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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re H.P., et al, Persons Coming Under the
Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

JASMINE R.,

Defendant and Appellant.

A136476

(Sonoma County
Super. Ct. No. 2880/3264-DEP)

Jasmine R. (appellant) appeals from the juvenile court’s order, made pursuant to Welfare and Institutions Code section 366.26,¹ terminating parental rights with respect to her children, half-siblings H.P. (now 12) and T.K. (now four). Appellant contends (1) the juvenile court abused its discretion when it denied her section 388 petition seeking return of the children to her care or, in the alternative, (2) the court improperly terminated parental rights after finding that the beneficial parent-child relationship and sibling relationship exceptions to adoption did not apply. We shall affirm the juvenile court’s order.

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

FACTUAL AND PROCEDURAL BACKGROUND

On May 2, 2008, the Sonoma County Human Services Department (Department) filed an original petition alleging that H.P. (then seven) came within the provisions of section 300, subdivisions (b) and (c), in that appellant had a history of substance abuse and domestic violence and had exposed H.P. to violent incidents, thereby placing her at substantial risk of physical and emotional harm and serious emotional damage.²

In a jurisdiction/disposition report filed on June 4, 2008, the social worker reported that H.P. remained in the home with appellant; David K., her presumed father; and her maternal grandfather. H.P. had been born with a positive toxicology for methamphetamine, and appellant had used drugs and alcohol for the first four years of H.P.'s life. H.P. had witnessed several instances of domestic violence between appellant and David. In the most recent incident, which led to the filing of the petition, H.P. suffered a scratch on her arm when she was "caught in the middle of an altercation" between appellant and David. In addition, appellant was pregnant with a boy expected to be born in mid-July, and H.P. had "already expressed fear for his safety, and her responsibility to protect him from his parents when they are fighting." The social worker further reported that H.P. "clearly loves her parents, and would be distraught if she were removed from the home."

David had reported that he and appellant were married in 2005, that he had held H.P. out to be his daughter, and that he had provided for her financially. He was also the caretaker of H.P. during appellant's incarceration for more than a year, from 2005 to 2006. H.P. referred to David as her father and he had been in her life as a father figure for over five years. Appellant acknowledged her history of drug use, arrests, incarcerations, and altercations with David.

The Department recommended that the court find David to be the presumed father and order family maintenance services for appellant and David. It further requested that

² The petition also contained allegations related to H.P.'s alleged father, John P.

the alleged father, John P., who had had no contact with H.P. and was not listed as the father on her birth certificate, be found to be the “mere biological father.”

On June 4, 2008, appellant and David submitted on the petition and the court declared David to be H.P.’s presumed father and ordered that family maintenance services be provided.

In the six-month status review report, filed on December 4, 2008, the social worker reported that the parents had been unable to comply with all elements of their case plan services due to David’s recovery from foot surgery and issues related to appellant’s pregnancy and the health of the new baby, T.K., who was born in July. The parents were getting family coaching and H.P. had begun therapy. H.P. was described as “an outgoing little girl with well developed social skills” who might be prone, however, to watchfulness, anxiety, and trying to assume responsibilities beyond her age. The parents were described as being very supportive of H.P. and also being “under a lot of stress but open to help.” The Department recommended that family maintenance services continue.

On December 4, 2008, the juvenile court ordered the continuation of family maintenance services.

In the 12-month status review report, filed on June 17, 2009, the social worker reported that the family continued to live in the home of the maternal grandfather, who was described as a “functional alcoholic.” The parents had frequent conflicts with the grandfather, and often stayed in motels or their car. David had undergone hip replacement surgery earlier that year and appellant reported feeling pressure from caring for both children, taking David to medical appointments, and dealing with her father. The parents were also stressed about T.K.’s health, as he had experienced digestive problems for several months. The parents continued to have poor participation in their case plan, and H.P. continued to miss a great deal of school. Both appellant and David had made progress in their relationship, in terms of tempering their arguments without resorting to violence, and had become more sensitive to the needs of their children. They

also had maintained their sobriety. The Department recommended that the family continue to receive family maintenance services.

On June 17, 2009, the juvenile court again ordered that family maintenance services continue.

Both children were removed from the home on January 7, 2010, pursuant to a protective custody warrant. On January 11, 2010, the Department filed an original petition, pursuant to section 300, subdivisions (b), (g), and (j), on behalf of T.K. and a supplemental petition, pursuant to section 387, on behalf of H.P.

On January 12, 2010, the Department informed the juvenile court that, on November 3 or 4, 2009, police executed a search warrant at appellant and David's home in the course of an investigation of a check-kiting scheme. They found illegally purchased material, and also found a box containing methamphetamine and drug paraphernalia in H.P.'s bedroom closet. Both parents were arrested and, thereafter, both pleaded guilty to felony check kiting and were awaiting sentencing. David was rearrested on January 2, 2010 for disorderly conduct (public intoxication) and was currently incarcerated. On January 6, 2010, David called the Department from jail to say that he was worried about the children's safety because appellant had been lying, had relapsed, and was using drugs. In January 8, 2010, appellant tested positive for methamphetamine and alcohol.

The juvenile court ordered both children detained on January 12, 2010.

In the jurisdiction/disposition report, filed on March 23, 2010, the social worker reported that the children were in separate emergency foster homes. In an addendum/disposition report, also filed on March 23, 2010, the social worker reported that the Department was recommending the bypass of reunification services for appellant only, based on her failure to successfully complete the previous 18 months of family maintenance, her prior refusals to comply with court ordered residential treatment for substance abuse, and her continued substance abuse. The Department was investigating a possible relative placement.

Also on March 23, 2010, the juvenile court declared T.K. a dependent of the court and found by clear and convincing evidence that the children should be removed from the parents' physical custody. The court ordered reunification services for David, but not for appellant. The court also found that placement with the maternal grandfather was not appropriate.

In the six-month status review report, filed on August 19, 2010, the social worker reported that David was committed to sobriety and determined to reunify with the children. Appellant had been released from jail in July 2010 and had entered a residential treatment facility, but had abandoned the program the next month. The social worker recommended that reunification services continue for David.

On August 19, 2010, the juvenile court ordered continued reunification services for David.

In the 12-month status review report, filed on February 2, 2011, the social worker reported that David continued to focus on his recovery. He had secured housing and was working closely with the foster parents to participate in the children's lives. Appellant was incarcerated but had requested regular contact with the children and the Department had facilitated supervised visits.

The social worker described H.P. as "a beautiful and smart young lady" who was "full of hope and full of life all of the time," though she did fall into a parentified role at times and was still in therapy. She was excited for a new life with her father and brother. T.K. continued to be "a loving, sensitive and curious little boy," who had developed a very strong connection with his father and sister. The Department recommended that reunification services continue for David and requested that the children have a trial home visit with him.

On February 10, 2011, the juvenile court adopted the recommendations of the Department and authorized the Department to begin a trial home visit with David.

In an interim report, filed on April 14, 2011, the social worker reported that appellant was no longer incarcerated. She had requested and was regularly participating in supervised visits with both children. Although not offered reunification services, she

was participating in individual therapy and parenting classes. The social worker noted that David was “becoming somewhat discouraged and increasingly overwhelmed” as he dealt with the challenges of caring for the children fulltime, but he continued to focus on his recovery and creating a safe, loving home for his children. The social worker recommended that the trial home visit conclude and that family maintenance begin for David.

In an addendum report, filed on April 28, 2011, the social worker reported that the children had been “abruptly” removed from David’s home on April 15, “based on the father’s recent relapse and ongoing depression that was consuming his life.” After he tested positive for alcohol, he acknowledged that he had relapsed and was feeling “overwhelming defeat” due to being in a great deal of physical pain, having to coordinate medical appointments and adjust pain medications, feeling emotional pain over the breakup of his marriage, parenting two active children alone, and engaging in all of his court-ordered services. H.P. had been returned to the foster home in which both children had previously stayed, but because the foster parents no longer had room for T.K. and were not able to commit to permanency with him, he was placed in another foster home. The social worker recommended that reunification services continue for David.

On April 28, 2011, the juvenile court continued reunification services for David.

In the 18-month status review report, filed on June 2, 2011, the social worker reported that the children were in separate foster homes, but the foster parents facilitated regular contact between them. Both foster families had expressed an interest in adopting the children. The children were reported to “eagerly anticipate” their scheduled sibling visits, their supervised visits with appellant, and their unsupervised contact with David. Both children also had a significant connection with their foster parents. Appellant had consistently participated in weekly supervised visits with the children, as well as therapy and parenting services. David had “come a very long way,” but also had a long way to go to fully accomplish a healthy lifestyle. He had again tested positive for alcohol on June 3, 2011.

Given that the time for services had expired, the social worker “sadly” recommended that David’s reunification services be terminated and that the court set the matter for a section 366.26 hearing as to both children.

On August 22, 2011, the juvenile court terminated reunification services for David and ordered that a section 366.26 hearing be held. On September 20, 2011, the court ordered a bonding study to assess the sibling relationship and the parent-child relationships.

In November 2011, the state adoptions agency conducted adoption assessments for H.P. and T.K., concluding that both children were likely to be adopted. It recommended that parental rights be terminated and that a plan of adoption be ordered.

Dr. Gloria Speicher completed a bonding study and in her report, dated December 3, 2011, she stated that T.K. and H.P. had a parent-child relationship with David, including “a substantial and positive attachment” to the degree that they “would be greatly harmed if the parent/child relationship were terminated.” Continuing the parent/child relationship between the children and David promoted their well-being “to a degree that outweighs the well-being that [they] would derive by being adopted.”

As to T.K.’s relationship with appellant, Dr. Speicher reported: “While Jasmine takes on a mother role with [T.K.] and he behaves in a positive manner in her presence, he does not demonstrate a strong and secure attachment to her. He appears to experience her or treat her as more similar to an occasional caretaker, baby-sitter, or extended family member.” While H.P.’s relationship with appellant was that of a parent-child, H.P. did not demonstrate a secure attachment to appellant. “Her attachment to her mother is better described as insecure/anxious and ambivalent.”

With respect to the sibling relationship, Dr. Speicher reported that T.K. and H.P. “have a sibling relationship that is so strong that its severance would cause long term detriment to each child. The benefit of their relationship outweighs the benefits of adoption.”

On December 22, 2011, the date set for the section 366.26 hearing, David filed a section 388 petition for return of the children, stating that he had recovered from hip

surgery, including cessation of narcotic pain management; had established his sobriety; and had continued visits with the children. In addition, the children were strongly bonded with him.

On February 1, 2012, the parties agreed to continue the section 366.26 hearing because the Department had just received the bonding study and other information it needed to assess. David withdrew his petition without prejudice.

In an addendum report, filed on May 17, 2012, the social worker reported that, in early February, David had turned H.P. away from a visit at his home and ended visits early because he reported that his hip was bothering him. Then, following a positive drug test for opiates on February 15, David's visits became supervised and his attendance at visits became inconsistent. He also was incarcerated for several weeks in April due to a probation violation. Appellant had continued to visit the children weekly. Her visits had become fully supervised due to her discussion of inappropriate court-related topics with H.P.

In addition, the social worker had learned that T.K.'s foster mother was no longer able to provide a permanent home for him. The Department continued to recommend that parental rights be terminated and that a plan of adoption be ordered.

On May 15, 2012, appellant filed her own section 388 petition, asking for the return of the children on family maintenance. She stated that she had remained clean and sober for 19 months; had engaged in anger management, relapse prevention, and 12-Step meetings; had maintained visitation with the children; and had continued in individual therapy. Since return to David was no longer an option, appellant stated that the "only alternative now available to have the children in the same home with the same parent" would be to return them to her to raise.

In an addendum report, filed on July 11, 2012, the social worker reported that T.K. had been placed in a new foster-adopt home on June 30, 2012. According to the state adoptions worker, T.K. had handled the placement transition well. He appeared to be comfortable with his new care provider and to be developing emotional ties with her. She was demonstrating good parenting practices and was "very committed" to adopting

him. She understood the benefit of T.K.'s sibling relationship with H.P., and was "committed to maintaining that connection for him over time."

The hearing on appellant's section 388 petition took place on July 16 and 17, 2012.³ Kyla Rauh, who had been appellant's therapist since March 2011, testified that appellant had made sufficient progress in therapy and had the maturity to be a healthy parent to her children. She believed that appellant had become aware of her unhealthy patterns and was making better choices. Rauh had also seen appellant with her new baby, who had been born that spring, and observed that she was very "in tune" with and responsive to the baby.

Appellant also testified at the hearing. She had stopped using drugs in October 2010, and had participated regularly in a 12-Step program since then. Since she was released from her most recent incarceration in February 2011, she had begun to make amends with her children. She knew that H.P. felt that she could not be counted on; she had therefore visited H.P. consistently so that H.P. could learn to trust her. As to T.K., appellant had not been his primary caregiver for most of his life, which she knew was confusing for him. She therefore visited him consistently as well, and was very affectionate with both children.

Monisha Sashital, who had been the social worker for H.P. and T.K. since October 2011, testified that she had observed some visits between appellant and the children, during which appellant seemed engaged with them and they seemed responsive to her. Sashital believed both children enjoyed being with appellant and seemed comfortable with her.

The Department did not attempt to find a foster-adopt placement for both children together. Given that H.P. had been in a stable placement for a long time "and there are other options to maintain their sibling bond, like frequent contact, as there is now, [the Department believed] that was the best solution." H.P.'s foster family had included T.K.

³ On the second day of the hearing, David's counsel informed the court that David had been hospitalized and had decided to submit on the determination of parental rights because he felt that it was in the children's best interest that he not oppose their adoption.

in activities and had, “through their actions, demonstrated that they have a commitment. And the new placement that he’s in has also, up to this point, demonstrated that.”

Sashital, whom the court deemed an expert on the issues of bonding and attachment, further testified that H.P. had told her therapist that she wanted to stay with the family she was placed with, which the therapist supported. H.P. did want to continue to have visits with appellant. Sashital did not believe it was in H.P.’s best interest to be returned to her mother because H.P. did not have a bond with her. H.P. also had many issues she needed to work through with her mother, and was “not even at a point where she wants to have a therapy session with her.”

At the conclusion of the hearing, the juvenile court found that appellant had “satisfied the first prong” of section 388 in that she had shown a change of circumstances and the court was “satisfied that her commitment is genuine,” and hopefully permanent. The court stated that returning the children to appellant “would serve the recommended outcome from Dr. Speicher [who had performed the bonding study] insofar as there is an identified bond between the siblings.” However, based on the children’s individual needs, the court observed that Dr. Speicher indicated that neither child had a bond with appellant on a par with the bond with David. Moreover, the court believed that “this relationship that Mother has with the two kids is in a negative and it is not at zero. That is to say, there would have to be significant work that would need to be done to bring it to zero and then go positive.” The court acknowledged that appellant’s “efforts should be praised,” but concluded that it would not be in the best interests of the children to return them to appellant.

During discussions with counsel following the court’s ruling, appellant’s counsel said appellant was “taking a no-contest position.” In addition, neither parent challenged the adoptability finding as to either child. David was hospitalized and was not present in court, but his counsel said that David had decided to withdraw his submission to the recommendation for adoption. At his counsel’s request, the court continued the section 366.26 hearing to August 7, so that David could be present.

At the August 7, 2012 hearing, David's counsel informed the court that David had suffered a stroke on July 17 and was still not well enough to attend the section 366.26 hearing. The court therefore continued the matter to August 27.

The section 366.26 hearing took place on August 27, 2012, at which time the parties stipulated that both children were adoptable. David was not present at the hearing due to health-related issues but, through his attorney, he withdrew his objection to the section 366.26 hearing.

Dr. Gloria Speicher, who had performed original and updated bonding studies, testified at the hearing. She observed that T.K. had "felt somewhat insecure and unstable through this entire process, because he's gone through so many changes." She believed that it was important to maintain visitation with David, but did not have the same concerns about T.K. maintaining contact with appellant, with whom he had a "poorly-established bond" and who was more like "an extended family member" to T.K.

According to Dr. Speicher, while both children could develop more trust in appellant through her being consistent and following through on her commitments, "it's not likely that their attachment to her is going to change dramatically." She described H.P.'s attachment to appellant as "ambivalent," with "a lot of anxiety about that relationship." T.K., who had a strong, positive attachment to David and H.P., had become more anxious due to the many disruptions in his life. She believed there were "a lot of positive things to be said about placing him with somebody that is known," but [t]he most important thing for that child . . . [has] to do with stability and consistency at this point."⁴

Dr. Speicher believed that T.K. "definitely needs to continue to see his sister," and that he would be best served by having continued contact with his parents. Nonetheless, she believed that "the most important thing that he could be afforded would be therapy"

⁴ When appellant's counsel's asked Dr. Speicher whether it would be more beneficial to T.K. to be placed with appellant rather than with a stranger, the court sustained the Department's objection, since return to appellant was no longer an option after the denial of her section 388 petition.

to help him to develop the relationship with his new foster mother. It was important for him to have “exposure to and consistency with his parents, but the amount of exposure to his relationships is not as important as the ability to begin to sort through his experiences of those relationships in a way that he can then feel more grounded in himself”

Dr. Speicher had learned that shortly after T.K. was moved to his new foster home, “he would hit himself and say, ‘I’m a bad boy,’ and ‘you’re going to leave me.’ ” She believed that his primary need was a sense of stability and continuity, which she hoped would be provided by adoption by his current caretaker. She described the benefits of T.K.’s current foster-adopt mother: “[S]he has some history of early childhood education, so she presents herself as being more prepared than the average parent with regard to understanding the needs of young children.” She also seemed to be responding appropriately to the special needs of T.K.

Dr. Speicher believed that H.P. would feel a loss if parental rights were terminated, but the most important thing for her was to continue working in therapy on the unresolved issues with her mother.

When asked for her opinion regarding whether appellant’s parental rights should be terminated, Dr. Speicher stated: “I think the primary need of both children at this point is stability and consistency in their life.” H.P. had developed an attachment to her foster-adopt parents, with whom she had lived for nearly two years, and “it would be probably not in her benefit to break that.” While T.K. did not have the same attachment to his new placement, “the most important thing for him at this point is some sort of stability and continuity. And the best of all worlds, you know, the children would be placed together. But it doesn’t appear to be possible. [¶] And in that regard, it’s probably in his long-term best interests . . . to have the opportunity to stay where he is and work that out. [¶] “I can’t say that terminating parental rights with the mother overrules the potential stability that he would gain in the adoption.”

In sum, Dr. Speicher believed that the least harmful alternative for both children was adoption. As to continued contact between the two children, Dr. Speicher stated that H.P.’s foster parents had demonstrated “a tremendously good understanding” of the

importance to H.P. of the relationship with T.K. T.K.'s foster-adopt parent had also expressed her understanding of the importance of maintaining contact and a desire to continue that relationship.

Lisa Conway-Hite, the state adoptions specialist assigned to H.P. and T.K.'s case, testified as an expert "in the field of adoption as a social worker." She testified that adoptable children who are not adopted could face several placement changes and the insecurity that comes from wondering if they will have to start over in a new placement. For a child who is placed in an adoptive home, but is not adopted, there is a high likelihood of a change in placement.

Conway-Hite further testified that there was no court order for sibling visitation between H.P. and T.K., and the Department was not arranging any sibling visits. Nonetheless, the children spent time together approximately three times a week, both during and after their weekly supervised visits with each parent, and also got together for outings or dinner with each other's foster-adopt families about once a week. She believed that it was very likely that the children would maintain an ongoing sibling relationship after adoption. Both foster-adopt families were willing to enter into a post adoption contract regarding continued sibling contact.

Conway-Hite knew of no alternative permanent plan other than adoption for either child. T.K.'s foster-adopt mother had contacted the local foster agency seeking a child to adopt. In Conway-Hite's experience, families who are looking to adopt a child do not always keep a child who cannot be adopted. She had asked H.P.'s caretakers whether they would consider a plan of guardianship for H.P., and they had said no. Finally, she had interviewed H.P. regarding her attitude about adoption. H.P. said that her first choice would be to live with David but, if that were not possible, she would like to be adopted by her current caretakers.

Monisha Sashital, the social worker who had been assigned to H.P. and T.K.'s case since about November 2011, testified that if parental rights were not terminated, the default plan would be long-term foster care. Children in long-term foster care often "bounce around" in many placements.

Sashital did not believe that termination of parental rights would decrease the amount of contact between H.P. and T.K., but she believed that if they were in long-term foster care, such contact would likely decrease. Presently, the children visited with each other a couple of additional days per week beyond the joint visitation with their parents. The two fost-adopt families had been getting together without the Department's involvement because they seemed to understand the importance of it.

At the conclusion of the hearing, the juvenile court found, with respect to the beneficial parent-child relationship exception to terminating parental rights, that appellant had maintained regular visitation and contact. The court also found, however, that appellant was "not successful in establishing that her relationship is of such a quality and strength that it outweighs the benefits of adoption."

With respect to the sibling relationship exception to adoption, the court noted that it had not considered the testimony regarding post-adoption sibling contact in making its decision. It then found that termination of parental rights would cause "some detriment" to the sibling relationship, but further found that, on balance, termination would be less detrimental than foregoing the benefit of adoption.

The court therefore proceeded to terminate parental rights and order the plan of adoption as the permanent plan.

On September 6, 2012, appellant filed a notice of appeal.

DISCUSSION

I. Appellant's Section 388 Petition

Appellant contends the juvenile court abused its discretion when it denied her section 388 petition after it concluded that changed circumstances did not warrant a finding that it would be in the children's best interests to return to her care.

Section 388, subdivision (a)(1), provides in relevant part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made . . ."

“If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held” (§ 388, subd. (d).)

“At a hearing on a motion for change of placement, the burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)). “A primary consideration in determining the child’s best interests is the goal of assuring stability and continuity. [Citations.]” (*Id.* at p. 317.)

We review the juvenile court’s denial of appellant’s section 388 petition for an abuse of discretion. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) As our Supreme Court has “warned: ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*Stephanie M.*, at pp. 318-319.)

In the present case, at the conclusion of the hearing, the juvenile court found that appellant had shown a change of circumstances, but concluded that it would not be in the best interests of the children to return them to appellant.

Appellant asserts that because maintenance of the sibling bond was essential to the emotional wellbeing of the two children and since they could live together if they both were returned to her, “she was the most attractive placement option in a less than perfect world.” She also asserts that “her success and demonstration of excellent parenting during visits” demonstrated that return to her care was in the children’s best interest.

The evidence shows, however, that despite appellant’s success at overcoming her addiction, her relationship with the children was, as the juvenile court stated, “in a negative” and that “significant work . . . would need to be done to bring it to zero and then go positive.” Appellant’s addiction and other issues had led to extreme neglect of her children, which had negatively affected them in various ways. In addition, she had already received family maintenance for some 18 months, until the children were removed from her house following her arrest.

At the time of the hearing on the section 388 petition, neither child had a healthy parental bond with appellant. Both children seemed to enjoy the visits and seemed comfortable with appellant. But, as Dr. Speicher noted, T.K. did “not demonstrate a strong and secure attachment to her,” experiencing her more as an extended family member, and H.P.’s attachment to her was “insecure/anxious and ambivalent.” H.P. also had many issues with her mother that she needed to work through, but she did not even feel ready to have therapy sessions with appellant.⁵

In addition, both children were in stable placements with foster parents who were committed to adopting them. H.P. had told her therapist that she wanted to stay with her foster family, which the therapist supported. Although T.K. had only been in his new placement for some six or seven weeks at the time of the hearing on appellant’s petition, he was developing emotional ties with his prospective adoptive mother, who was demonstrating good parenting practices and was very committed to adopting him. Moreover, the prospective adoptive parents were already facilitating regular contact between the children and had expressed a commitment to continuing such contact in the future.

⁵ This case is distinguishable from *Nahid v. Superior Court* (1997) 53 Cal.App.4th 1051, 1056-1058, on which appellant relies, in which an Iranian political refugee living in Iraq sent her two daughters to the United States to ensure their safety until she could join them here. The two daughters became dependents of the juvenile court after one of them was molested by an adult caretaker. When the mother was able to enter the United States several years later, her daughters expressed a desire to remain in their foster home and not reunify with their mother. (*Id.* at pp. 1059-1065.) The appellate court found, in light of, inter alia, the facts underlying the dependencies and the mother’s blamelessness with respect to the jurisdictional facts, the juvenile court had erred in setting a permanency planning hearing. (*Id.* at pp. 1068-1069.) The court concluded: “If ever a case called for reunification efforts, this is it. Mother rescued her children from the perils of war, in the process enduring a protracted separation from them. Yet the Department taxes her with failure to come to the United States sooner than she did despite evidence that it was not possible for her to do so.” (*Id.* at p. 1070.)

We find appellant’s attempt to analogize her “fight against years of being under the thrall of a powerfully addictive drug and her victory over it and eventual availability to her children” with the mother’s situation in *In re Nahid* completely unpersuasive.

In sum, the juvenile court did not exceed the bounds of reason when it found that appellant had not satisfied her burden of showing by a preponderance of the evidence that changed circumstances made a return to her care in the best interests of H.P. and T.K. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Rather, the court reasonably concluded that the children’s interest in stability and continuity would not be best served by a return to appellant. (See *id.*, at pp. 318-319.) Thus, while appellant is to be commended for her achievements in attaining and maintaining sobriety, there was no abuse of discretion. (*Ibid.*)

II. *Applicability of the Beneficial Parent-Child Relationship and Sibling Relationship Exceptions to Adoption*

Appellant does not claim that H.P. and T.K. are not adoptable. Rather, she contends the juvenile court improperly concluded that the beneficial parent-child relationship and sibling relationship exceptions to adoption did not apply.

Although adoption is the preferred plan of care once reunification services have been terminated, the Legislature has provided various exceptions to the general rule of adoption, which apply only if the juvenile court finds by clear and convincing evidence “compelling reason[s] for determining that termination would be detrimental to the child.” (§ 366.26, subdivision (c)(1)(B).) The parent has the burden of proving the applicability of any of these exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) We review the juvenile court’s determination regarding whether an exception applies to determine if it is supported by substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; but see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [finding abuse of discretion standard of review appropriate, but noting that practical differences between abuse of discretion and substantial evidence standards of review “are not significant”]; see also *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 [applying substantial evidence standard of review to question of whether parent has shown the existence of a beneficial relationship and abuse of discretion standard to question of whether that relationship is a compelling reason for finding detriment to child].)

A. Beneficial Parent-Child Relationship Exception

Pursuant to section 366.26, subdivision (c)(1)(B)(i), the juvenile court will not terminate parental rights if it finds, by clear and convincing evidence, that “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

Here, the juvenile court found that appellant had maintained regular visitation and contact, but that she was “not successful in establishing that her relationship is of such a quality and strength that it outweighs the benefits of adoption.”

In *In re Autumn H.*, *supra*, 27 Cal.App.4th 567, 575 the appellate court discussed the beneficial parent-child relationship exception to adoption: “In the context of the dependency scheme prescribed by the Legislature, we interpret the ‘benefit from continuing the [parent-child] relationship’ exception 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.

“Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (Accord, *In re C.F.* (2011) 193 Cal.App.4th 549, 558-559 [parent-child beneficial relationship exception is not established “by merely showing the child derives some measure of benefit from maintaining parental contact”].)

In the present case, the evidence showed that it was David, not appellant, with whom H.P. and T.K. had a positive, strong bond. Although the children seemed to enjoy their visits with appellant, as previously discussed (see pt. I, *ante*), neither child had a solid, healthy parental bond with her. (See *In re Jason J.* (2009) 175 Cal.App.4th 922, 938 [“A friendly relationship . . . ‘is simply not enough to outweigh the sense of security and belonging an adoptive home would provide’ ”].) H.P., who wished to be adopted by her current caretakers if she could not live with David, had an anxious and ambivalent attachment to appellant. Nor did T.K. demonstrate a strong, secure attachment to her. Neither relationship reflects the sort of “significant, positive, emotional attachment from child to parent” that would warrant a deviation from the statutory preference for adoption at this stage of the proceedings. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

In addition, the evidence showed that both children urgently needed the stability and continuity that adoption by their current caretakers would provide. Following her updated bonding study, Dr. Speicher testified at the section 366.26 hearing that “the primary need of both children at this point is stability and consistency in their life.” She noted H.P. had lived with her fost-adopt parents for nearly two years and was attached to them. Also, while T.K. did not yet have the same attachment to his new caretaker, Dr. Speicher believed that it was in T.K.’s long-term best interest to stay where he was.

In sum, substantial evidence supports the juvenile court’s conclusion that appellant had not satisfied her burden of showing that the relationship between her and the children promotes the wellbeing of either child “to such a degree as to outweigh the well-being [each] child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)⁶

B. Sibling Relationship Exception

Pursuant to section 366.26, subdivision (c)(1)(B)(v), the juvenile court will not terminate parental rights if it finds, by clear and convincing evidence, that “[t]here would

⁶ The result would be the same under an abuse of discretion standard of review. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

be substantial interference with a child's sibling relationship, taking into consideration 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."

Here, the juvenile court found that termination of parental rights would cause "some detriment" to the sibling relationship, but further found, on balance, that termination would be less detrimental than foregoing the benefit of adoption.

In *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952, the appellate court explained the two-step process for deciding whether the sibling exception applies: "Under [former] section 366.26, subdivision (c)(1)(E)[now section 366.26, subdivision (c)(1)(B)(v),] the court is directed first to determine whether terminating parental rights would substantially interfere with the sibling relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (Fn. omitted; accord, *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017-1018.) If the court finds that a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide. (*In re L.Y.L.*, at p. 952; accord, *In re Jacob S.*, at pp. 1018-1019.)

In the present case, given the evidence of the strength and importance of the bond between H.P. and T.K., we find reasonable the juvenile court's determination of detriment. We also find, however, that substantial evidence supports the court's

conclusion that the benefit of adoption clearly outweighed the benefit of the two children living together in a less stable situation, such as foster care. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

As previously discussed (see pt. II.A, *ante*), Dr. Speicher believed that “the primary need of both children at this point is stability and consistency in their life” and that it was in both children’s best interest to be adopted by their current caretakers. Dr. Speicher also observed that H.P.’s fost-adopt parents had shown a “tremendously good understanding” of the importance of the sibling relationship and that T.K.’s fost-adopt parent had also expressed her understanding of the importance of maintaining contact between the siblings, along with a desire to continue their relationship.

Lisa Conway-Hite, the state adoptions specialist who testified at the section 366.26 hearing as an expert in the area of adoption, testified that, for a child who is placed in an adoptive home but not adopted, there is a high likelihood of change of placement. She also testified that, even without a court order for sibling visitation, the two children spent time together regularly and she believed it was very likely that they would maintain a sibling relationship after adoption. Both fost-adopt parents had expressed a willingness to enter into a post-adoption contract for continued sibling contact.⁷

Monicha Sashital, the assigned social worker, also testified that the children were visiting with each other a couple of days a week beyond the joint visits they had with their parents, without any Departmental involvement. She did not believe that termination of parental rights would decrease the amount of contact between the two

⁷ Appellant argues that it is speculative to assume that sibling visits will continue once the children are adopted. The evidence shows, however, that both sets of fost-adopt parents understand how crucial such regular visits are to both children’s ability to thrive and have expressed a desire for the visits to continue. We expect that the children’s counsel will ensure that arrangements for post-adoption sibling contact are formalized during the adoption proceedings and that these significant sibling bonds will be protected and supported. (See § 366.29.) We also observe that the evidence supports the juvenile court’s finding that the sibling relationship exception would not apply even without any consideration of the expected post-adoption sibling contact.

children, but thought that the contact would decrease if they were not adopted and were placed in long-term foster care.

Appellant asserts that it is likely that she will soon be able to successfully petition to have the children returned to her care, which would allow them to live together. However, given the evidence of the lack of a positive parent-child bond and the damage to her relationship with both children, any assumption that the children could soon be returned to her care would be based solely on speculation. As Dr. Speicher testified, the children’s attachment to her was “not likely . . . to change dramatically,” and they do not have time to wait and see what happens. They both urgently need the stability and continuity that adoption will provide. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

In conclusion, substantial evidence supports the juvenile court’s finding that the sibling relationship exception to adoption does not apply.⁸

DISPOSITION

The juvenile court’s order terminating appellant’s parental rights with respect to both H.P. and T.K. is affirmed.

Kline, P.J.

We concur:

Lambden, J.

Richman, J.

⁸ The result would be the same under an abuse of Discretion standard of review. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)