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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re B.L., a Person Coming Under the
Juvenile Court Law.

SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

H.B.,

Defendant and Appellant.

A134379

(Solano County
Super. Ct. No. J39445)

I. INTRODUCTION

Appellant H.B., the mother of B.L., appeals from the juvenile court’s order terminating her parental rights to her now 13-year-old daughter. Mother contends the juvenile court erred in finding that the beneficial parent-child relationship exception to termination of parental rights set forth in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i),¹ did not apply. Mother previously challenged the juvenile court’s order terminating her reunification services. We affirmed that order. (See *In re B.L.* (Dec. 6, 2011, A130579) [nonpub. opn.].) We now affirm the order terminating her parental rights.

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

II. FACTUAL AND PROCEDURAL BACKGROUND

In our prior opinion in this matter, we set forth the factual and procedural background of these proceedings, up to and including the 18-month review hearing after which the juvenile court terminated mother's services. (*In re B.L., supra*, A130579, at pp. 1-12.) We will briefly review that factual and procedural background and augment it with subsequent events from the record in this appeal, with an emphasis on the evidence that is relevant to the issues raised herein.

Petition

In May 2009, nine-year-old B.L. was detained by the Solano County Health and Social Services Department (the Department) when her mother was arrested following an altercation with a roommate. B.L. appeared tired and had a strong foul odor, but she was easily engaged and happy to go to the receiving center. A social worker interviewed B.L., who reported physical abuse by her mother including an incident in March 2009 in which mother hit her in the face, giving her a black eye. She attributed it to mental illness, saying that her mother hears voices in her head and argues with people who are not there. The social worker interviewed mother, who was confrontational and often did not make sense. Mother denied mental health problems, denied hurting her daughter, and accused the social worker of lying. Mother was charged with corporal injury to a child based on the March 2009 incident.

The Department filed a juvenile dependency petition alleging that B.L. was at risk of physical and emotional harm because of mother's chronic serious mental health issues, mother's history of aggressive physical altercations including an incident in which she struck B.L. in the face, father's significant criminal history, and the fact that father's current whereabouts were unknown.²

Jurisdiction

By the time of the jurisdictional hearing, father had contacted the social worker, reported that he was currently incarcerated, had not cared for B.L. since his relationship

² Father is not a party to this appeal.

with mother ended four years earlier, and that he believed mother was not mentally able to care for B.L. The jurisdiction report stated that mother spent time at a behavioral health facility in 2006, which resulted in a temporary conservatorship. The report also indicated that three separate restraining orders had been filed against mother due to harassing behavior. During an interview with the social worker, B.L. admitted that she was a little scared of mother because she talked to and argued with herself, heard voices, got mad for no reason, and would scream and yell. B.L. also stated that mother would hit her with an open hand on her arms and legs for no reason, telling her to “stop,” when B.L. had not been doing anything. The court sustained the allegations in the amended petition and exercised jurisdiction over B.L.

Disposition

The Department’s report for the disposition hearing stated that mother had temporary housing in the home of a friend. Mother continued to deny any mental health problems, but indicated that she could use housing assistance and help in dealing with the stress of B.L.’s removal. B.L. was in counseling and doing well in a foster home, but the Department was concerned by the anger B.L. exhibited toward mother. At the hearing, both parents submitted on the report and the court adopted the Department’s recommendations including that mother undergo a psychological evaluation and that the Department provide reunification services to both parents.

Six-Month Review

The Department’s report for the six-month review hearing indicated that mother was still living with her friend, but needed to find another place to live because of her difficult behavior. Mother resisted the social worker’s efforts to discuss the case plan, accused the Department of harassment, prejudice, and fabrication, and took the position that compliance with the case plan was optional. The Department documented its efforts to assist mother in finding secure housing.

Mother refused to participate in mental health treatment or services, and continued to maintain that she did not have any mental health problems. Mother was required to obtain a psychological evaluation. She attended the first session, but refused to

participate after 15 minutes. She refused to return for the second appointment. The doctor did not have enough data to make a diagnosis, but reported that mother appeared to experience delusions and to need medication. The doctor also opined that mother likely would not benefit from services unless her mental health issues were addressed first.

Mother was also required to obtain a mental health assessment. She attended her appointment at Solano County Mental Health. The evaluator concluded that she did not qualify for specialty mental health services because she was not “severely and persistently mentally ill.” The social worker contacted the evaluator and was advised that she could accompany mother for a second assessment to ensure that the assessor received all relevant information because a client with severe problems who does not report all symptoms might not qualify for services.

Mother enrolled in a parenting course and attended five of seven sessions. The instructor reported that, during a class, mother stated that she was attending only because it was required but that she did not need the classes because her daughter did not have discipline or behavior issues.

Mother was attending visits with B.L., but the Department recommended reducing visitation. The visits had been moved to a special room outside the visitation center because mother’s behavior was disrupting other families’ visits. The behavior included demanding physical contact with B.L. even when B.L. pulled away, talking about things that made no sense, shouting out random phrases like “SpongeBob” and “Orphan rage,” and singing.

B.L. was healthy and doing well in school. She was attending therapy, but was reluctant to talk about her mother. She did not want mother to know where she was going to school so mother could not try to pick her up. B.L. did not want to participate in therapy with mother and asked that visitation be reduced. During visits with mother, B.L. resisted physical contact and refused affection and food from mother. After observing one visit, B.L.’s therapist opined that visits were not productive.

The Department identified the paternal grandmother as the best alternative placement if reunification did not succeed.

At the contested hearing, mother submitted on the Department's recommendations and the court adopted the proposed findings and orders. The court authorized out-of-county placement with the paternal grandmother, ordered visitation changed to twice a month for a total of four hours, and ordered mother to complete the psychological evaluation.

Interim Changes

In March 2010, B.L. was placed with her paternal grandmother.

Also in March, mother completed her psychological evaluation. The doctor diagnosed mother with schizoaffective disorder, bi-polar type, and personality disorder not otherwise specified with obsessive compulsive, histrionic, and narcissistic personality features. Although mother tried to present herself favorably and with no emotional or parenting difficulties, test results and other data indicated depressive, manic or mixed episodes, delusions, auditory hallucinations and disorganized speech. The doctor recommended a psychiatric medication evaluation, individual psychotherapy, family therapy once medication was stabilized, independent living skills training, and parenting classes. The doctor also recommended that visitation with B.L. be suspended until mother was stabilized on medication.

Following receipt of the psychological evaluation, the Department filed a request to change the court visitation order to temporarily suspend visitation until mother addressed her mental health issues. The parties reached an agreement to reduce visitation to one hour, twice a month. At an interim review hearing in May 2010 on the visitation issue, the court gave the social worker discretion to increase visitation. Mother had completed her second mental health assessment and was determined to be eligible for services.

12-Month Review

In June 2010, the Department filed a report for the 12-month review hearing scheduled for July. The Department recommended that B.L. remain in her placement

with the paternal grandmother and that services to mother be terminated. The Department considered mother to be homeless because she had been asked to leave her friend's home and had not provided the Department with any information about where she was living. The friend reported that mother was asked to move out after she lied about taking the car keys and cigarettes from the family's car. Other problems with mother included her talking loudly and using profanity while standing outside in the early morning hours. The friend also expressed concern about mother's anger and paranoia toward the social workers and attorneys involved in her case.

The social worker provided mother with referrals to agencies that provide emergency shelter. Mother did not contact the agencies, stating that she had a job and would find her own housing. She completed a medication evaluation and was prescribed medications to treat depression and obsessive compulsive disorder. Mother was referred to attend two weekly support groups run by Solano County Mental Health. She reported that she was attending the sessions and found them helpful. The Department was concerned that mother's compliance with the mental health evaluation components of her case plan came so late that it was unlikely mother could stabilize her mental health situation if services were provided for 18 months. The Department was also concerned that mother was merely going through the motions of compliance and was not acknowledging her problems or really benefitting from the services.

Mother fully complied with visitation and appeared to enjoy her time with B.L., although B.L. did not always enjoy her time with mother. The Department expressed concern that mother did not act like a parent during the sessions. She did not always engage with B.L. and some of the conversations she initiated were inappropriate, which required intervention and redirection from the social worker.

B.L. was doing well in her placement with the paternal grandmother, and continued to do well in school and socially. She was no longer in therapy, by choice and because it was not medically necessary. She reported that she loved mother but did not want to live with her.

At the contested 12-month review hearing, the court continued services for mother.

18-Month Review

The Department's report for the 18-month review hearing again recommended that B.L. stay in her placement with paternal grandmother and reunification services to mother terminate. From July until October 2010, mother lived in a car parked on the property of the maternal great-grandmother (A.B.). A.B. had complained to the social worker that mother was "out of control," including that mother swore, called her names, and made false accusations that A.B. had abused her when she was a teenager. A.B. reported that mother wanted to shower three to five times a day, refused to wash her clothes or let A.B. wash them, threw away plates and utensils because they were dirty, not understanding that they could be reused, and made false police reports against A.B. A.B. also reported that mother misused money she received from the county by, for example, buying 230 spices, and buying food, opening it and then throwing it away without eating it. A.B. told the social worker that mother's mail came to her home but that mother threw it away without opening it. In mid-October, A.B. told the social worker she asked mother to leave her property after the police came to the house because mother was standing on top of a car in the front yard screaming and yelling at 3:00 a.m.

During this reporting period, the social worker made several housing referrals, but mother reported that she was working and intended to rent her own apartment. A.B. reported that mother had been working only one day a week and she thought that mother had lost that job. Mother reported that she was staying with a friend.

Mother was placed on summary probation as a result of the felony charges arising out of the circumstances that brought B.L. to the attention of the court.

Mother failed to begin individual therapy despite being reminded repeatedly. In late September, the social worker sent mother another referral; mother acknowledged receipt and said she would follow-up soon.

During the reporting period, mother missed appointments with her psychiatrist and the social worker. She was instructed to bring her medications to appointments with the

social worker, but failed to do so. In August, she showed the social worker two bottles for prescriptions that had been filled in June. Both bottles appeared to be full. A.B. reported that mother did not take her medication because she did not like it and it made her feel sick.

Mother had nine scheduled supervised visits with B.L. and she attended them all. The social worker tried to direct mother to take on a parenting role with B.L. During a visit in October, mother corrected B.L. when she answered “yeah” to a question instead of “yes.” During the same visit, mother announced that “some people speak in tongues and 7 years ago something happened but I don’t want to talk about that now.” B.L. reported that her visits with mother were “okay,” but she did not want to increase visitation or have visits be unsupervised.

At the conclusion of its report, the Department summarized the reasons that B.L. could not be safely returned to mother: Mother had not followed through with services to stabilize her mental health or to obtain housing, and was still experiencing active mental health symptoms; she was unable to take care of her own daily needs, missed appointments, and did not take advantage of referrals; she had failed to begin individual therapy; and the Department suspected that she was not taking her medication. In addition, although mother enjoyed visits with B.L., it did not appear that B.L. reciprocated those feelings. Under the circumstances, the Department recommended terminating services to mother.

On November 27, 2010, Fairfield police responded to a reported battery outside the home of A.B. Mother’s uncle reported that mother had caused a disturbance in the street and he attempted to subdue her. Mother struck and hit him, and then got away when he tried to hold her until the police came. The officer subsequently contacted mother who claimed that her uncle was the original aggressor.

A contested 18-month review hearing was held on December 2, 2010. Social worker Virginia Davis was the only witness. At the conclusion of the hearing, the juvenile court found that reasonable services had been provided to mother; mother had

made only minimal progress on her case plan; and B.L. could not safely be returned to mother's custody. Services to mother were terminated.

On appeal to this court, mother claimed she was not provided with reasonable reunification services and that the juvenile court abused its discretion in refusing to extend services beyond the 18-month statutory deadline. We rejected these contentions and affirmed the order terminating reunification services to mother. (See *In re B.L.*, *supra*, A130579, at pp. 12-16.)

24-Month Review

On April 19, 2011, the Department filed a 24-month status review report and a confidential pleading addendum. The Department recommended that B.L. remain out of mother's care; that family reunification services to father be terminated; and that a section 366.26 hearing be scheduled.

Mother was residing at a shelter in Fairfield in March 2011. However, the friend with whom mother had previously been living contacted the social worker in April 2011 to report that she was concerned because mother had not changed her clothes for a week and was living in a house she believed she owned but which was actually for sale. Mother's friend said mother had discontinued her medication and seemed more delusional as a result.

Mother complied with visitation during the reporting period. The supervising social worker reported that mother focuses on B.L. during visits, but needs prompting to engage B.L. in activities. She also reported that mother treats B.L. like a small child and that B.L. "shows more maturity than [mother] about current circumstances." During visits, mother makes statements that indicate she is in denial about why B.L. is in placement. Mother shows affection to B.L., but B.L. "does not always reciprocate, and [B.L.] is typically guarded about physical affection towards mother."

At school, B.L. received straight A's and was recommended for the Gifted and Talented Education (GATE) program. B.L.'s teacher described her as intelligent, focused, and an excellent student in all areas. She praised B.L.'s writing ability in particular. B.L. had perfect attendance.

B.L. had adjusted well to living with the paternal grandmother, including following rules. She has her own room. B.L. and the paternal grandmother appeared to have a loving and caring relationship. B.L. was able to confide in her grandmother about the instant case. The paternal grandmother facilitated contact and visits between B.L. and her three half-siblings and between B.L. and her maternal great-grandmother and maternal aunt and uncle in Fairfield.

The paternal grandmother restated her wish that she adopt B.L. or that she become B.L.'s legal guardian. In addition, B.L. expressed her desire to remain with her grandmother rather than reunifying with her parents.

In March 2011, a permanency team meeting was held. B.L., the paternal grandmother, and the social worker attended the meeting; father was unable to be present due to being incarcerated; mother was invited to the meeting but did not attend. It was decided that B.L. would not be able to reunify with father by the 24-month review due to father's recent arrest and incarceration and his lack of stable and suitable housing for B.L. upon his release from jail. In addition, B.L. stated that she wanted to stay with the paternal grandmother rather than reunifying with father. It was also decided that the paternal grandmother would consult with the adoptions supervisor "to discuss the difference between adoption and legal guardianship to determine the best plan for the family."

Subsequently, the adoptions supervisor reported that she talked with the paternal grandmother about permanency options. Grandmother stated that she preferred to adopt B.L., but that if the case got too contentious, she would be willing to be the legal guardian. Grandmother reported that B.L. had stated that she wants to be adopted by her grandmother "so that she will not have to worry about going back with her parents." The adoptions supervisor advised that an adoption worker would be assigned to the case and she would refer the matter for an adoption home study.

On May 10, 2011, the court held a 24-month review hearing. Father requested a contest, and the contested review was set for June 9, 2011.

At the contested hearing on June 9, 2011, father objected and submitted on each of the recommendations in the report; mother submitted on the recommendations regarding the setting of the section 366.26 hearing. The court terminated father's services and scheduled a section 366.26 hearing for September 29, 2011.

Section 366.26 Hearing

On September 13, 2011, the Department filed a review report in anticipation of the section 366.26 hearing. The Department recommended termination of services to father and a permanent plan of adoption of B.L. by her paternal grandmother.

The Department reported that father's services were terminated on June 9, 2011, because he did not have suitable housing and was incarcerated at the time. It reported that mother, whose services were terminated on December 2, 2010, was currently in jail for vandalism, spousal abuse, and terrorist threats; her expected release date was unknown.

B.L. had been living with her paternal grandmother for a year and a half. She presented as "a very mature and well mannered young girl." She enjoyed reading and helping the paternal grandmother around the house. B.L. earned straight A's in school and participated in the GATE program. Her grandmother had no concerns about her mental and emotional health.

When B.L. was first placed with her, the paternal grandmother noticed that B.L. wanted to help her with adult activities such as writing checks. The paternal grandmother challenged B.L. to explore being a child and play with other children. She also encouraged B.L. to try new things. B.L. has since become more social and outgoing. The paternal grandmother has also advocated for her educational needs, provided her with after-school services, and has helped her with her homework.

The paternal grandmother reiterated her wish to adopt B.L. She explained that she wanted to do so because she loved her and wanted to provide her with the best care on a more permanent basis.

B.L. was aware of her parents' current situations. She stated that she loves them but realizes that they cannot take care of her and meet her needs. B.L. had been living with her grandmother for over a year and wanted to be adopted by her.

The paternal grandmother was open to post-adoption contact with B.L.'s parents on a supervised basis. She was willing to supervise visits with father, but not with mother because of mother's unpredictable behavior. She stated that she felt capable of arranging visitation through a formal visitation service; she did not wish to enter into a written post-adoption contact agreement.

The social worker assessed B.L. as both generally adoptable because of her good health and physical appearance and specifically adoptable because her grandmother wanted to adopt her. The social worker also opined that the paternal grandmother had formed a parent-child relationship with B.L. by loving her, showing interest in the things B.L. enjoyed, such as reading, and by providing her with support and encouragement.

Mother visited B.L. regularly every other week at the Department's visitation center until July 2011. Notes from the visits indicated that B.L. would usually tell mother about her progress in school, and she tended to want to finish her homework before visiting with mother. When they interacted, they often played games or braided each other's hair. At times, mother would make random comments to B.L. For example, on April 4, 2011, mother kept telling B.L. that she owned a house; B.L. would reply, telling her "no, you don't." This reportedly went on for a short time. At the most recent visit on July 12, 2011, the social worker and B.L. arrived for the visit and observed mother cursing at someone and talking to someone else. When they approached, they could see that no one else was present. The social worker assumed that mother was talking to herself.

Father was residing at a half-way house in San Francisco. The paternal grandmother reported that father visited B.L. sporadically, but that the visits went well.

Mother was incarcerated at the Solano County jail for vandalism, spousal abuse, and criminal threats. The juvenile court appointed a guardian ad litem for mother and

ordered mother's Penal Code section 1368 psychological evaluation be filed in the dependency case.

In October 2011, mother's psychological competency evaluation in the criminal case was filed in the juvenile court. The evaluation provided a summary of mother's recent criminal history and mental health status. In May 2009, mother was charged with assault by means likely to produce great bodily injury, corporal injury to a child, and battery. In December 2010, mother was charged with trespass and refusing to leave private property despite being asked to leave repeatedly. In July 2011, she was charged with criminal threats, vandalism, and battery. In the most recent incident, mother had pushed a realtor, took the realtor's phone and smashed it, and then threatened to kill the realtor.

While in jail, mother exhibited illogical speech and was delusional. The psychiatrist at the facility suspected that she was suffering from schizophrenia. She was prescribed the anti-psychotic medication Risperdone. Mother had to be restrained with belly chains to restrict her arm movement. She was prone to "grabbing at things," including the arm of a nurse who was passing out medication.

In addition to reviewing records, the psychologist who conducted the competency evaluation interviewed mother. She informed mother of the purpose of the evaluation, obtained background information from mother, and asked mother about the charges against her. The psychologist concluded that mother was "a very mentally ill woman with no insight into her condition." During the interview, she was tearful, delusional, her thinking was often illogical and disordered, and her mood was labile. She was taking medication but did not know why and could not identify any ways in which it helped her. The psychologist opined that mother's lack of insight into her need for medication rendered her cooperation tenuous. In the psychologist's opinion, mother was not competent to stand trial.

On January 12, 2012, the juvenile court held the contested section 366.26 hearing. Social worker Maurice Shaw, who was assigned to the case in July 2011, and mother testified. Shaw testified, based on his review of notes in the file, that B.L. had a friendly

relationship with mother, but that it was not a parent-child relationship. It seemed to Shaw that B.L. felt obliged to attend the visits but did not want to see her mother and did not feel a mother/daughter connection. He noted that there was a period of time during which B.L. had been very resistant to the visits. He also felt that mother's mental health issues interfered with her ability to provide appropriate care, custody, and supervision.

Shaw also testified that the paternal grandmother had consistently stated that she was willing and able to adopt B.L., and that B.L. had told him several times that she wanted to be adopted by her grandmother. The paternal grandmother had provided B.L. with a stable and consistent living environment, and was a parental figure for B.L. Shaw had observed their interactions and described their relationship as very close, "almost [a] mother-and-daughter relationship. [B.L. is] very respectful of her grandmother, and the grandmother gives [B.L.] enough room to be a teen, but sets limits at the same time." He believed that adoption was the best option for B.L.: "She's in a stable home. She's receiving great grades. Her grandmother supports her educational needs, and she's excelling in the home right now." By contrast, Shaw testified that the environment for B.L. was very unstable with mother.

On cross-examination, mother's attorney questioned Shaw about mother's most recent visits with B.L., which dated back to June and July 2011. At the supervised visit on June 14, 2011, B.L. asked mother to braid her hair and showed mother her homework and the grades she had received at school. B.L. told her mother which school she would probably attend next year and that she had been accepted into the GATE program. Mother told B.L. she was proud of her. B.L. gave mother a keychain as a gift. The keychain read, "I could always see what I've become. You are beyond special to me. You're my mom." At the end of the visit, mother hugged B.L. good-bye. It appeared to the worker who supervised the visit that B.L. was becoming more comfortable showing affection to mother.

At the visit on June 28, 2011, B.L. brought a game of checkers to play with mother. B.L. told mother she received an award at school for being on the honor roll.

Mother told B.L. she was proud of her. The visit ended with mother asking for a kiss good-bye, and B.L. hugged and kissed her.

At the July 12, 2011, visit, B.L. again asked mother to braid her hair. The visit supervisor observed mother to caress B.L.'s face in a loving manner. At the end of the visit, mother asked for a kiss. B.L. kissed her hand and put it on mother's cheek. Mother said, "I love[] you," and B.L. replied, "I love you back."

Shaw testified that the paternal grandmother was willing to facilitate visits between B.L. and mother, but did not want to supervise them herself because of mother's history of mental health issues. He also testified that he explained the adoption process to B.L., including what it meant to terminate parental rights, and that B.L. stated that she wanted her grandmother to adopt her because she knew she would still be able to see mother after the adoption was finalized.

Mother was the only other witness to testify at the hearing. She testified that the last time she saw B.L. was in July 2011 because she, i.e., mother, was taken into custody on July 22, 2011. B.L. called her "mom." Mother testified that she loved B.L. and told her she loved her, and that B.L. told mother the same.

Mother argued that her parental rights should not be terminated because there was a beneficial relationship between B.L. and mother, and that legal guardianship would best meet B.L.'s needs. The Department argued that, after termination of reunification services, the statutory preference was for adoption over guardianship because a guardianship is not permanent; it can be disrupted. Counsel expressed concern that, if the less permanent plan of guardianship were ordered, mother would continue her efforts to reunify with B.L. when she was out of custody. Counsel acknowledged that some detriment could be expected from terminating parental rights, but argued that mother had not met her burden of establishing the requisite beneficial relationship sufficient to overcome the legislative preference for adoption as the most permanent plan that could meet B.L.'s needs. Counsel for B.L. stated that B.L. understood "the ramifications of termination of parental rights and being adopted by her grandmother, and it's her wish to do so."

The court found, by clear and convincing evidence, that B.L. was adoptable and that it was likely she would be adopted. The court terminated parental rights and ordered adoption as the permanent plan. The court also found that the benefit to B.L. of adoption far outweighed any detriment from the termination of parental rights, and that no exception to termination had been established.

On January 13, 2012, mother filed a timely notice of appeal.

III. DISCUSSION

Mother contends that the juvenile court erred in finding that the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude termination of her parental rights. We find no error.

Where, as here, the court finds a minor is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a “compelling reason for determining that termination would be detrimental to the child due to one or more” of the circumstances specified in the statute. (§ 366.26, subd. (c)(1)(B); *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “ ‘[T]he burden is on the party seeking to establish the existence of [the exception] to produce that evidence.’ [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

Here, mother does not dispute the court’s finding that B.L. was adoptable, and respondent does not contend that mother failed to show regular visitation and contact. Thus, the issue presented is whether B.L. would benefit from a continuing relationship with mother. “The ‘benefit’ prong of the exception requires the parent to prove his or her relationship with the child ‘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.’ [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must

show that they occupy “a parental role” in the child’s life.’ [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ [Citation.] Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

“The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576 (*Autumn H.*))

As respondent notes, different courts have applied different standards of review to a juvenile court’s determination that an exception to termination of parental rights does not apply. (See, e.g., *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622 [question of whether beneficial parent-child relationship exists is reviewed for substantial evidence; question of whether relationship provides compelling reason for applying exception is reviewed for abuse of discretion]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [abuse of discretion]; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [substantial evidence].) Citing *In re Autumn H.*, mother argues that we review the juvenile court’s decision for substantial evidence. On this record, our conclusion would be the same under any of these standards. (See *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [noting that practical differences between substantial evidence test and abuse of discretion standard are insignificant].)

There is no dispute that mother loves her daughter and that their troubled relationship was improving by June and July of last year. However, mother’s showing falls short of that required to establish a parental relationship with B.L. and that B.L.

would be greatly harmed by termination of her parental rights. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466-468; *In re Brittany C.* (1999) 76 Cal.App.4th 847, 853-854.)

The record provides a detailed picture of mother's visitation with B.L. and the state of their relationship during these proceedings. At the first two visits, B.L. asked that they end early, stating that she felt anxious around mother because mother had hit her in the past. At visits that took place during the first six-month review period, B.L. refused to speak to mother; declined to play games with her or accept food from her; asked that visits remain supervised and that the one-hour weekly visits be reduced in frequency because of mother's unpredictable behavior. B.L. also pulled away or became tense when mother tried to hug, kiss, or even touch her on the shoulder. B.L. described the visits as "bad," and did not want mother to know the location of her school for fear that mother would go there and try to pick her up. She did not want to participate in family therapy with mother and repeatedly stated that she did not want to live with mother.

During visits between the six-month review in February 2010 and the 12-month review in July 2010, B.L. sometimes interacted with mother and accepted food and gifts from her, but often did not, frequently preferring to work on her homework or read by herself. She once refused food and money from mother, stating that mother needed these things more than she did. B.L. continued to reject mother's attempts to show affection. B.L. repeatedly asked when visits would be over, asked that they be reduced from one hour to 30 minutes, and sometimes stated that she did not want to visit mother at all. She asked how much time mother had to reunify with her, and reiterated that she did not want to live with mother.

At visits between the 12-month review in July 2010 and the 24-month review in May 2011, the visits continued to be strained. At one visit, B.L. refused to respond when mother greeted her and only said, "hi" after the visitation supervisor directed her to respond. She pulled away when mother tried to hug her and refused to give her a kiss when mother asked for one. She did not respond when mother told her she loved her or missed her. B.L. repeated that she did not want to live with mother.

The positive visits mother cites occurred after B.L. had been living with her grandmother for 18 months and after the case was set for a hearing to terminate parental rights. The visits from May to July 2011 were positive, but B.L. was not upset when the visits ended and she transitioned easily back to grandmother's care. She "did not care" if mother's reunification period was extended, and consistently stated that she did not want to live with mother. B.L. stated that she wanted to be adopted by grandmother so that she "[would] not have to worry about going back with her parents."

At the time of the section 366.26 hearing in January 2012, B.L. had been out of mother's custody for two and a half years, and had been living with grandmother for almost two years. B.L. was strongly attached to grandmother, and was thriving, happy, and doing exceptionally well in school. Grandmother loved her, demonstrated that she was able to meet all of B.L.'s needs, and wanted to provide a permanent, stable home for her.

At the most, the evidence establishes that mother and B.L. had loving contact in a supervised setting between the setting of the section 366.26 hearing and mother's incarceration in July 2011, and that they shared a relationship that was pleasant or even emotionally significant to B.L. This is not enough of a showing to establish a beneficial parent-child relationship the benefits of which outweigh those of a permanent plan of adoption by grandmother. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 [to meet beneficial parent-child relationship exception, parent must do more than show "frequent and loving contact"]; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827 [to meet exception, parent must do more than show relationship is pleasant or emotionally significant to child].)

Citing the Department's reports from visits in June and July 2011, mother argues that she shares a loving relationship with B.L. and that B.L. had developed a "significant, positive emotional attachment" to her. Based on *Autumn H.*, *supra*, 27 Cal.App.4th 567, mother argues that she need not establish "day-to-day contact" or that she "occupies a primary parental role" to show that terminating the parent-child relationship would cause detriment to B.L. She acknowledges that her relationship with B.L. "did not fit a

traditional definition of a parent-child relationship because of mother's mental illness," but contends that, nonetheless, "it was a mother-child relationship from which [B.L.] derived mother's love and affection."

Mother relies on *In re S.B.* (2008) 164 Cal.App.4th 289, 299, in support of her contention that she maintained a significant relationship with B.L. In that case, the juvenile court found that the beneficial parent-child relationship exception did not apply because the father's relationship with the child was not parental and there was no evidence that terminating that relationship would be detrimental to the child. (*Id.* at p. 296.) The appellate court reversed the termination of parental rights, finding that the child had a "substantial, positive emotional attachment" to the father and concluding that the beneficial parent-child relationship exception applied. (*Id.* at p. 299.)

In re S.B. is distinguishable on its facts. The father in that case had been the child's primary caregiver; he maintained this attachment with the child through visits three times a week; the child was unhappy at the end of the visits and expressed the desire to live with her father; and father fully complied with all elements of his case plan but could not reunify with the child due to physical and mental health issues that resulted from combat-related post traumatic stress disorder. (*In re S.B., supra*, 164 Cal.App.4th at pp. 298-299.) The evidence of a strong emotional bond from the child to her father was apparent. Such an emotionally significant attachment is not in evidence here. Moreover, as one court has observed: "The *S.B.* opinion must be viewed in light of its particular facts. It does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.)

Mother also argues that the juvenile court should have ordered legal guardianship as the appropriate permanent plan for B.L. to best meet B.L.'s needs for stability and to maintain her relationship with mother. We disagree.

"The Legislature has decreed . . . guardianship is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most

permanent and secure alternative that can be afforded them. In decreeing adoption to be the preferred permanent plan, the Legislature recognized that, “[a]lthough guardianship may be a more stable solution than foster care, it is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.” [Citation.]” (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1419.) Adoption is the first choice because “it gives the child the best chance at [a full emotional] commitment from a responsible caretaker.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348, quoted in *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Mother contends that B.L.’s agreement to adoption included the understanding that she would continue to see mother, but the record was silent as to whether B.L. knew anything about legal guardianship or that she was not guaranteed visitation with mother under adoption. Moreover, evidence in the record disclosed “substantial barriers to achieving ongoing contact with mother.” Specifically, mother cites grandmother’s unwillingness to supervise visits herself because of mother’s unpredictable behavior, and questions grandmother’s willingness or ability to pay for a visitation service in light of grandmother’s reliance on the Department for financial assistance for transportation to visits and her comment to the social worker that she wished adoption assistance funding was higher.

Also in support of legal guardianship, mother points to evidence that the paternal grandmother was amenable to legal guardianship if the court ordered it, and was committed to providing B.L. with a safe and stable home, whether through guardianship or adoption. Mother relies on *In re Scott B.* (2010) 188 Cal.App.4th 452 as a case in which the appellate court reversed termination of parental rights, ordered legal guardianship, and hoped the foster-adopt parent would understand and continue to provide exemplary care of the child.

The facts in *In re Scott B.* contrast sharply with this case. There, the child was developmentally disabled and emotionally fragile. The appellate court recognized that, although it might not ever be in Scott’s best interest to be returned to his mother’s care, he had a very strong emotional bond with her, she provided stability in his life, and given

his precarious emotional state, and his history of running away and regressing when under stress, there was a very good chance that he would experience a severe setback if visitation with his mother did not continue. (*In re Scott B.*, *supra*, 188 Cal.App.4th at pp. 471-472.) Here, as noted above, the evidence showed that B.L. had no disabling diagnosis or emotional fragility. Nor was there any evidence that B.L. would be adversely affected by any interruption in visitation. Her interactions with mother improved only after she was placed with grandmother, mother's reunification services were terminated, and the section 366.26 hearing was set. B.L. consistently stated that she did not want to be returned to mother's care. The emotional bond that was evident in *In re Scott B.* is not present here.

Here, the juvenile court reasonably determined, and substantial evidence showed, that terminating parental rights would not be detrimental to B.L. Although B.L. lived with mother for nine years before being detained, she was co-parented by father for four of those years, and was at times also in the care of relatives, friends, and service providers. During her years with mother, B.L. was subjected to unstable housing, neglect, and mother's bouts of mental illness that manifested in mother's talking to individuals who were not present, combative behaviors, and physical abuse. The evidence shows that B.L. did not have a " 'substantial, positive emotional attachment' " (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 299, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575) and/or a parental relationship to mother before she was removed; nor did such a bond develop during visitation or exist at the time of the section 366.26 hearing. There likewise was no evidence that B.L.'s relationship with mother would benefit her significantly enough to outweigh the strong preference for adoption. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Moreover, B.L. was an articulate 12-year-old at the time of the section 366.26 hearing. She was enrolled in the GATE program at school and was a straight-A student. She attended the permanency team meeting. She was represented by counsel throughout the proceedings. Thus, respondent argues, it is reasonable to infer that, because B.L. was 12 years old at the time of the hearing and could have objected to the adoption under

section 366.26, subdivision (c)(1)(B)(ii), her counsel would have discussed “adoption and the ramifications of termination of parental rights” with B.L. We agree that, under these circumstances, it is reasonable to infer that counsel so advised her client.

In sum, mother has failed to show more than loving contact during supervised visits with B.L. By contrast, B.L. was thriving in her grandmother’s care and wanted to be adopted by her grandmother. Mother has not met her burden of demonstrating that this is an “extraordinary case” in which her relationship with B.L. promotes B.L.’s well-being to such an extent that it outweighs the benefit to B.L. of being adopted into a secure and permanent home. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) The juvenile court did not err in terminating parental rights to give B.L. this stability.

IV. DISPOSITION

The order appealed from is affirmed.

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.