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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re J.B. and D.B., Persons Coming
Under the Juvenile Court Law.**

**SAN FRANCISCO HUMAN
SERVICES AGENCY,**

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

A134711

**(San Francisco County
Super. Ct. No. JD09-3253 &
JD09-3253A)**

J.B. (mother) appeals from an order terminating her parental rights to her twin children under Welfare and Institutions Code section 366.26.¹ She argues that the order violated her right to due process because the juvenile court did not comply with Family Code section 7862, which governs the procedure and quantum of proof necessary to terminate the rights of a parent in family court due to a mental disability. Mother also argues that her parental rights should not have been terminated under section 366.26 because the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i) applies. We affirm.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

BACKGROUND

During her childhood and teenage years, mother was subjected to serious abuse, including sexual abuse by her own mother. She has a long history of drug use and mental health issues, including psychotic episodes, and has been diagnosed with post-traumatic stress disorder (PTSD). She has been described as hypervigilant, rigid, and subject to dissociative states.

In 2008, mother became pregnant. She stopped using drugs, with the exception of marijuana and prescription medications, and moved into Ashbury House, a residential treatment center for mentally ill women and their children. Mother gave birth to twins, D.B. and J.B., in January 2009.

Jennifer Curley is a social worker with respondent the San Francisco Human Services Agency (Agency), who acts as a liaison between the Agency and Ashbury House. The director of Ashbury House approached Curley about providing childcare for mother, who was feeling very stressed. On August 4, 2009, Curley opened a voluntary case so mother could receive services from the Agency.

The Agency provided mother with childcare assistance as part of the voluntary services, but mother remained exhausted and unable to cope. In September 2009, when the twins were eight months old, mother told Curley that they should be placed in foster care. Though Curley convinced mother to have the staff at Ashbury House watch the twins for a couple of days before she made that decision, mother called later that day and said she was hearing voices telling her that she was sexually and physically abusing her children. Mother was “tender and sweet” with the twins, and there were no signs of actual abuse. The twins were taken into protective custody on September 10, 2009, and the Agency filed a dependency petition on September 14, 2009.²

Mother became psychotic and relapsed on alcohol and crack cocaine on the same day the twins were taken into foster care. She was placed in a detoxification program for two weeks and then returned to Ashbury House, where she appeared flat and sedated.

² The children could not be placed with a noncustodial parent, as their father has not been identified.

Mother continued to have auditory hallucinations and thought they might have been caused by an antidepressant medication, though she had been exhibiting some signs of psychosis before the medication was prescribed.

During the months following the removal of the twins, mother received mental health treatment. She was taking several prescription medications (including Depakote, Risperidal, and Klonopin) and, despite her doctors' warnings, used marijuana to ease her anxiety. Mother was ambivalent about her ability to care for the twins and in January 2010, considered giving them up for adoption. After she learned that the maternal grandmother would not be considered as a caregiver for the children (due to the grandmother's abuse of mother when mother was growing up), mother decided to try to regain custody.

On May 11, 2010, mother submitted on an amended version of the dependency petition, which alleged that her mental health problems greatly impacted her ability to safely care for the twins. The court declared the twins dependents under section 300, subdivision (b), removed them from mother's custody, and approved a reunification plan that included components of drug treatment, counseling and therapy, parenting education, and suitable housing. After considering an addendum report filed by the social worker, the court also ordered mother to submit to a psychological evaluation.

In a December 2010 report prepared for the status review hearing (§ 366.21, subd. (e)),³ social worker Curley recommended that the children remain in foster care and that reunification services be terminated. The report indicated that mother's affect was improving and that she had made a "herculean" effort to regain custody by managing her psychiatric symptoms, but that "given the seriousness of her diagnosis and the history of her very slow recovery from her psychotic episode, we cannot conclude that this brighter period signals a permanent stable mental condition." Mother had moved into the home of a friend, having reached the 18-month limit that she was permitted to stay at Ashbury House, and was paying her friend rent. As a consequence, she had lost her status as a

³ Although designated a "six-month" status review report, the twins had been in foster care for almost 15 months and were one month shy of their second birthday.

homeless person and was not eligible for housing through other programs. The friend with whom mother was living would not allow the children to live in her home permanently.

According to the social worker's report, mother had been unable to increase her visits with her children until September 2010. Visitation had been taking place at Ashbury House through a special arrangement made after mother moved out, and mother had declined offers to take the children by herself when those visits ended. Mother had been offered the opportunity of day-long visits so she could demonstrate her ability to care for the children, but had not been able to make the necessary arrangements. As the six-month period for reunification passed, mother began to panic about her time being up and began wanting to see the children for longer periods. She needed a tremendous amount of support just to maintain her own mental health, and her service providers believed she could not care for the twins unassisted.

On February 1, 2011, mother filed a petition for modification of a prior order under section 388 (form JV-180), seeking an increase in visitation to 18 hours a week, including overnight visitation. The petition alleged that the court had ordered a minimum of six hours a week visitation with discretion to increase the length of the visits, that visits of 18 hours a week had been offered in late 2010, but that social worker Curley had since reduced the amount of visitation.

Prior to the review hearing, Dr. Hugh Molesworth submitted his psychological evaluation of mother, which was based on psychological testing, interviews with mother and her mental health providers, and a review of her mental health records. He diagnosed her as suffering from chronic PTSD, psychosis not otherwise specified (currently controlled with medication), a history of poly-substance dependency, amphetamine and cocaine dependence (in remission), cannabis dependence, and maladaptive personality traits. The report concluded that mother was vulnerable to further psychotic episodes and that while she was commendably engaged in treatment, "her psychopathology will not disappear." She had a "wild and crazy" history, but because of her substance abuse, it was hard to tell how much of it was the product of underlying personality traits. In

Dr. Molesworth's opinion, mother would need ongoing support to parent her children outside of a supervised setting.

At the contested review hearing, which began on March 7, 2011 and was finally completed on June 13, 2011, Dr. Molesworth was called as a witness. He testified that mother's PTSD went beyond the "more classical symptoms" and included "significant problems with regulating emotions and marked problems with interpersonal relationships." She was at a high risk of future psychotic episodes and he was concerned that her continued use of marijuana increased that risk, as well as her risk of relapse with other drugs. Her Global Functioning Assessment score (GAF) was 50 to 55, indicating a moderate to severe degree of impairment, which would make it difficult for her to hold down a job, maintain relationships, and manage daily activities such as parenting.

Dr. Molesworth believed that mother could not parent her children without support and assistance, that she could not be the primary caretaker, and that her struggles with depression, anxiety and psychotic thinking impaired her ability to make decisions. In his opinion, there would be a "moderate to high risk" that mother's parenting ability would collapse if the children were returned to her, which would in turn necessitate intervention by child welfare services. Her preoccupation with her own problems could distract her from monitoring the children: "I could see [] a range of negative consequences occurring. One is, due to her problems with decision making, she may, you know, make bad judgments, poor decisions, act on impulse with her kids in ways that, you know, are negative. For example, she could take the kids to the park and become preoccupied with her own issues and [] the kids might wander away. [¶] She could – decisions in the home, like leaving, basic things like leaving kitchen appliances on or water boiling in the kitchen while she might be preoccupied with her own mental health state."

Alisa Birgy, the program director of Ashbury House, had almost daily contact with mother while she was living there. She testified that she was concerned about mother's ability to parent, given that mother was easily overwhelmed and could not deal with unexpected changes. Mother had difficulties soothing her children and was not able to

independently care for them during her visits. In Birgy's opinion, mother was not ready to reunite when she left Ashbury House after 18 months.

Social worker Curley testified that when the children were initially removed, she thought it would be temporary and so encouraged numerous and lengthy visits to build mother's confidence. Mother could not handle the visits, so they were reduced to enable her to focus on bettering herself. It was only recently that mother had been willing to increase visitation, but Curley did not believe there was enough time left for mother to demonstrate that she was competent to care for the children. On a recent visit with the children at a park, mother was not able to address several safety concerns, at one point leaving J.B. at the edge of a water fountain to chase D.B.

Although she recognized that mother loved the twins and had worked hard, Curley believed mother's severe mental illness continued to impair her ability to parent. She acknowledged that mother had participated in the reunification services offered to her and had recently quit using marijuana, but did not believe additional services would enable mother to independently parent the children. Mother had entered a program with Women's Hope Project, an affiliate of Walden House.

Another concern was that mother had decided against adoption and decided to try to reunify after she was told her own mother would not be considered for placement. The maternal grandmother had sexually abused mother when she was growing up, and mother did not seem to understand why it would not be appropriate to place the twins with their grandmother.

Curley explained that she had been eager to offer mother more visitation, and increased the time to 18 hours per week in September 2010. She had reduced the time to six hours per week because (1) mother's drug counselor told Curley that mother was not "being straight" with her; (2) Dr. Molesworth had expressed concerns about mother while he was conducting his evaluation; and (3) mother returned the children to the foster parent with wet clothing, bleeding diaper rashes and smelling strongly of cigarette

smoke.⁴ Curley was also concerned that mother had rejected a housing opportunity with Harbor House that would have required her to stop smoking marijuana and that visits at Ashbury House had been discontinued because the children were crying too much.

Beginning in December 2010, mother's visits with the twins were supervised through the La Raza program. Although the supervisor from La Raza wrote generally positive reports about those visits, Curley discounted them because the supervisor had taken it upon himself to act as a "second parent," rather than simply observing mother. As a result of this, the visits were moved to a different agency.

Based on this evidence, the trial court found that reasonable efforts had been made to help mother overcome the problems leading to removal of the twins, but there would be a substantial danger if they were returned home at that time. On June 24, 2011, the court terminated reunification services and set a hearing under section 366.26 to select the permanent plan. The court denied mother's petition for increased visitation under section 388 and granted a petition filed by the Agency to decrease visitation to ease the twins' transition into an adoptive home.

Mother filed a timely notice of intent to file a writ petition, arguing that (1) no substantial evidence supported the court's determination that it would be detrimental to return the children to her care; (2) she was not provided with reasonable reunification services; (3) the children should have been placed in her care subject to supervision and monitoring as a less drastic alternative; and (4) the court should have granted her request for increased visitation. This court denied the petition. (*J.B. v. Superior Court* (Oct. 5, 2011, A132535) [nonpub. opn.])

On November 14, 2011, mother filed a petition for modification under section 388 (form JV-180) seeking an additional six months of reunification services. The changed circumstances cited in the petition were mother's completion of the Women's Hope

⁴ The foster mother submitted a declaration saying that one child had been returned to her with a wet tee shirt and that mother had apologized. The foster mother concluded, "I have seen [mother] with her children. She is always loving and never mean and there are no signs that she ever neglects them after her time with her."

program, her regular visitation with the children, and her abstinence from all non-prescription substances. Mother submitted a letter from her therapist stating that her “prognosis was greatly improved . . . by several factors: she has been stable for 2 years without any recurrent [psychotic] episodes, she is sober from drugs and alcohol and active in her recovery, she can readily identify early warning signs to her illness and is able to communicate them to her providers, she is adherent with her medication regimen, she is engaged in therapy, she utilizes a number of different coping skills when under stress and practices good sleep hygiene.” However, mother continued to experience significant symptoms of anxiety. The juvenile court denied the petition on December 20, 2011, concluding that mother had failed to show that an extension of the reunification period would be in the best interests of the children.

The section 366.26 hearing was held on January 9, 2012, with the Agency recommending adoption as the permanent plan. In the report prepared for the hearing, social worker Curley noted that the twins had been moved to an adoptive home and were doing exceptionally well. They seemed to be having fewer emotional symptoms since visits with mother had been reduced. D.B. had “changed from [an] angry, sad toddler with frequent tantrums and trouble with any transition to a happy, active boy” J.B., who had been developing a “blunted affect” now seemed to “display a normal range of affect and her personality is really blooming.” Both children were very attached to the new caretaker.

According to the report, mother had visited the children regularly. “The children seem to be happy to see their mom at visits and seem to leave the visits without too much distress. The mother certainly loves her children. However, although the children may know her name as ‘Mommy,’ the actual person who provided the care and attention for all their days except a few hours was their first foster mother. Their relationship ever since they were removed from their mother was much more like the visit of a favorite aunt. The children suffered without a permanent caretaker.”

Mother testified that the children were very excited to see her on visits and sometimes cried when she left. At the conclusion of the hearing, her attorney argued that

the court should not terminate parental rights because the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i) applied. The court found that mother had not carried her burden of establishing this exception and ordered the termination of mother’s parental rights.

DISCUSSION

I.

Mother argues that the order terminating her parental rights violates due process because the juvenile court did not follow the procedures of Family Code section 7827.⁵ We reject the claim.

Procedures for terminating parental rights outside of the dependency context are set forth in Family Code section 7820 et seq. Family Code section 7820 provides, “A proceeding may be brought under this part for the purpose of having a child under the age of 18 years declared free from the custody and control of either or both parents if the child comes within any of the descriptions set out in this chapter.” Family Code section 7821 establishes the burden of proof for such proceedings, and states, “A finding pursuant to this chapter shall be supported by clear and convincing evidence, except as otherwise provided.” Family Code section 7827 authorizes the termination of parental rights “where the child is one whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future” (*id.*, subd. (b)), and defines “mentally disabled” to mean “that a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately” (*id.*, subd. (a)). A finding of mental disability under Family Code section 7827 must be supported by “the evidence of any two experts” who are psychiatrists or psychologists, and who meet certain educational and experiential requirements. (Fam. Code, § 7827, subd. (c).)

⁵ We assume, without deciding, that mother did not forfeit this claim by failing to raise it in the trial court.

The procedural requirements of Family Code section 7827 have been statutorily incorporated into dependency proceedings when a parent is denied reunification services at the outset of the case. Welfare and Institutions Code section 361.5 provides in relevant part, “(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] [¶] (2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.” This section has been interpreted to require the testimony of two qualified experts before reunification services may be denied on the grounds of mental disability. (*In re C.C.* (2003) 111 Cal.App.4th 76, 84; *In re Joy M.* (2002) 99 Cal.App.4th 11, 18; *Linda B. v. Superior Court* (2001) 92 Cal.App.4th 150, 152–153; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474.)

Appellant argues that the procedural requirements of Family Code section 7827 extend to all hearings under Welfare and Institutions Code section 366.26 in which the termination of parental rights is based on the parent’s mental disability or mental illness. We disagree. Such a rule would be contrary to the plain language of Welfare and Institutions Code section 366.26, which makes no mention of Family Code section 7827 and which specifically states, “The procedures specified herein are the exclusive procedures for conducting these hearings.” (Welf. & Inst. Code, § 366.26, subd. (a).) If the Legislature had wished to incorporate the requirements of Family Code section 7827 into Welfare and Institutions Code section 366.26, it could have done so with language similar to that used in section Welfare and Institutions Code 361.5, subdivision (b)(2), which extends those requirements to cases in which reunification services are denied based on a parent’s mental illness or mental disability. The Legislature’s failure to include comparable language in Welfare and Institutions Code section 366.26 shows that it did not intend Family Code section 7827 to apply to hearings under that section. (See *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481, 487.)

A similar issue was presented in *In re Khalid H.* (1992) 6 Cal.App.4th 733 (*Khalid H.*), in which the court made a jurisdictional finding that the child was a dependent because the mother suffered from a mental illness under Welfare and Institutions Code section 300, subdivision (b). The mother challenged this finding on appeal, arguing that it could not be sustained because it was not based on the testimony of two qualified experts, as was required for a termination of parental rights on the basis of mental illness under Civil Code former section 232, subdivision (a)(6) [the predecessor statute to Family Code section 7827]. (*Khalid H.*, at pp. 735-736; see *In re Jasmon O.* (1994) 8 Cal.4th 398, 407, fn. 1.) The appellant mother noted that Welfare and Institutions Code section 361.5, subdivisions (b) and (c), which pertained to the denial of reunification services, specifically required the court to find evidence of mental disability as defined by Civil Code former section 232, upon the testimony of qualified mental health professionals. (*Khalid H.*, at p. 736.)

The court in *Khalid H.* disagreed that the procedures of Civil Code former section 232 were required for a jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b): “Since section 300, subdivision (b), does not contain a described formal procedure to determine if a parent suffers from a mental illness, we will not borrow one from another statute. The Legislature is presumed to have meant what it said, and the plain meaning of the language will govern the interpretation of the statute. [Citation.] Where exceptions to a general rule are specified by statute, other exceptions will not be implied or presumed. [Citation.] We conclude that if the Legislature had intended to require section 300, subdivision (b), to adhere to a specific evidentiary scheme, it would have expressly designated one within the statute, as it has done in others. In limiting the interpretation of section 300, subdivision (b), to the plain language within, we preserve the legislative intent.” (*Khalid H.*, *supra*, 6 Cal.App.4th at p. 736.)

Mother urges us to import Family Code section 7827 into Welfare and Institutions Code section 366.26 because section 366.26 involves the termination of parental rights, rather than a jurisdictional finding authorizing juvenile court intervention. She argues that because her mental illness is the only basis for the dependency, with no evidence of

independent acts of abuse or neglect, her rights have been terminated without a showing of “fault.” Mother then jumps to the conclusion that under these circumstances, an order terminating parental rights comports with due process only if it is supported by clear and convincing evidence by two qualified mental health experts as provided in Family Code section 7827.

The California Supreme Court has rejected the argument that the state must present clear and convincing evidence of parental unfitness at the hearing under section 366.26. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253 (*Cynthia D.*.) Although such evidence must appear before parental rights can be terminated, a finding of unfitness need not be made at the section 366.26 hearing itself. “[T]he purpose of the section 366.26 hearing is not to accumulate further evidence of parental unfitness and danger to the child, but to begin the task of finding the child a permanent alternative family placement. [] By the time the dependency proceedings have reached the stage of a section 366.26 hearing, there have been multiple specific findings of parental unfitness . . . there have been a series of hearings involving ongoing reunification efforts and, at each hearing, there was a statutory presumption that the child should be returned to the custody of the parent. (§§ 366.21, subds. (e), (f), 366.22, subd. (a).) Only if, over this entire period of time, the state continually has established that a return to custody to the parent would be detrimental to the child is the section 366.26 stage even reached.” (*Cynthia D.*, at p. 253, fn. omitted.)

Mother argues that the termination order in this case cannot be upheld under *Cynthia D.* because *Cynthia D.* was limited to cases involving abused or neglected children and, in this case, the children suffered no actual harm as a result of mother’s mental disorder. The court in *Cynthia D.* did not limit its decision to cases involving actual harm. (See *Cynthia D.*, *supra*, 5 Cal.4th 253-256; see also *In re David B.* (1979) 91 Cal.App.3d 184, 194-195 (*David B.*) [showing of actual harm due to parent’s mental illness was not required for termination of parental rights].)

We also disagree with mother’s suggestion that *Cynthia D.* does not apply because there was no finding of “fault” in this case. At the jurisdictional/dispositional hearing,

the court made findings (not challenged on appeal) that mother had “mental health problems which greatly impact her ability to safely care for the children.” The twins were removed from mother’s custody after the court found clear and convincing evidence that return to mother would present a substantial risk of danger to their physical safety or their physical and emotional well being. This finding was the equivalent of a finding of parental unfitness and satisfies due process. (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1211–1213.) Mother cites no authority to support her claim that the court was additionally required to follow the procedures of Family Code section 7827 at the Welfare and Institutions Code section 366.26 hearing.

Nor are we persuaded by mother’s citations to *David B.*, *supra*, 91 Cal.App.3d 184 and *In re R.S.* (1985) 167 Cal.App.3d 946. Both involve the termination of parental rights of a mentally disabled parent in cases under Civil Code former section 232, a different statutory scheme. In neither case was the parent offered reunification services before the termination of parental rights.

Appellant complains that the procedures of Family Code section 7827 are more “rigorous” than a termination proceeding under Welfare and Institutions Code section 366.26, but she overlooks that a parent in a dependency proceeding has an opportunity to reunify that is not contemplated by the Family Code. And, in cases where reunification services are denied based on mental defect or mental illness, the Family Code procedures are afforded under Welfare and Institutions Code section 361.5, subdivision (b)(2).

Mother has not established a denial of due process.

II.

Mother alternatively argues that the court should have selected something less drastic than adoption as the permanent plan, citing the “beneficial relationship” exception of section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a hearing under section 366.26, the court may order one of three alternative plans: adoption (necessitating the termination of parental rights), guardianship or long-term foster care. (§ 366.26, subd. (c)(1), (c)(4)(A).) If the child is adoptable, there is a

strong preference for adoption over the other alternatives. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297 (*S.B.*.) Once the court determines the child is adoptable (as the twins indisputably were), a parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B). (*S.B.*, at p. 297.)

Section 366.26, subdivision (c)(1)(B)(i) provides for one such exception when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The “benefit” necessary to trigger this exception has been judicially construed to mean, “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*); see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1347 (*Jasmine D.*.) It is not enough to show that the parent and child have a friendly and loving relationship. (See *In re Brian R.* (1991) 2 Cal.App.4th 904, 924; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 (*Beatrice M.*.) “ ‘Interaction between [a] natural parent and child will always confer some incidental benefit to the child[,]’ ” but the beneficial relationship exception contemplates that the parents have “occupied a parental role.” (*Beatrice M.*, at p. 1419.)

Case law is divided as to the correct standard for appellate review of an order determining the applicability of the beneficial relationship exception. Most published decisions have reviewed such orders for substantial evidence. (See, e.g., *In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333; *Autumn H.*, *supra*, 27 Cal .App.4th at p. 576.) Others have applied an abuse of discretion standard. (See, e.g., *Jasmine D.*,

supra, 78 Cal.App.4th at p. 1351; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) We believe that both standards play a role.

The beneficial relationship exception requires a parent to show that he or she has had regular visitation and contact with the child and that the child would benefit by continuing the relationship. (§ 366.26, subd. (c)(1)(B).) These are essentially factual determinations that should be upheld on appeal if supported by substantial evidence. On the other hand, the ultimate decision as to whether these factors outweigh the benefit of adoption; i.e., whether there is “a compelling reason for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B)), is a “quintessentially discretionary determination.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351; see also *In re C.B.* (2010) 190 Cal.App.4th 102, 123.) In any event, the “practical differences between the two standards of review are not significant,” and as a reviewing court, we should interfere only if the facts, viewed in the light most favorable to the judgment, were such that no reasonable judge could have taken the challenged action. (*Jasmine D.*, at p. 1351.)

Turning to the specifics of this case, we cannot say that no reasonable judge would have terminated parental rights based on the evidence presented. The evidence showed that mother loved her children, but suffered from mental health issues that prevented her from assuming custody. The twins had been placed in an adoptive home, where they were doing extremely well and had bonded with the foster mother. The twins’ relationship with mother, though positive in many ways, was described by the social worker as similar to that with a favorite aunt. It was reasonable for the court to conclude that the benefits of a stable home would outweigh any harm the twins might suffer as a result of terminating mother’s rights.

Mother notes that the trial judge “curiously” ruled that she had not met her burden of proving the beneficial relationship exception while at the same time finding that the children would benefit from a continuing relationship. The court’s comment about a continuing relationship with mother was made in the context of an order referring the case to an outside agency to create a post-adoption visitation agreement—something the

adoptive mother supported. The court's belief that the children would benefit from some contact with mother for purposes of making this referral does not contradict its finding that the benefit of adoption into a stable home outweighed the benefit of maintaining mother's parental rights.

III. *DISPOSITION*

The judgment (order terminating parental rights) is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.