) "[J]urisdiction under the UCCJEA may not be conferred by mere presence of the parties or by stipulation, consent, waiver, or estoppel," but must exist at the time the action is commenced. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1287; accord, *In re Marriage of Newsome* (1998) 68 Cal.App.4th 949, 956.) The absence of subject matter jurisdiction is a fundamental

defect that should be addressed whenever the issue comes to the court's attention. (*In re Gloria A.* (2013) 213 Cal.App.4th 476, 482.)

Family Code section 3421, subdivision (a) provides: "Except as otherwise provided in Section 3424 [governing temporary emergency jurisdiction], a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: [¶] (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent[22] continues to live in this state. [¶] (2) A court of another state does not have jurisdiction under paragraph (1) . . . and both of the following are true: [¶] (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships. . . ."

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22 A "[p]erson acting as a parent" is defined as "a person, other than a parent, who: (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and (2) has been awarded legal custody by a court or claims a right to legal custody under the law of this state." (Fam. Code, § 3402, subd. (m).)

In computing the six-month period, "[a] period of temporary absence . . . is part of the period." (Fam. Code, § 3402, subd. (g); see *In re Nelson B.* (2013) 215 Cal.App.4th 1121, 1130 [home state of teenager who ran away to California was Maryland; although teen was in California when the proceeding commenced, he lived with his aunt, acting as his parent, in Maryland for at least six consecutive months, and his absence from that state without the aunt's permission was a "'temporary absence'" under section 3402, subdivision (g)].) For a child less than six months of age, "'[h]ome state'" means "the state in which the child lived from birth with any of the persons mentioned [parent or person acting as a parent]." (Fam. Code, § 3402, subd. (g).)

The court had jurisdiction over the children under these provisions. Ky and Kim were born in California and lived in this state with Mother before they were detained and the jurisdictional proceedings involving them commenced. They had not lived in any other state, and there is no evidence either of them was ever taken to another state prior to the initiation of proceedings. Kingston was born in California and lived in California with Mother and his grandparents for nearly four years. He was living in California with his grandparents when proceedings commenced in September 2011, but had been in Alabama for several weeks in August 2011. This is reasonably construed as a temporary absence that did not deprive this state of jurisdiction under subdivision (a)(1) of Family Code section 3421. Even if it were not a temporary absence, subdivision

(a)(2) Family Code section 3421 provides an alternate basis for jurisdiction: no other state had jurisdiction under subdivision (a)(1), as Kingston had lived in no other state for six consecutive months, Kingston and Mother had a significant connection to California, and substantial evidence was available in this state concerning Kingston and his care.

Moreover, even assuming jurisdiction in California was not appropriate under Family Code section 3424 in September 2011, when the original petition was filed, assertion of emergency jurisdiction was appropriate when the subsequent petition and the amended subsequent petition were filed in April and May 2012. Father had petitioned for Kingston's return and was poised to obtain custody when Mother reported the violence she had endured at Father's hand while she was in Alabama. Under Family Code section 3424, subdivision (a), "[a] court of this state has temporary emergency jurisdiction if the child is present in this state and it is necessary in an emergency to protect the child because the child . . . is . . . threatened with mistreatment or abuse." Once emergency jurisdiction has been asserted to protect a child, if no child custody proceeding is initiated in a state with a better claim to jurisdiction -- and none had here -- "this state becomes the home state of the child." (*Id.,* subd. (b).)

C. *Personal Jurisdiction*

Father claims the court lacked jurisdiction over him because he was a resident of Alabama. Sufficient contacts

with a state to support assertion of personal jurisdiction over a parent are not necessary in order for the state to determine the custody of a child over whom it has jurisdiction under the UCCJEA. (See Fam. Code, § 3421, subd. (c) ["Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination"].) In any event, Father's repeated appearances in these proceedings would have waived any possible objection he might have had.

D. *Right to Self-Representation*

Section 317, subdivision (b) states that the court shall appoint counsel for an indigent parent in a case where the children have been or might be removed from the home "unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel . . . ." This statutory right to appointed counsel "has been interpreted to give a parent in a juvenile dependency case a statutory right to self-representation" (*In re A.M.* (2008) 164 Cal.App.4th 914, 923, citing *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1083), as long as the parent is not "using the request to proceed pro se to intentionally obstruct the proceedings." (*In re Angel W.*, *supra*, at p. 1084.)

The juvenile court has discretion to deny a request for self-representation if it determines that granting the request would cause significant disruption in the proceedings. (*In re A.M.*, *supra*, 164 Cal.App.4th at pp. 926 ["A parent's disruptive behavior may be sufficient to deny a request for

self-representation"].) The court should also weigh the parent's right to self-representation against the child's right to a prompt and fair disposition of the case. (*Id*. at pp. 925-926.) "[T]he juvenile court has discretion to deny the request for self-representation when it is reasonably probable that granting the request would impair the child's right to a prompt resolution of custody status *or* unduly disrupt the proceedings." (*Id*. at pp. 925-926.) Any error in denying a parent his or her right to self-representation is "analyzed under ordinary principles of harmless error as set forth in *People v. Watson* (1956) 46 Cal.2d 818, 837." (*In re Angel W*., *supra*, 93 Cal.App.4th at p. 1082.)

Here, the court determined that allowing Mother to represent herself would be too disruptive to the proceedings. That determination was supported by the record, and the same would have been true with respect to Father, had he expressly requested self-representation. The record reflects that Mother and Father were frequently admonished and occasionally removed from the courtroom for interrupting the proceedings. In addition, they engaged in behavior, such as making the same motion or request after it had been denied and repeatedly requesting new counsel, that suggested their primary motivation was delay. Moreover, under a *Watson* error analysis, we perceive no prejudice. Mother and Father were represented by competent counsel who advocated vigorously on their behalf. Their failure to prevail was based on the evidence presented and the court's evaluation of credibility, not any deficiencies of counsel.

E. *Attempts to Disqualify Judge Downing*

Father discusses his attempts to disqualify Judge Downing under section 170.6 of the Code of Civil Procedure. A denial of a peremptory challenge is not an appealable order, but may be reviewed only by writ petition. (*Antonio G. v. Superior Court* (1993) 14 Cal.App.4th 422, 424, fn. 2.)[23] Neither Mother nor Father sought writ review.

Mother and Father also asserted that Judge Downing should have been disqualified under Code of Civil Procedure section 170.1, claiming she could not be impartial because they were suing her in federal court and because she and the maternal grandfather had attended the same law school. The denial of appellants' requests that Judge Downing be disqualified under Code of Civil section 170.1 is also reviewable only by writ. (*Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 50.)[24] Mother

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[23] We note that prior to Judge Downing's assignment, Mother and Father had each peremptorily challenged a judicial officer under Code of Civil Procedure section 170.6. Each party is entitled to a single peremptory challenge in a case. (*Manuel C. v. Superior Court* (2010) 181 Cal.App.4th 382, 385; *Stubblefield Construction Co. v. Superior Court* (2000) 81 Cal.App.4th 762, 765.)

[24] We also note that filing a lawsuit against a judge does not automatically disqualify the judge. "The courts of this state cannot permit a litigant to 'shop' for a judge through the device of filing a lawsuit against those judges who enter rulings adverse to the litigant. Such procedure would make it possible for a litigant who obtains an unfavorable decision from a trial court or from an appellate court to cause that court to become disqualified or to

(Fn. continued on the next page.)

did not seek writ review, and Father's writ petition was denied for failure to demonstrate entitlement to relief.

F. *Termination of Reunification Services With Respect To Kim*

Father filed a separate notice of appeal purporting to appeal the September 14, 2016 order terminating reunification services with respect to Kim. An order terminating reunification services and setting a section 366.26 hearing is not generally appealable; review must be had by way of petition for extraordinary writ. (§ 366.26, subd. (l)(1); *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-816; *In re Cathina W.* (1998) 68 Cal.App.4th 716, 719.) The Legislature has provided this expedited method of reviewing such orders to ensure that issues are resolved before the section 366.26 hearing, preserving the finality of that decision and the child's interest in securing a stable and permanent home. (*In re Tabitha W.*, *supra*, at p. 816; *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1022-1023; *Karl S. v. Superior Court* (1995) 34 Cal.App.4th 1397, 1402-1403.)[25]

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recuse itself merely by filing a lawsuit naming the judicial officers as defendants. Such an obvious attempt to manipulate the legal system will not be condoned." (*First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 867.)

[25] We have been advised the hearing on termination of parental rights over Kim has taken place, and parental rights have been terminated, allowing her to be adopted.

Father's failure to seek timely review of the September 14, 2016 order precludes our consideration of any issues pertaining to that order.[26]

G. *Order Terminating Parental Rights Over Kingston and Ky*

Mother and Father appeal the court's August 16, 2016 section 366.26 order terminating parental rights over Kingston and Ky. They present no reasoned argument supporting their claim of error. We have reviewed the record, and find no error in the court's determinations.

At the section 366.26 hearing, the court selects the permanent plan for the dependent child. The court has several options, including imposition of a long-term guardianship or termination of parental rights and ordering the child placed for adoption. (§ 366.26, subd. (b); *In re Celine R.* (2003) 31 Cal.4th 46, 53.) "'Adoption is the Legislature's first choice'. . . ." (*In re Celine R.*, *supra*, at p. 53.) If the court determines by clear and convincing

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[26] The same is true with respect to many other matters discussed in appellants' briefs. Appellants seek to relitigate numerous orders made in the course of the proceedings. We are constrained by the limits of appellate jurisdiction from addressing claims of error in prior orders that were themselves appealable. (See *In re Elizabeth G.* (1988) 205 Cal.App.3d 1327, 1331.) """An appeal from the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed."" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7.)

evidence that it is likely the child will be adopted, the court "shall terminate parental rights and order the child placed for adoption" (§ 366.26, subd. (c)(1)), unless one of the statutory exceptions applies and "provides a compelling reason for finding that termination of parental rights would be detrimental to the child." (*In re Celine R.*, *supra*, at p. 53.)

There was no dispute that Kingston and Ky were adoptable, as their grandparents had made clear their desire to adopt years ago. At the hearing, appellants sought to invoke the exception found in section 366.26, subdivision (c)(1)(B)(i): "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." A parent seeking to forestall termination of parental rights under this exception must establish: (1) "the existence of a beneficial parental . . . relationship" and (2) that "the existence of that relationship constitutes a 'compelling reason for determining that termination would be detrimental.'" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315, quoting § 366.26, subd. (c)(1)(B), italics omitted; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 622.)

Satisfying the exception "requires the parent to prove that 'severing the natural parent-child relationship would deprive the child of a substantial positive emotional attachment such that the child would be greatly harmed,'" and that the relationship "'"promotes the well-being of the child to such a degree as to outweigh the well-being the child

would gain in a permanent home with new, adoptive parents.'"'" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643, italics omitted, quoting *In re Angel B.* (2002) 97 Cal.App.4th 454, 466. In determining whether to apply the exception, the court "balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Evidence of "'"frequent and loving contact" is not sufficient . . . .'" (*In re Marcello B.*, *supra*, at p. 643, quoting *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) "[A] parental relationship is necessary for the exception to apply, not merely a friendly or familiar one." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, italics omitted.) "'[A] child needs [a] parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.'" (*Ibid.*, quoting *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.*, *supra*, at p. 466, italics omitted.) In determining whether the exception has been established, the court may consider such factors as "[t]he age of the child, the portion of the child's life spent in the parent's custody, . . . and the child's particular needs . . . ." (*In re Autumn H.*, *supra*, at p. 576.)

The court did not err in concluding that termination of parental rights would not be detrimental to Kingston or Ky. Kingston, now nearly ten, has lived with his grandparents nearly his entire life and has been in their sole care for the last six years. Neither Mother nor Father ever lived with or parented Ky, now five, who was taken from their custody as an infant, and has been cared for by her grandparents since she was a few days old. Since DCFS intervention, Mother has been in the children's lives only through inconsistent monitored visitation. She has never resumed a parental role for Kingston or assumed one for Ky. Father was living in Alabama for the first years of Kingston's life. His opportunity to assume a parental role for his children occurred in 2015 and 2016, when he was permitted unmonitored weekend visits. However, his lack of candor concerning his housing situation prevented him from taking the next step to overnight visits. In addition, the unmonitored visits were brought to an end when Kingston reported that Father had inappropriately hit and spanked him. There was no evidence either child would be greatly harmed by the termination of parental rights.

By their own admission, appellants engaged in violent conduct toward each other, which had a clear detrimental impact on Kingston. DCFS and the court expended considerable time and energy endeavoring to maintain appellants' relationships with their children, giving both parents multiple opportunities to correct the behavior that led to the assertion of jurisdiction. Appellants repeatedly

put obstacles in their own way by failing to participate in offered services, expressing hostility toward caseworkers, seeking to dismiss competent attorneys, and failing to cooperate with DCFS and the court. Children have a compelling interest in a placement that is "stable, permanent, and that allows the caretaker to make a full emotional commitment to the child." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) "[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." (*Id.* at p. 308.) These proceedings have been going on since 2011 for Kingston and all of Ky's life. At this point, the children's need for stability and permanence outweighs appellants' desire for a continued relationship. The court did not err in concluding that no exception to termination of parental rights applied.

DISPOSITION

The order terminating parental rights over Kingston and Ky is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.