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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re K.W. and M.F., Persons Coming
Under the Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A136490

(Humboldt County
Super. Ct. Nos. JV100101, JV100102)

I. INTRODUCTION

C.S. (mother) appeals from the juvenile court’s denial of her Welfare and Institutions Code section 388¹ petition for modification and from the order terminating her parental rights to her daughters K.W. (now age eight) and M.F. (now age six).² Mother contends that the juvenile court erred in denying her section 388 petition because she met her burden of establishing changed circumstances and that additional

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

² Although separate pleadings by the parties and reports by the Department were filed for each minor, they are largely identical except for information specific to each child. Because the issues concern identical facts as to each child, in the interest of clarity, we will refer to documents filed for each child as singular.

reunification services were in the children's best interests. She also contends that her parental rights should not have been terminated because of the beneficial parent-child relationship she has with her daughters. (§ 366.26, subd. (c)(1)(B)(i).) Finding no error, we affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND³

A full recitation of the facts preceding the juvenile court's termination of reunification services is not necessary to our present opinion, but can be found in our prior opinion (*In re K.W. et al.* (July 3, 2012, A134967) [nonpub. opn.]). As relevant here, then-six-year-old K.W. and three-year-old M.F. were taken into protective custody on July 14, 2010, when police responded to a call about a fight at mother's home in Fortuna (the Fortuna house). The Fortuna house had no running water, no working stove, no edible food, and was rat-infested. The bathtub and toilet were overflowing with garbage and feces, and there was a strong smell of urine in the children's bedrooms.

The Humboldt County Department of Health and Human Services (Department) filed a section 300, subdivision (b), petition as to each child, alleging substantial risk of physical harm or illness due to mother's willful or negligent failure to provide them with adequate food and shelter and mother's substance abuse or mental illness, which rendered her unable to care for the children.

In a report prepared for the disposition hearing, Department social worker Alison Phongsavath stated that the Department had previously received nine referrals regarding mother since August 2005, five of which were assigned for investigation. All five alleged neglect of one or more of mother's four children.

Phongsavath reported that mother appeared to be in denial. Mother described conditions at the Fortuna house as not that bad and blamed her roommate and limited resources for the condition of the house. Mother agreed to drug test but had not yet done so.

³ Mother previously sought review of the juvenile court's orders terminating family reunification services and setting the matter for a permanency planning hearing. We affirmed those orders in an unpublished decision.

Phongsavath learned that mother had not paid rent in approximately two years and would soon have to vacate the residence. The social worker also noted, during a visit in late August 2010, a mound of toilet paper and tissue on the side of the Fortuna house, a bedroom blocked off by clutter and garbage, still no running water, and four broken windows. Mother stated that she was unaware of the broken glass or feces until the social worker pointed them out.

At the hearing, the court adopted the Department's recommended findings and orders including a case plan that required mother to (1) obtain a mental health assessment and follow any recommendations; (2) access counseling services to assist with housing; (3) attend a parenting program; (4) attend budgeting workshops to learn how to manage resources; and (5) periodically submit to random drug testing. The court also ordered supervised visitation.

In a report prepared for the six-month review hearing, Phongsavath reported that mother had not found safe and stable housing, and did not want to participate in transitional housing. She had not addressed her mental health issues or attended counseling sessions, but she had completed a parenting class. Mother telephoned and visited the children, but visits had to be moved from the foster home because of mother's conduct. Mother arrived late for visits and refused to leave when visits were scheduled to end. Although mother had repeatedly accused her ex-husband/current boyfriend of molesting the girls, she brought him to a visit at the foster home.

Both the Department and the children's Court Appointed Special Advocate (CASA) recommended six more months of reunification services. After a hearing on April 19, 2011, the court found that reasonable services had been provided and that mother's progress on her case plan was minimal. The court ordered six more months of reunification services.

At an interim review hearing on June 7, 2011, counsel for the Department informed the court that mother tested positive for methamphetamines on April 15, 2011. The court ordered an alcohol and other drugs (AOD) assessment.

In a report submitted for the 12-month hearing, the newly-assigned social worker, Alyssa Bowles-Martinez, stated that mother had made significant progress in the past six weeks and was beginning to take responsibility for her actions, but she was still homeless.

The report documented evidence that mother was using drugs, including her testing positive for methamphetamines on April 15, 2011; her refusal to drug test on April 19, 2011; her failure to drug test in May before a visit with the minors; and the opinion of a social worker at the Multiple Assistance Center who reported that mother appeared to be under the influence of methamphetamines at an intake interview on June 10, 2011. Mother blamed diet pills for her problems with drug testing.

In late June, mother completed both an AOD assessment and a mental health assessment. She did not meet the criteria for treatment or services. Drug tests on June 20 and 28 were negative. Mother consistently visited the minors and they continued to do well in their placement. Mother felt that the main barrier preventing reunification was poverty. She was looking for housing and a job, but needed more time. The Department recommended six more months of services and that visitation be unsupervised. CASA concurred with providing six more months of services, but was quite concerned about mother's possible drug use and disagreed with unsupervised visitation.

At the 12-month review hearing in August 2011, the court found mother had made adequate progress on her case plan and that she had demonstrated the capacity and the ability to complete the objectives. The court ordered six more months of services and that visitation be unsupervised.

In the report prepared for the 18-month hearing, social worker Bowles-Martinez stated that mother was still homeless. Of 11 drug tests from September to November 2011, mother tested positive twice for methamphetamines. Mother denied drug abuse and claimed the positive tests were due to her allergy medication and/or diet pills.

Bowles-Martinez saw mother's homelessness as the only barrier to reunification. She also opined that mother and the children were bonded and it would be detrimental to

sever that bond by terminating parental rights. She recommended a permanent plan of guardianship with a relative.

On January 24, 2012, Bowles-Martinez submitted an addendum to her 18-month status review report stating that mother had found a two-bedroom apartment with a roommate who planned to move out in a few months; the maternal grandmother was paying mother's \$350 per month rent. The Department recommended returning the minors to mother with family maintenance services.

Counsel for the minors objected to the Department's recommendation of reunification, as did CASA. Counsel noted a number of unresolved issues including positive drug tests; mother's failure to submit to hair follicle testing despite being ordered to do so by the court; that it was unclear whether mother had a valid driver's license; that mother had been living at the Fortuna house until very recently and still stored her belongings there; that it was unclear whether mother could pay rent and utilities for the new apartment; the roommate's background, about which nothing was known; an incident in which mother left the minors at a motel with a man alleged to be involved with illegal drugs; and a recent charge against mother for possession of a controlled substance. Mother had not drug tested since November 2011.

After hearing testimony and considering reports submitted by the Department and CASA, the juvenile court terminated reunification services and referred the matter for a section 366.26 hearing. Mother filed a writ petition challenging the court's findings that return of the minors would expose them to a substantial risk of harm and ordering that visitation be supervised. In an unpublished opinion, this court denied mother's petition on the merits on July 3, 2012. (*In re K.W. et al.* (July 3, 2012, A134967) [nonpub. opn.]
Section 366.26 Proceedings and Mother's Section 388 Petition)

On May 24, 2012, the Department submitted its section 366.26 report. The new social worker assigned to the case, Greg Geare, informed the court that State Adoptions had conducted an adoption assessment and concluded that the children were adoptable. The current care providers were identified as a concurrent placement. Geare stated that the prospective adoptive parents had formed a strong bond with the children, "[had]

consistently provided them with a safe and nurturing home environment,” and wanted to become their adoptive parents. With respect to visitation, Geare reported that mother and the maternal grandmother had repeatedly told the minors that they would not be adopted and would be returned to them. Geare opined that this was detrimental to the children and stated that recent visits had become more closely supervised. The Department recommended termination of parental rights to free the minors for adoption.

The adoption assessment was attached to the social worker’s report. Adoptions specialist Beverly Fontaine observed that the children were doing well in their placement. Fontaine described the current care providers as “potential adoptive parents . . . who have provided a loving, secure home for the two children since December 23, 2010.” Fontaine also wrote that the foster parents’ “love and commitment to the children” was “exceptional.” She reported that the children had an “age-appropriate understanding of the meaning of adoption” and that they wanted to be adopted “so that they will not have to ‘worry about going anywhere else’ and can ‘settle in’ where they are.” Fontaine also reported that the foster parents had previously adopted another child and that there were no identified impediments to the approval of their home as an adoptive placement. The adoptions specialist recommended that the court terminate mother’s parental rights and order a permanent plan of adoption.

On August 2, 2012, mother filed a petition pursuant to section 388 as to both children by which she sought either the return of the children to her custody or the reinstatement of reunification services. Mother alleged that she was attending NA/AA (Narcotics Anonymous/Alcoholics Anonymous) meetings, was enrolled in the Healthy Moms program, had secured safe and stable housing in Eureka, and that she had maintained visitation and a bond with the children. In support of the petition, mother attached her declaration stating that, since March 8, 2012, she had attended “approximately fourteen (14) NA/AA sessions.” Mother also attached a document indicating that she picked up an application from the Healthy Moms program on July 30,

2012, and had an appointment on August 3, 2012. The court ordered a hearing on the petition.⁴

On August 17, 2012, the Department submitted a report in response to mother's section 388 petition. Geare wrote that mother had not addressed the problems that led to the removal of her children including her drug use, her failure to maintain a safe home, and her failure to comply with other requirements of her case plan. He stated that mother had little insight into her problems and had not resolved them sufficiently to have the children returned to her care. Addressing mother's assertions in the petition, he stated that the Department had received no information verifying that mother had secured safe and stable housing, that she was attending AA/NA meetings, or that she was enrolled in Healthy Moms. Geare also reported that the children recently disclosed that they had been exposed to inappropriate sexual behavior during visits. The children were in counseling for the trauma caused by these events. He wrote that "mother has failed to admit or grasp the seriousness of what occurred." Geare concluded that it would be "detrimental for the children to be returned to [mother's] care," that it was "in their best interest to be adopted by their current care providers," and that the "bond between the children and mother [was] insufficient to overcome the children's need for permanency."

CASA submitted a report and recommendations for the section 388 petition/section 366.26 hearings, concurring in the Department's conclusions and recommendations. CASA reported her concern that, although visits were supervised, mother had taken the minors into the bathroom and told them that they would not be adopted and that she would get them back. CASA observed that this caused instability and stress for the children, and they had a difficult time after visits. The children's counseling sessions had been scheduled to occur after visits to help the minors process their feelings. CASA was also troubled by reports that mother had disclosed to the foster

⁴ The court ordered that documentary evidence and witness testimony be presented together for the hearing on the section 388 petition and the section 366.26 hearing, but that argument be presented separately.

parents' neighbor that she knew people who could cause physical harm to the foster family.

CASA observed that the children were bonded with the foster parents; they were healthy and thriving, both physically and socially. K.W. had improved academically and was now at grade level for reading and math; M.F. was doing well with speech therapy, which she had not received prior to the foster placement. CASA recommended that parental rights be terminated and that a permanent plan of adoption be ordered.

On August 29, 2012, the court conducted a hearing on mother's section 388 petition in conjunction with the section 366.26 hearing. The court admitted the CASA report, the Department's section 366.26 report, and the Department's report in response to mother's section 388 petition.

Mother testified that, since the 18-month review hearing in March 2012, she had maintained employment with her sister, usually four or five days a week, and had maintained stable housing in Eureka. In response to questions from counsel for the prospective adoptive parents/de facto parents,⁵ mother admitted that she had not been staying at the Eureka residence regularly. She primarily stayed at the Fortuna house or at the home of her older children's father. She stated that she was in the process of moving all of her things out of the Fortuna house and into storage.

Mother testified that she had maintained sobriety since the March 8, 2012, review hearing and that her case plan requirements had been complete "for awhile." She stated that she attended NA/AA meetings three times a week to continue her progress in substance abuse services, and that she attended a prayer group once or twice a week. In response to questions from counsel for the de facto parents, mother admitted that she had attended a total of 14 NA and AA meetings since the March review hearing.

Mother also testified that during visits with the minors, she participated in activities such as reading books, coloring, talking, and counting. She had gone to the

⁵ The juvenile court granted the care providers de facto parent status on December 21, 2011.

bead store a few times and the girls made necklaces. Mother said the girls were happy and excited to see her at visits; at the end of visits, they were sad and would cry and cling to her.

When asked how she provided for her children's needs, mother responded, "[b]y listening to them, and if there is a problem, try to take care of it to get it remedied. I don't know with their physical well-being all day." Mother testified that the minors were emotionally attached to their two older half-siblings in that they would do activities together and read books together, and the minors would look to their siblings for comfort and security. Mother believed that ongoing contact between the four children was in the minors' best interest because they all missed each other and were used to seeing each other on birthdays, holidays, and events.

Social worker Geare testified that the minors disclosed in late June that they were exposed to inappropriate sexual activity by their siblings. The allegations described conduct that happened a number of times over a long period of time. Mother had not been present during these incidents.

The maternal grandmother, S.F., testified that mother's "whole life is her daughters." In her opinion, mother acted in a parental role "100 percent," and was "100 percent affectionate with her children." When asked whether the minors derived benefit from continued contact with mother, S.F. answered, "100 percent." When mother and the minors are together, S.F. stated that "they cook . . . , they clean the house, they read stories, a lot of coloring, interacted like moms and children do." S.F. also opined that the minors had good relationships with their older siblings and benefited from being able to see them.

In response to questions from counsel for the minors, S.F. testified that she had lived her whole life in Eureka. Then, about four years ago, she sold her house in Eureka and bought a residence in a gated community in Las Vegas. She was currently staying with her daughter, mother's sister, in Eureka, awaiting the court's decision in this matter. S.F. testified that she was waiting for the court to give her custody of the children.

After hearing argument on the section 388 petition, the court found that, although there was some evidence of changing circumstances, mother had not changed the patterns that brought the case before the court and it was not in the children's best interests to delay permanence in the case. The court denied the petition.

After hearing argument on permanency planning pursuant to section 366.26, the court found, by a standard that was "above clear and convincing," that the children were likely to be adopted. Regarding mother's argument that her parental rights should not be terminated because of the beneficial relationship she maintained with the minors, the court found that mother had not established the beneficial parental relationship exception. The court cited evidence that mother's communications with the children regarding the potential outcome of the case were detrimental to the children and made it "hard for the children to transition." The court also noted that the prospective adoptive family had initially been interested in an open adoption until contact with the biological family caused emotional harm to the children. Regarding the beneficial sibling relationship exception, the court found, based on the evidence presented, that that exception did not apply. The court terminated mother's parental rights and ordered adoption as the permanent plan.

Mother filed a timely notice of appeal.

III. DISCUSSION

A. *Denial of the Section 388 Petition.*

Mother contends that the juvenile court abused its discretion in denying her section 388 petition because she established that her circumstances had significantly changed and the modification would have been in the children's best interests.

Section 388 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 circumstances or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . ." (§ 388, subd. (a)(1).) Section 388 allows the juvenile court to modify an order if a party establishes, by a preponderance of the evidence, that changed circumstances or new evidence exists and

the proposed change would promote the child's best interest. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The burden of proof is on the party bringing the petition to show that the proposed change is in the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Section 388 provides a means for the court to consider a legitimate change of circumstances, even at the permanency planning stage, that may justify a change to a prior order. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) However, “[a]fter the termination of reunification services, a parent’s interest in the care, custody and companionship of the child is no longer paramount. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) Rather, at this point, the focus shifts to the needs of the child for permanency and stability. (*In re Marilyn H.* [, *supra*,] 5 Cal.4th [at p.] 309.)” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) Moreover, “[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529; § 388, subd. (b).) Whether a prior order should be modified rests within the discretion of the juvenile court and its determination will not be disturbed on appeal absent a clear abuse of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318; *In re Kimberly F., supra*, 56 Cal.App.4th at p. 522.)

The juvenile court did not abuse its discretion in determining that mother did not present evidence of changed circumstances sufficient to warrant changing its order terminating family reunification services. At best, she presented evidence that suggests her circumstances may have been changing, but she failed to show that the problems that led to the children’s dependency, primarily her housing situation and her substance abuse problem, had been resolved. (See *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610 [mere showing of “changing” circumstances is not enough]; *In re Edward H.* (1996) 43 Cal.App.4th 584, 592 [a “changed circumstance” requires changing the court’s order because the problems that led to the child’s dependency have been resolved].)

Mother testified at the hearing that she maintained stable housing in Eureka, but admitted on cross-examination that she stayed mainly at the Fortuna house and at the home of her older children’s father. Mother also testified that she was in the process of

transferring her things from the Fortuna house into storage. Further confusing the housing issue is mother's brief to this court, in which she argues that she "remedied [her housing] problem by moving into a new apartment which had been inspected by a social worker from the Department and met safety standards." However, the apartment referred to is the one mother found in Carlotta on the eve of the 18-month review hearing. There is no indication in the record that she ever moved into this apartment, and no evidence that her housing situation was stable and safe at the time of the hearing on the petition.

As evidence of changed circumstances with respect to her substance abuse problem, mother testified at the hearing that she attended NA or AA meetings three times a week, but admitted on cross-examination that she had attended only 14 meetings from March to August 2012. She testified that she had enrolled in the Healthy Moms program, but documentation from the program showed only that she picked up an application on July 30, 2012.⁶ There was no indication that mother completed the application, attended her appointment on August 3, 2012, or otherwise pursued involvement in the program. In her brief to us, she contends that she "completed all other aspects of her case plan which included a substance abuse assessment and a mental health evaluation." Once again, her brief cites evidence prior to the 18-month review hearing. On this record, the juvenile court reasonably could reject mother's argument that her circumstances had changed.

Moreover, mother failed to show that granting the petition and returning the children to her custody or continuing reunification services was in the children's best interests. During the reunification period, parent and child share a fundamental interest in reuniting the family. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697.) Once reunification efforts cease, however, and the case progresses to permanency planning at a section 366.26 hearing, the primary consideration in determining the child's best interest

⁶ We observe that this date was three days before mother filed her section 388 petition.

is assuring continuity and stability for that child. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Mother's argument focuses entirely on the strength of the children's bond to her. She cites the children's note and pictures from December 2011 stating that they missed mother and wanted to be with her. She also cites status review reports dated August 9, 2011, January 10, 2012, and February 7, 2012, in which social worker Bowles-Martinez noted that the children were bonded with mother. Finally, mother cites the maternal grandmother's testimony at the hearing.

There is no dispute that the children were bonded with mother and had a loving relationship with her. The record also contains ample evidence of the children's attachment to their prospective adoptive family, as well as evidence that mother may have attempted to prevent or interfere with any such bonding by repeatedly telling the children that they would not be adopted and would be returned to her. In finding the children's best interests would not be served by granting the petition, the court cited mother's "competing and confusing messages" to the children, and was troubled by mother's inability to "put her emotions aside during visits [in order] to support [them]."

Under these circumstances, we find no abuse of discretion by the juvenile court in denying the petition. Mother did not establish changed circumstances within the meaning of section 388, nor did she demonstrate that returning the children to her custody or continuing reunification services and delaying a permanent plan for the children was in their best interests.

B. Termination of Parental Rights.

Mother contends that the juvenile court erred in terminating her parental rights because she established the exception to termination set forth in section 366.26, subdivision (c)(1)(B)(i), for a beneficial parent-child relationship. We find no error in the juvenile court's determination that mother failed to establish the applicability of this exception.

"Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for permanency and stability. [Citation.] A section 366.26 hearing

is designed to protect these children’s compelling rights to have a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. [Citation.]” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) When the court finds the child is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a “compelling reason for determining that termination would be detrimental to the child due to one or more” of the circumstances specified in the statute. (§ 366.26, subd. (c)(1)(B); *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” “ [T]he burden is on the party seeking to establish the existence of [the exception] to produce that evidence.’ [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

Case law is divided as to the correct standard of review of an order determining the applicability of a statutory exception to termination of parental rights. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*) [applying the substantial evidence standard]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [applying the abuse of discretion standard]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [applying substantial evidence standard to whether the beneficial parent-child relationship exists; applying abuse of discretion standard to whether that relationship provides a compelling reason to apply the exception].) The “practical differences” among these standards of review are not significant (see *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351), and, on this record, our conclusion would be the same under any of these standards.

As we have already stated, it is undisputed that mother maintained regular visitation and a loving bond with the children, the “regular visitation and contact” prong of the exception. However, the attachment of the children to the parent does not alone suffice to establish the beneficial parent-child exception under section 366.26, subdivision (c)(1)(B)(i).

The “benefit” prong of the exception requires the parent to prove a parent-child relationship that “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.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

“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., supra*, 203 Cal.App.4th at p. 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.” (*Autumn H., supra*, 27 Cal.App.4th at pp. 575-576.)

Mother relies primarily on *In re Scott B.* (2010) 188 Cal.App.4th 452 (*Scott B.*) in contending that she had a beneficial parental relationship with the children. According to mother, *Scott B.* and the instant case contain “many similarities,” and a similar result, legal guardianship, should obtain. We disagree.

Scott B. involved a developmentally disabled and emotionally fragile 11 year-old who had been receiving excellent care for two years from a foster parent who wished to adopt him. The juvenile court terminated parental rights, but the appellate court reversed, concluding that the beneficial parent-child relationship exception should have been applied. The appellate court ordered legal guardianship rather than adoption as the permanent plan, and expressed hope that the fost-adopt parent would understand and continue to care for the minor. The appellate court recognized that, although it might not ever be in Scott's best interest to be returned to his mother's care, he had a very strong emotional bond with her, she provided stability in his life, and given his precarious emotional state, and his history of running away and regressing when under stress, there was a very good chance that he would experience a severe setback if visitation with his mother did not continue. (*Scott B.*, *supra*, 188 Cal.App.4th at pp. 471-472.)

Mother's attempt to analogize this case to *Scott B.* is strained at best. Mother points to evidence in the record that previous social worker Bowles-Martinez repeatedly stated in her reports that the children were significantly bonded to her. Mother also cites drawings by the minors from December 2011 expressing sadness over being separated from her. Further, it is true that the minors had been in mother's custody until their removal (when K.W. was six and M.F. was three), they had an emotional bond with mother, and a foster family wished to adopt the minors, as in *Scott B.* However, the facts in *Scott B.* that resulted in application of the exception to termination were highly unusual and unique to that case: the strength of the bond between Scott and his mother, Scott's cognitive and psychological condition, and the real threat to his well-being if visitation were discontinued.

Here, there was ample evidence in support of the juvenile court's determination that this was not a beneficial parental relationship within the meaning of the statute. At the time of the section 388/section 366.26 hearings in August 2012, the minors had been out of mother's custody since July 2010, some 25 months. In finding the exception inapplicable, the juvenile court observed that, earlier in the proceedings, the foster family had been interested in an open adoption, but that had changed when it later appeared that

contact with the biological family was causing emotional harm to the children. The court referred to evidence that mother and the maternal grandmother had repeatedly told the minors that they would not be adopted and that mother would get them back, communications that had caused the minors distress and had interfered with their ability to transition. The record also contained reports from the social worker and CASA describing recent disclosures by the minors that, during visits at the maternal aunt's house, they were exposed to inappropriate sexual behavior and were presently in counseling for the trauma caused by those incidents. The social worker reported that, although mother and the aunt were not present during these incidents, mother "failed to admit or grasp the seriousness of what occurred."

The children were well-adjusted and thriving in their prospective adoptive home. Their interest in permanence and stability at this stage of the proceedings was paramount, and the juvenile court reasonably found that that interest would be best served by adoption. Under all the circumstances, we conclude the court did not err in determining that the beneficial parent-child relationship did not apply. Although mother maintained an emotional bond with the children, it was not unreasonable for the court to conclude that this relationship did not promote the children's well-being to such an extent that it outweighed the benefit the children would gain in a secure, permanent home with new, adoptive parents. (See *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

IV. DISPOSITION

The orders appealed from are affirmed.

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.