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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re CHRISTIAN C., a Person Coming Under the Juvenile Court Law.	
NAPA COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. SARA V., Defendant and Appellant.	A134713 (Napa County Super. Ct. No. JV16395)

Sara V. (mother) appeals an order of February 15, 2012, following a permanency planning hearing for nine-year-old son Christian C., that terminated her parental rights and chose adoption for the boy. She claims erroneous rejection of the sibling relationship exception to adoption (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v)), [1] but we uphold the ruling and affirm the order.

BACKGROUND

Alcoholism, depression, neglect, and domestic violence led to the April 2010 filing of this case, but the main issue before us is not mother's efforts to reunify, but Christian's relationship with half-brother Julio O., who is nearly nine years his senior. Mother had custody of Julio at Christian's birth in August 2003, but had no ongoing relationship or support from Julio's father. Christian's father lived with mother and the

[1] All unspecified section references are to the Welfare and Institutions Code.

boys but left when Christian was three years old, the relationship soured by domestic abuse and mother's drinking. The father's parental rights were also terminated below, but he does not appeal.

From ages three to five (2007 to 2009), Christian and Julio lived with a maternal grandmother in Los Angeles while mother was in residential treatment for alcoholism and depression, and it was suspected (by all but mother) that the grandmother's boyfriend physically and sexually abused Christian during this time. Both brothers would report the physical abuse, and sexualized behavior by Christian suggested his sexual abuse.

Mother retrieved the children in April 2009 and settled in Calistoga, where the Napa County Department of Health and Human Services (department) responded to a report of the molestation by referring the family to voluntary services. Despite intensive services offered over the next 12 months, the children remained at risk. Christian had attention deficit hyperactivity disorder (ADHD) but was not regularly given prescribed medications for ADHD and insomnia, and poor academic work and escalating misconduct led to his school recommending that he repeat the first grade. Mother continued her alcohol abuse and maintained a combative relationship with an unstable and alcoholic housemate, Cornelia Vasquez, who drank and fought with mother, and once threatened suicide in the presence of the boys. Over the course of a year before the department intervened with this dependency case, there were four referrals for abuse, neglect, or caretaker absence.

The years of instability and neglect left both boys "parentalized," meaning that, because they felt anxious about the future and their needs being met, each took on a role reversal, trying beyond his years and maturity to compensate for mother's deficiencies. For 15-year-old Julio this included taking care of Christian on his own, growing frustrated at the younger child's misbehavior, and even fighting with him so that Christian came to see Julio as "mean." Christian, just six years old, worried about mother, and felt he had to help her with her problems. His misbehavior and anger control also worsened. Household instability mounted toward the end of that year, and mother was arrested and hospitalized in February 2010 for alcohol abuse after she "blacked out"

and ran outside naked. Christian's father was helping out by driving Christian to and from school and spending some time with Christian, but this would not last.

An original petition, filed by the department on April 1, 2010, alleged mother's failure to protect Christian (§ 300, subd. (b)) based on 14 allegations surrounding the recent spate of drinking, domestic violence, and neglect. Julio was the subject of a related petition that is not in our record. Neither child was removed, and after all allegations were sustained, jurisdiction was declared with dispositions of in-home placement for both boys, under a family maintenance plan.

The formal intervention did not stem the instability, and the department filed a supplemental petition (§ 387) in late August 2010, as to Christian only, seeking a more restrictive placement. This followed reports of Julio injuring Christian while babysitting him, Julio protesting against having babysitting responsibility, mother routinely leaving him in charge of Christian (particularly after Cornelia left following a fight with mother that the boys witnessed), and Christian not getting his medications and being suspended from school for choking another child. Christian, now seven years old, was detained in foster care, and the court sustained the petition, continued foster care, and granted reunification services at an uncontested hearing in late September 2010.

Christian's father was granted services and visits but was now in custody on a probation violation and facing felony charges for selling and transporting drugs near a school. He had supervised visits with Christian for the first two months following the dispositional hearing, but then was convicted, incurred an immigration hold, and did not see Christian again after a transfer to state prison to begin serving a five-year term.

Mother's initial progress was promising, and her services were extended at a six-month review in March 2011. Just weeks afterwards, however, came a relapse in treatment that triggered a precipitous regression. She was arrested and charged in early May for domestic violence inflicted against Cornelia V. during a night of drinking, and Julio was placed in foster care with Christian. The arrest led to mother's transfer to the United States Immigration and Customs Enforcement. Upon release a month later, mother resumed drinking and, by the time of a 12-month review in early October 2011,

was denying her problems, discharged from another treatment program, and falsifying attendance for 12-step-program meetings. The court terminated reunification services and set a plan selection hearing for Christian, now eight years old.

Christian remained in the foster care of Paul and Nina P. for the 18 months between his removal and a plan hearing on February 15, 2012, and he made progress described as "greatly improved," "excellent," "tremendous," and " 'amazing.' " The P.'s were experienced educators with the patience and maturity to deal with Christian's special needs. They provided him with consistent rules and limits, a loving and structured home, medical and psychiatric support, homework support, and music and sports activities. Christian stabilized on his medications and made a good emotional adjustment, his misbehaviors "greatly decreased at home and at school." He went from an aggressive and disruptive first grader working "far below grade level," with poor attention skills, to a second-grade child excited about school, performing at grade level in all subject areas, good at reading, math and science, and with outside interests and no reported misconduct. He completed a summer enrichment program to prepare for second grade, had a "loving and affectionate relationship" with the P.'s, and ceased being clingy when they left him. He slept well, felt safe, and was calmer, happy, and less worried—"like a very different kid." While no longer anxious about his own welfare, he did continue to worry about mother. For example, the bilingual boy wanted to teach mother some English, having heard from her that her poor English skills meant that she could lose her job.

The boys' relationship also improved. While the prior pressures of caring for Christian had evoked frustration, abuse and anger from Julio, and resulting apprehension from Christian, Julio was surprised to find that he missed Christian after Christian was removed to foster care. Also mending their "very troubled relationship" were four months that the boys spent together in the foster home after mother's incarceration. Having Julio in the home had been the foster parents' idea, concerned for Julio and his importance to Christian after reading about mother's arrest. The P.'s made Julio part of their family, and the boys, free of the former pressures, grew closer and seemed to love

one another. Christian, who had once regarded Julio as "mean" to him, now said Julio was "nice" and said he wanted to see Julio.

Julio left the foster home after four months to live with an aunt and uncle in Napa, wanting to live with family and to attend high school there. He did not seek visits with Christian for several months afterward and, now 17 years old, reported that he had been busy reconnecting with family and friends. He did seek visits in November 2011 and, while authorized to have more, had them only twice a month. Christian did not seek more frequent visits, and his behavior, as the visits decreased, did not show adverse effects.

Meanwhile, the P.'s wanted to adopt, and a state adoption assessment based in part on time spent with the adoptive family, found Christian to lack developmental problems and have a strong relationship with the P.'s, and that they were committed to adoption. The assessment also observed that Julio could have stayed in the home and been adopted by the P.'s, but chose instead to live with his relatives. "Christian," it found, "has made an excellent adjustment to his foster placement and he and his foster parents have grown to love each other and share a close and affectionate relationship. The foster parents have demonstrated an ability to meet [his] emotional, mental health and behavioral needs. Christian has blossomed under their care and he is doing well in school, loves to read, sing in his school choir and play football." The assessment urged adoption and terminating parental rights as in his best interests because "Christian's need for permanency outweighs all other considerations in this matter. Christian is only 8 years old and has suffered from years of neglect and instability. It is vital for [him] to have the consistent love and support of caregivers who can adequately meet his needs, and which is necessary for him to grow and develop into a healthy and well adjusted adult."

One issue explored at the plan hearing was whether adoption might end all contact between the brothers, a prospect that evidently moved Julio to contest the adoption plan. Statutory provisions authorize an agreement for post-adoption contact between birth relatives and a child if found to be in the child's best interests (Fam. Code, § 8616.5), and the P.'s did want continued contact and had expressed a willingness to have it, measuring

Christian's best interests as dependent on Julio's behavior and level of continuing interest in his brother. Nevertheless, while adoptive parents' ability to change their minds left no way to guarantee continued contact, the P.'s had already shown a commitment to continuing contact by taking Julio into their home while mother was incarcerated, and social worker Lauren Harris was confident from her discussions with the P.'s that there would be contact. Also, if contact were to cease after adoption, there is a procedure whereby, at age 18, each sibling could seek contact through the state adoptions agency, and contact would resume if mutually desired.

Julio testified at the hearing, recounting his long relationship with Christian since infancy, tearfully expressing his love for Christian, sense of mutual love, that Christian meant "the whole world" to him, and that he did not want to "lose" Christian or have Christian lose contact with his relatives and Hispanic heritage. Their mother is Guatemalan, and their fathers Nicaraguan and Mexican, while the P.'s are not Hispanic, and Julio worried that Christian was losing his Spanish language ability. He also wanted Christian to meet and get to know a son his sister in Los Angeles was carrying, who would make them both uncles. Julio, now 17 years old and due to graduate from high school in 2014, also testified that he wanted to "get the chance to be able to adopt" Christian. Julio said that his plans upon graduating were to stay in Napa, get a part-time job and continue with his studies.

Harris, who authored the plan hearing report, testified that Christian's need for permanence outweighed all other considerations, "not discounting the relationship that he . . . has with his brother or that he loves his brother or that his brother loves him[.]" She saw his best interests being served even 40 years hence, when the foster parents might be gone, because he would "internalize that security and safety over time" and be better equipped "to go out and navigate the world." She called "conjecture" the risk of him being isolated with only a brother left. To the contrary, she felt: "[T]he risk of him not having permanence increases the likelihood of him being that lonely person that only has one person in his life, and that he has his foster parents that will adopt him and their extended family. And the family that he builds for himself, . . . whether he goes out, has

intimate relationship[s] and has children of his own." She also saw "irony" in that the boys had a "very troubled relationship" during the time Julio was forced prematurely to take care of Christian due to mother's alcohol abuse and domestic violence, while the foster parents had "very much understood" that Christian was "part of another family." They had reached out to mother to facilitate visits and then, once they had a relationship with him, reached out to Julio when he was in need after mother's arrest, when Christian was worried about his brother, and that this enabled the brothers to develop an improved relationship. She had met with the Christian and the family in the home, and understood that he wanted to continue seeing Julio and mother, that Julio felt very close to his brother, and that Christian wanted to meet his nephew (due in three months). "[T]he whole irony," she explained, "is that this family understands the bigger concept of adoption. That it's not a child they birthed and raised, that he's also, you know, part of another family."

As for concern about Christian losing his cultural background, Harris reasoned: "I think just the loss of the language isn't necessarily an indicator. There's lo[t]s of children who grow up in the United States with parents of Hispanic origin . . . who don't speak their native tongue. I think that the foster parents are aware of the cultural difference and, and will make efforts to incorporate that into their life. [¶] I know that Christian's elementary school is 75 percent Hispanic, and that most of his friends are Hispanic. That now that he's no longer an English language learner he's going to be taking Spanish classes at school."

Harris also questioned how available Julio would be for Christian: "Julio's at an age [nearly 18 years old] where he's developmentally going to be appropriately doing what he wants to do. And, you know, he was with Christian in a foster home and . . . he chose to go and live with relatives. He wanted to be back in Napa. He wanted to be with his friends. The door was open for him, to have lots . . . more contact and be able to visit Christian with [the] foster parents, spend weekends up there. [¶] He didn't exercise that during the initial months that he was placed back in Napa with his aunt and uncle. And when I really, I asked him about that he was like, oh, I was really busy with friends. And

he's very focused on what he needs to be focused on right now. He has told me when he turns 18 he is either going to go live with mom or live with his sister in Los Angeles. He keeps talking about going to Los Angeles. [¶] So how much can he really be there for Christian[?][2] Even Christian has verbalized, I know Julio is getting older, might go off to school. Might get a job somewhere. I might not see him that often. So that's the thing to consider, as well. Julio is going to . . . make decisions as a young adult that are based on his self-interest. [¶] So it's not like he's going to be there seeing his brother on an ongoing basis. He may move to LA and not see his brother very often. No matter where Christian is. And again, what Christian needs is that stable, loving, secure, consistent environment so that he can grow up to be a healthy and productive young adult."

The court, in ruling to terminate parental rights, first acknowledged Julio's concerns and observed that, while everyone hoped the brothers' relationship would continue, an adoption decision could not rest on that assumption. Then the court next turned to the notion of Julio adopting Christian, an idea arising late in the hearing, and found it to be an unreasonable basis for ruling: "[T]hat is, at a minimum, speculative. And probably just looked at with [a] cold eye of those in this position, it is just unlikely that an 18 year old can provide a home, or steady job, or experience, or any of the other attributes we look for in adoptive parents . . . . , that that would happen.

The court then segued into weighing the sibling relationship against the benefit of permanence, and reasoned: "[Rejecting adoption] would mean Christian would be in our juvenile dependency system for a long, long time. And . . . it is quite likely that the P[.'s] would say, well, if we can't adopt Christian, we want to adopt a child, so we are going to find a child we can adopt. They may decide they might not, but they might decide that Christian should live elsewhere. And there's no assurance that Christian would have a steady, permanent, continuous, loving, supportive home without making this decision [for adoption]. [¶] And that is . . . with the understanding that any time parental right[s are]

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[2] The aunt and uncle in Napa who took Julio in at the time of mother's arrest had been approached about having Christian placed with them, but declined. The aunt felt that they could not meet Christian's needs.

terminated and any time a relationship with a family member is put into question, there is detriment. But the detriment in this case is vastly, vastly outweighed by the care and progress that [the P.'s] made with Christian. [¶] There's been no doubt [they] have done a wonderful job in dealing with a child who suffered grave trauma, which resulted in severe behavioral problems. As many other prospective adoptive parents would say, he's too much for us. But they, clearly [have] persevered. Christian is . . . in a safe warm place that he will thrive in and that has to be the basis for the decision."

DISCUSSION

The law is perhaps best stated in a decision discussing the sibling relationship exception along with the related parental relationship exception. "Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship . . . .' (§ 366.26, subd. (c)(1)(B).) '[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.' [Citation.]" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).)

"[Two] standards of review come into play in evaluating a challenge to a juvenile court's determination as to whether [either] exception to adoption applies in a particular case. Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination. Thus, . . . a challenge to a juvenile court's finding that there is no beneficial relationship amounts to a contention that the 'undisputed facts lead to only one conclusion.' [Citation.] . . . .

"The same is not true as to the other component . . . . [A] finding that the relationship is a '*compelling reason*' for finding detriment to the child is *based* on the

facts but is not primarily a factual issue. It is, instead, a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 622 [adopting the *Bailey J.* approach].)

Factors guiding the sibling relationship exception are "the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v); *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1317.)

Mother does not challenge the court's reasoning that Julio could not likely offer a proper adoptive home anytime soon, or the social worker's reasoning that Christian's Hispanic friends and schoolmates made it unlikely that he would to lose his cultural identity by using English over Spanish, or by having non-Hispanic adoptive parents. Arguably, the cultural identity of prospective adoptive parents is, in any event, more appropriately considered in selecting which prospective adoptive parents are chosen, rather than in deciding whether the benefits of adoption outweigh those of ensuring a sibling relationship. We are cited no authority on that point, but in any event, mother's arguments are, rather, that the record shows a significant sibling relationship and that this justified foregoing the permanence of adoption.

It does not appear that the court had serious doubt that there was a relationship marked by significant common experiences, living together, and strong bonds. There is substantial evidence from which the court could conclude that Julio's professed bond to Christian was not quite as strongly reciprocated, for while Christian certainly wanted to keep seeing Julio, he was secure and well adapted with his caregivers and showed no

long term adverse effects from diminished sibling contact after Julio moved out of the home. His remarks to Harris also show considerable maturity in realizing that Julio could and would, as he reached adulthood, take opportunities available to him that could lessen their contact. The court could also find some negative potential in the boys' relationship, given evidence of how strained it had been before Christian was removed to foster care. But it does appear, on ample evidence, that the court found a beneficial relationship that, *other circumstances being different*, might outweigh the benefits of adoption. The difficult question—and the one subject to our deferential review for abuse of discretion—was whether that relationship warranted rejecting adoption.

We see no abuse of discretion in opting for adoption. The permanence and stability of adoption are powerful benefits in any case, but especially powerful here, where the child, just a year and a half earlier, had been on the precipice of emotional and developmental disaster due to years of neglect and instability. The court had to bear in mind that the seemingly well adjusted and stable child Christian turned out to be, in fact had continuing special needs from years of neglect and trauma. He had been wonderfully transformed by 18 months of uninterrupted and consistent care. To deny permanence to this child, in favor of guaranteeing a continued relationship with a brother who could not fill that need, risked losing the gains made and leaving Christian with a relationship, but few other resources for molding an emotional identity essential to long range growth and maturation. The court's remarks reflect those concerns, and no abuse of discretion appears on this record.

DISPOSITION

The order is affirmed.

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Kline, P.J.

We concur:

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Lambden, J.

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Richman, J.