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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re S.C., a Person Coming Under the  
Juvenile Court Law.

CONTRA COSTA COUNTY BUREAU  
OF CHILD AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA C.,

Defendant and Appellant.

A134720

(Contra Costa County  
Super. Ct. No. J1001146)

Appellant Maria C. (mother) appeals from an order terminating her parental rights as to her three-year-old daughter, S.C. She argues that she met her burden to show that an exception to termination of parental rights existed, because the minor would benefit from a continued relationship with her. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> We disagree and affirm.

I.  
FACTUAL AND PROCEDURAL  
BACKGROUND

The procedural and factual background of these proceedings was set forth in a previous denial of a petition for extraordinary writ relief (*Maria C. v. Superior Court*

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

(Nov. 15, 2011, A133294) [nonpub. opn.]), and will be briefly reviewed here.

Respondent Contra Costa County Bureau of Child and Family Services (Bureau) filed a juvenile dependency petition in August 2010, alleging that mother had a serious and chronic substance abuse problem, that she had mental health issues, and that she had failed to provide adequate medical care for the minor or to comply with a doctor's order regarding the minor. Mother displayed obsessive behavior during visits following detention, such as removing all of the minor's clothing to inspect her body. The juvenile court adjudged the minor a dependent child, and ordered reunification services for mother.

During the reunification period, mother tested positive for marijuana several times, and failed to make use of the mental health services available to her, according to the social worker. She reportedly displayed erratic behavior during both therapeutic and non-therapeutic visits, arguing with the clinician during a therapeutic visit, and spending much of her time during non-therapeutic visits exploring the minor's body to find evidence of injury or illness.

Following a contested six-month review hearing held over four days in July and September 2011, the juvenile court terminated reunification services, and set a permanency planning hearing pursuant to section 366.26. The juvenile court also limited visitation to one hour per month, to be supervised. Mother petitioned this court for extraordinary writ review, and this court denied the petition on November 15, 2011. (*Maria C. v. Superior Court, supra*, A133294.)

Conflicts soon arose regarding visitation. The social worker reported that mother brought clothing and tennis shoes to a scheduled visit, and insisted on having the minor try on the clothes, even though the minor resisted. Mother removed every article of the minor's clothing, including a dry diaper, and "thoroughly examine[d the minor] for marks or bruises," despite the minor's protests. The social worker advised mother on October 25, 2011, not to undress the minor against her will, because it caused the minor distress and was unnecessary. Mother insisted that it was her "civil right to undress her child," and questioned the social worker's authority.

On November 1, 2011, mother's attorney filed a "visitation memo," requesting that court-ordered visits "continue to occur without undue scrutiny" by the Bureau. (Capitalization omitted.) Mother claimed that it was customary at the beginning of visits for her to change the minor into clothes that she brought with her, and then to change her back into her original clothes at the end of visits. The visitation memo stated that mother believed that she had a right to change the minor's clothing, and to bring her food, drink, and toys, and she requested that the juvenile court order the Bureau "not to interfere in this activity." At a hearing on November 3, the juvenile court ordered mother not to change the minor's clothing during visits.

Security was called to intervene during a visit on November 7, 2011, when mother insisted that she could change the minor's shirt, and began "ranting." When security officers arrived, mother was holding onto the minor, who was crying. The social worker reported that the visit continued with two security officers present. Mother's counsel thereafter filed another visitation memo, stating that mother's November visit had lasted only 30 minutes. She requested that the court order that mother's December visit last for an entire hour, as it had previously ordered. Following a hearing on December 1, 2011, the juvenile court again ordered mother not to undress the minor during visits.

Mother filed a petition for a change of court order (§ 388) on December 13, 2011, requesting that the juvenile court reinstate reunification services, including weekly visitation. She alleged that she was "aggressively treating her marijuana use" by entering a program. The juvenile court ordered that a hearing be held on the petition on the same day as the scheduled section 366.26 hearing.

In a section 366.26 report dated December 29, 2011, the social worker stated that mother had maintained consistent visitation with the minor throughout dependency proceedings. However, mother's behavior during visits had been "concerning to all of the persons supervising the visits," and was "often times inappropriate and cause[d the minor] much distress." Mother was confrontational with the supervisor, did not follow directives, and became easily agitated and combative when given directives. According to the social worker, mother "often re-directs [the minor's] play or attempts to stop her

from doing a certain activity. [Mother] hugs and kisses [the minor] while she is occupied with an activity and [the minor] responds with verbal and physical objection, such as telling the mother 'no' or pushing her away. [The minor] does not verbally or physically reciprocate mother's affection."

At a hearing on December 29, 2011, the juvenile court first considered mother's section 388 petition. Mother testified that her daughter told her, "'I love you, Mommy,'" at their last visit, and that the minor "expresses affection and love to me, always has." She explained that she was on the waiting list for an outpatient program that provided counseling and drug treatment, to address her marijuana use. In the meantime, she was attending two 12-step programs each week, and she planned to start counseling in the following weeks to address her mental health issues. She testified that she would "drug test right now if you ask me to." She took a drug test during an afternoon recess, and the juvenile court reported that mother "tested positive for THC, extremely so." THC is an indicator of marijuana.

In response to a question on cross-examination about whether mother had spoken with a counselor about the dependency proceedings, mother complained that the question was "harassment," stated that she did not understand, and asked, "What is going on here?" She became frustrated with the minor's counsel and the juvenile court after being asked general questions about her case, stating that "I need to confer with my lawyer please before all this. I didn't know I was going to be interrogated in this manner." Following a brief recess, mother testified that she had no female role models, but that she did the best she could to raise the minor and never neglected her daughter. She blamed the initiation of the dependency proceedings on false accusations by her older brother, with whom she had a "serious conflict." Mother likewise claimed that all the Bureau reports were "filled with mistakes."

The juvenile court denied mother's section 388 petition, finding that mother was "a severely emotionally disturbed person" who was using marijuana "to basically self-medicate," and who had not addressed her mental health issues in the 17 months that the minor had been the subject of dependency proceedings. The court further observed that

mother had “expressions of paranoia, histrionics, [and] at times . . . appear[ed] delusional. I mean all of those factors would lead the Court to quite clearly conclude that the child would be, certainly by clear and convincing evidence, that the child would be in serious, physical or emotional risk if the child was placed with [mother].”

The juvenile court proceeded to the permanency planning hearing. The social worker testified that the minor “[o]n occasion” displayed affection toward mother during supervised visits. She confirmed that the minor had told mother “ ‘I love you, Mommy,’ ” during their last visit. Mother’s counsel asked if there had been any other conversation between the minor and mother during the visit, but before the social worker could answer, mother stated, “That’s enough emotional torture for one day, for one tortured [soul], please.” The juvenile court stated that because it was close to the end of the workday, it would continue the hearing to a later date.

A continued hearing on January 10, 2012, ended shortly after it began, after an outburst by mother over needing drinking water led the juvenile court to remand her pursuant to section 5150, because of mother’s “as close to incoherent and out-of-control behavior as one could witness in a courtroom.” The court stated that mother “was waving the empty water containers around in the court and acting out in a physical way, in addition to her obvious emotional distress.” After mother was removed from the courtroom, county counsel argued that visitation should be suspended, because mother was displaying similar behavior at visits with the minor, and the visits were not going well. The juvenile court terminated visitation, finding that further visits with mother would be detrimental for the minor.

At a continued hearing on February 10, 2012, the social worker testified that it was her opinion that the minor did not recognize appellant as her mother, and instead recognized the foster mother as her mother. The minor was fearful when she was brought for visits with mother, and addressed her foster parents as “ ‘mom’ ” and “ ‘dad.’ ” Although the minor addressed appellant as “ ‘mother’ ” and told her that she loved her during their last visit on December 12, 2012, this was the first time that the minor had addressed mother this way, and it came at a time when the minor had been practicing

saying “ ‘I love you’ ” in her foster home. The minor was not feeling well during the visit, and she lay on mother’s chest. In general, mother brought age-appropriate toys, food, and drink for the minor, and the minor played with mother if mother engaged in activities that interested the minor.

Mother testified at a continued hearing on February 16, 2012, that she had never missed any scheduled visits with the minor. When asked whether the minor appeared to recognize her at their last visit, mother testified, “Yes. She always has recognized me because she started her life inside my womb, and we always had the maternal bond.” When asked how she knew that the minor recognized her, mother testified, “Because she’s my child, and I am the best expert on my child’s reactions in this room. I am the only human on this earth who has spent all the time I have with my child inside my womb, birthing her through the cesarean section . . . .” She further testified that the minor cried during most of their last visit, pointed toward the social worker, and looked toward mother for sympathy. The minor wet her pants during the visit, and mother changed her into pants that she had brought to the visit.

Mother’s counsel argued that the juvenile court should not terminate parental rights, because of mother’s beneficial relationship with the minor. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court found that the minor was adoptable, concluded that no exception to termination of parental rights existed, and terminated mother’s parental rights. The court also declined mother’s request to reinstate visitation. Mother timely appealed.

## II. DISCUSSION

Mother argues that she met her burden to show that the termination of parental rights would be detrimental to the minor, and that the juvenile court erred in failing to apply the beneficial-relationship exception to termination of parental rights. “At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans.

[Citation.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.) “Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citations.] 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.’ ” (*Id.* at p. 297.)

Because there is no question here that the minor was adoptable or that mother showed that she maintained regular visitation with the minor, the only disputed issue is whether the minor 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.) Mother argues, and respondent does not dispute, that we review a juvenile court’s

order on the beneficial-relationship exception for substantial evidence.<sup>2</sup> (E.g., *In re S.B.*, *supra*, 164 Cal.App.4th at pp. 297-298.)

In arguing that the juvenile court erred in terminating parental rights, mother focuses on evidence favorable to her, such as reports of visits when mother acted appropriately, and the fact that the minor told her “ ‘I love you’ ” during their last visit. We will affirm the juvenile court’s order if supported by substantial evidence, even if other evidence supports a contrary conclusion. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Reviewing the record as a whole, there is little evidence that mother’s relationship with the minor promoted the minor’s well-being, let alone that the relationship would promote her well-being to such an extent that it would *outweigh the well-being the minor would gain in a permanent home* with new, adoptive parents. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Mother was disruptive during some visits, which upset the minor (causing her “much distress”), the minor was fearful when she was brought for visits with mother, and the juvenile court’s personal observation of mother was that she was “emotionally disturbed.” The social worker testified that the minor did not recognize appellant as her mother. Although the minor told mother that she loved her, this came at a time when the minor was practicing the phrase in her foster home, undermining mother’s suggestion that the statement was a sign that the minor “reciprocated” mother’s love for her. By contrast, the minor recognized her foster mother as her mother, and she was doing well with her current caretakers, who wished to adopt her. Substantial evidence supports the juvenile court’s conclusion that the beneficial-relationship exception did not apply in this situation.

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<sup>2</sup> As mother recognizes, some courts have applied different standards of review. (*In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622 [question of whether beneficial parental relationship exists is reviewed for substantial evidence, whereas 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 [abuse of discretion standard].) On the record before us, we would affirm under whatever standard of review is applied. (*Jasmine D.* at p. 1351 [practical differences between substantial evidence and abuse of discretion standards are minor].)

Finally, we reject mother’s argument that the juvenile court prejudicially erred by terminating visitation during the pendency of the permanency planning hearing, thereby interfering with her ability to demonstrate that the beneficial-relationship exception applied. The juvenile court suspended further visitation at the hearing on January 10, 2012, after mother was remanded pursuant to section 5150 because she was acting out physically and emotionally, and was “close to incoherent and out[ ]of[ ]control.” County counsel stated that mother’s courtroom behavior was consistent with her behavior during visits. The minor’s counsel stated that she likewise had noticed an escalation of mother’s extreme behavior as they approached the potential termination of parental rights, reported that mother had been “screaming” at counsel before that day’s hearing, and expressed concerns about the minor’s emotional and physical well-being if visits were to continue. County counsel offered to provide the testimony of the social worker for additional evidence supporting termination of visitation, but the juvenile court concluded that this was not necessary, terminated visitation “until further order of the Court,” and found that further visitation would be detrimental for the minor. (§ 366.21, subd. (h) [court shall continue to permit visitation pending § 366.26 hearing, unless it finds that visitation “would be detrimental to the child”].)

Mother claims that it was “speculation” that the minor was harmed by visitation, ignoring the basis for suspending visits—the fact that mother was acting so erratically at a court hearing that she was remanded after the court found that she was a danger to herself and to others (§ 5150). That she behaved in a similar fashion at visits is supported by the social worker’s report that security officers had to be called during one visit because of mother’s emotional outburst.

Mother also faults the Bureau for not filing a formal section 388 petition seeking to reduce visitation; however, she did not object on that basis below, and she cites no authority on appeal to support her argument that such a petition was required. (Cf. Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2012 ed.) Supplemental and Subsequent Petitions, § 2.140[1], p. 2-414 [no § 388 petition necessary if issue is one which court must already consider at hearing].) Even assuming *arguendo* that the

juvenile court erred in proceeding without a formal section 388 petition, we find such error to be harmless. Mother's parental rights were terminated fewer than six weeks after visitation was suspended. Mother has not demonstrated that the loss of no more than two visits materially affected the outcome of these proceedings.

In sum, although it is clear that mother loves the minor, she has not shown that the juvenile court erred in terminating her parental rights.

III.  
DISPOSITION

The juvenile court's order is affirmed.

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Sepulveda, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.