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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CLAUDIA G.,

Defendant and Appellant.

A137734

(Alameda County
Super. Ct. No. OJ1015257)

Claudia G. (formerly Claudia G. and appellant) appeals from the juvenile court’s order, pursuant to Welfare and Institutions Code section 366.26,¹ terminating her parental rights with respect to her daughter Alondra S. (now nine years old). Appellant contends the juvenile court improperly found that she had failed to establish the applicability of the beneficial parent-child and sibling relationship exceptions to adoption. We shall affirm the juvenile court’s order.

FACTUAL AND PROCEDURAL BACKGROUND

On July 26, 2010, the Alameda County Social Services Agency (the Agency) filed an original petition, pursuant to section 300, subdivisions (b), (d), (g), and (j), in which it

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

alleged that appellant had failed to protect Alondra, then five years old, from sexual abuse by appellant's boyfriend. The petition further alleged that Alondra was at risk of abuse because appellant had not protected Alondra's sister, M.S., then 10 years old, from sexual abuse by appellant's boyfriend.²

On July 27, 2010, the juvenile court ordered Alondra, who had been taken into protective custody and placed in an emergency foster home, retained.

In the jurisdiction/disposition report filed on August 9, 2010, the social worker reported that appellant "has not yet come to fully recognize or acknowledge that her live-in boyfriend . . . has sexually abused Alondra and her sibling, [M.S.]. Likewise, the mother does not appear to understand the risk she placed her daughters under by continuing to live in the boyfriend's home" The social worker reported that Alondra has an older brother, J.S., who was in long-term foster care. Her sister M.S. was now living with the maternal grandmother.

The social worker recommended that Alondra be made a dependent of the court and placed out of appellant's care. She further recommended that appellant be offered reunification services. She reported that appellant agreed with these recommendations.

On August 26, 2010, the juvenile court adjudged Alondra a dependent child of the court, ordered that she remain in an out-of-home placement, and further ordered that reunification services be provided.

In the status review report filed on February 3, 2011, the social worker reported that Alondra had been placed in the home of a non-relative extended family member on December 2, 2010. The social worker was supervising weekly visits between appellant and Alondra, and reported that appellant "engage[d] well during the visits." Appellant was participating in parenting classes and individual therapy. She had been cooperative with the social worker and had completed a psychological evaluation. The evaluator found that appellant suffered from major depression and was still "struggling with many

² The petition also alleged that the "whereabouts, circumstances, and abilities" of Alondra's alleged father, Cesar S., to care for her were not known.

psychiatric and emotional issues that overwhelm her coping and that place her at risk for entering dangerous and dysfunctional relationships (i.e., homelessness, financial stressors, etc. . . .). Moreover, in light of [her] inconsistencies vis-à-vis the sexual molestation of her daughters by [her boyfriend], it is still necessary for [her] to explore her own decision-making and her own contribution to placing her daughters at risk of such victimization.”

At the February 23, 2011 six-month review, the juvenile court found that appellant had made partial progress with her case plan, and ordered that reunification services continue for an additional six months.

In the status review reported filed on August 8, 2011, the social worker reported that Alondra had been placed in a new foster home on June 13. She had made a positive adjustment to the home and her new foster parents had expressed a willingness to adopt her if a permanent plan were needed. Alondra had enjoyed spending spring break in Southern California with her sister, M.S., and their maternal grandmother.

Appellant had begun unsupervised Saturday visits with Alondra in March 2011. Starting in June, the visits had become inconsistent. Appellant had canceled several times “due to her health.” The social worker also reported that, “[w]hen [appellant] states that she does not want to reunify with Alondra, she . . . cancels their visit for that week.” Appellant had reported that she was homeless, and that she needed money and housing. She was “planning to become pregnant and if that happens, she stated that she does not want to know anything about Alondra and her other children. [She] reports that she need[s] to have another baby so that she will not feel lonely and [will] feel loved.”

Appellant had completed two parenting classes and was participating in individual therapy, but had not made progress in meeting Alondra’s safety needs or acknowledging the issues that had caused the dependency. Nor was she compliant with her family therapy. She had misrepresented her living situation (she was renting a closet), and suffered from suicidal ideation. The social worker recommended that reunification

services be terminated and that Alondra “be maintained in a planned permanent living arrangement with the goal of adoption.”

In addendum reports, filed on September 1 and October 20, 2011, the social worker reported that Alondra was developmentally on target and doing very well in school. Appellant had been the victim of domestic violence by her new boyfriend, and had told Alondra about the incident. Alondra told the social worker that “when she grows up she wants to be a police officer to protect people from danger and that she does not want to get married because she does not want to get hurt.” Appellant and Alondra had started family therapy, although appellant had missed several sessions. The therapist questioned appellant’s present ability to be a primary care giver, but believed that Alondra would benefit from continuing a relationship with her.

At the 12-month review on November 16, 2011, the juvenile ordered the termination of reunification services and set the matter for a section 366.26 hearing.

In the section 366.26 report filed on February 29, 2012, the social worker reported that Alondra’s half brother, J.S., had been made a court dependent in 2008 after appellant had threatened to kill him with a knife. After his parents failed to reunify, J.S. had been placed in long term foster care.³ Alondra’s half sister, M.S., was removed from appellant on January 4, 2012, and placed in the same foster home as Alondra. The Agency was recommending permanency planning for M.S., with no reunification services.

The social worker further reported that Alondra, “a friendly and engaging child,” had been found to be adoptable. Her current foster parents, with whom she had lived for nine months, were “willing and able to adopt her.” They “strongly prefer adoption as a permanent plan. They do not want legal guardianship, as they want to have control of visitation if the mother is not behaving appropriately, and they want to ensure that the mother could not seek to overturn a guardianship at a later date.” Alondra had a good

³ The social worker had previously reported that J.S. “has behavioral issues that are not appropriate for Alondra.”

relationship with her foster parents, and had given her foster mother a card in which she had written, "Please adopt me."

Alondra still enjoyed her weekly visits with appellant. She also had spent Christmas week in Southern California with her grandmother, M.S., J.S., and other relatives. She said that she was happy to spend Christmas with her siblings and relatives. At the Agency's request, the section 366.26 hearing was continued so that a pending bonding study could be completed.

In the status review report filed on March 22, 2012, the social worker reported that appellant had been participating in weekly unsupervised visits with both Alondra and M.S. since January 2012, other than a few times when appellant cancelled the visits. Alondra had said she enjoyed the visits except for a recent visit during which appellant had taken her to a liquor store and played a slot machine. During an earlier visit, after the sisters had been visiting with appellant for about two hours, appellant called the foster mother to tell her that she could not control them and that they were fighting. There were also concerns about the favoritism appellant showed to Alondra, which left M.S. feeling left out and upset.

The social worker also reported that Alondra was happy in her foster home and "does not wish to go to any other place." The foster mother had said "that she loves Alondra and that she is a good and sweet girl." The social worker noted that placement with the maternal grandmother had been considered, but she never followed up with the relative assessment and had returned Alondra's sister to appellant.

On March 15, 2012, the juvenile court ordered appellant's visits with Alondra to be supervised due to concerns about her suicidal ideation, i.e., her threats to harm herself if Alondra were to be adopted.

In a section 366.26 memorandum filed on July 9, 2012, the social worker reported that, after a brief period of placement with Alondra's foster family, Alondra's sister, M.S., was moved in April 2012, due to concerns about her behavior. On May 3, M.S. was declared a court dependent and was "permanently planned." The social worker

further reported that, in March, appellant had cancelled a visit with Alondra at the last minute when she and the foster mother disagreed about the length of the visit, stating that if she could not have four hours, she would not visit. In April, appellant told an Agency supervisor that she was planning to leave the country, “ ‘maybe for a long time,’ ” but she did not want her children to know. Also in April, appellant cancelled a visit after a disagreement with the transportation provider about what time she would be picked up. She canceled a visit in May, stating that she had no transportation. Appellant had also told the social worker that she was pregnant., Alondra had given the foster mother a Mother’s Day card stating that she wanted to be adopted. In June 2012, appellant told a social worker that Alondra had written a letter stating that she did not want to live with the foster parents anymore. The social worker spoke with Alondra’s foster mother, who said that Alondra “had not been doing her homework, and did not respond when the foster mother tried to get her to cooperate, with the result that the foster mother yelled at Alondra.” Alondra told the social worker “that she wanted to be moved because the food is too spicy and the foster mother yells.” The social worker explained that this was not a reason to change foster homes, and told Alondra to let the foster mother know when the food is too spicy. She also discussed the yelling incident with the foster mother. Alondra also said she would like more visits with her siblings, and the social worker said she would work on getting more visits and reminded Alondra that she could call her siblings anytime. The foster mother subsequently informed the social worker that Alondra seemed to be “in a better emotional space” after the social worker’s visit, and that she had a good time on a trip with the foster parents. Also in June, the foster mother terminated a phone call between Alondra and appellant, after appellant asked when Alondra was moving, and also terminated a call between Alondra and her brother, J.S., because he seemed to be under the influence and was saying things that made no sense.

On July 2, 2012, the Agency had received confirmation that a paternity test had shown that Cesar S. was Alondra’s biological father.

In a section 366.26/366.3 report filed on September 4, 2012, the social worker reported that appellant and Alondra usually had telephone contact three or four times a week, but that appellant had not called Alondra for over a week. Alondra stated that, “ [w]hen she gets a boyfriend, she forgets about us.’ ” Alondra continued to visit regularly with M.S. and occasionally with J.S., and had said that she would like frequent contact with both siblings. The social worker stated that it would not be appropriate to place Alondra with her siblings; M.S. was removed from a placement with Alondra due to behavioral issues and J.S. was in a foster home that only accepted boys.

In late July, the social worker had spoken with Alondra, who said that everything was going well at home and that she liked the food for the most part. She said “that she wants to be adopted by the foster parents. She also said that she would like to see her sister more frequently, and that she continues to enjoy visits with her mother.”

On September 12, 2012, the Agency submitted an attachment evaluation prepared by Dr. Aliyeh Kohbod. Because appellant did not appear for the final appointment and was unreachable thereafter, Dr. Kohbod’s evaluation was based on two earlier sessions in which she observed and tested appellant only, without input from the final session in which she was to meet with appellant and Alondra together. Dr. Kohbod found that appellant suffered from, inter alia, a chronic anxiety disorder and a mental disability that affected her ability to parent. She further found that, although appellant’s “attachment is elevated, her attachment is weak and she does not feel a sense of emotional closeness to her child. An elevated attachment is not sufficient, she has to understand her child’s feelings and needs, and be able to protect them.”

At a hearing on September 19, 2012, Alondra’s counsel reported that Alondra was doing very well in her placement, as well as in school, and that she was happy to be in the placement. The social worker reported that Alondra was having regular visitation with M.S., but that J.S. “had an AWOL recently.”

The section 366.26 hearing began on November 29, 2012. The juvenile court and the attorneys questioned Alondra, who was then eight years old, in chambers, after the

court set “ground rules” for her examination. Initially, the court stated that no one was to ask Alondra “the ultimate question or anything . . . even indirectly near that question, about whether she wants to be adopted by her current caregiver.” After further discussion with counsel, the court offered “a better statement of the Court’s position[, which] is that I’m not going to defer to a child the ultimate decision that has to be made hear [*sic*], whether or not there’s a likelihood of adoption. And certainly Alondra’s opinion will have a certain weight in sufficiency. [¶] And, as I understand the state of law, even if a child over 12 objects, that does not foreclose the Court from still finding a likelihood of adoption.”

During the questioning by counsel, Alondra stated that she liked visiting with her siblings and mother. She called appellant “mom” and called her foster mother by her first name. When appellant would miss a visit, Alondra felt upset because she wished appellant were there. She did not like it when appellant took her to her boyfriend’s house because he drank a lot and Alondra did not feel safe. Alondra felt comfortable at the foster parents’ house and wanted to stay there. She only spent an hour with her mother during visits; she would like to spend more time with her, as well as with her brother and sister. She did not like the prior visits at appellant’s house as much because she only had one room, which felt crowded.

Mabel Villalta, who had been Alondra’s case worker for almost a year, testified at the section 366.26 hearing.⁴ Appellant’s visits with Alondra were supervised and took place twice a month, at the same time Alondra visited with her siblings. Appellant had not been consistent in visiting Alondra during the time Villalta had been Alondra’s case worker. She had “cancelled visits at the last minute, or she just doesn’t show up.” Her stated reasons for missing visits included that she was not feeling well or was upset. Since monitored visits began in April 2012, through the last report, which was written in October, appellant had missed close to half of the visits. Since October, she had missed

⁴ Counsels’ examination of Villalta began at the November 29, 2012 hearing, and continued on January 11 and January 25, 2013.

two or three visits.⁵ When appellant did not show up for visits, Alondra would become sad and angry, wondering “if mom is actually seeing a new boyfriend because she feels that the only reason mom hasn’t gone to the visit is because mom is with a new boyfriend.” Alondra also had reported to her foster mother that, during one visit, appellant let her look at appellant’s cell phone, where Alondra saw sexually explicit photos.

Alondra said she enjoyed her visits with appellant and wanted to continue visiting with her, but Villalta did not believe that Alondra relied on her mother to meet her emotional needs. Alondra never asked to see her mother at other times, including when she was upset. Alondra’s visits with appellant were like a play date, in which they played and watched movies together, and sometimes staff would have to redirect appellant to make sure she was involved in activities with the children. Appellant did not occupy a parental role for Alondra. Alondra’s foster parents were the ones who disciplined her, oversaw her education, and to whom she turned for guidance.

Both Villalta and Alondra’s foster parents had explained to Alondra what it means to be adopted. Alondra had told Villalta several times that she wanted to be adopted by her current foster parents, including the month after she had said she did not want to be adopted due to the spicy food in the home and her foster mother yelling about homework. Villalta believed that adoption would benefit Alondra because she would have a stable placement and the nurturing any child needs. She believed Alondra was “receiving all of that love and care at the current home.” The foster parents were open to post-adoption

⁵ In a section 366.26 memorandum filed on December 27, 2012, between the first and second hearing dates, the social worker reported that appellant had continued to visit every other week. On November 17, 2012, Alondra was in respite care during renovations or repairs to the foster parents’ home. When appellant was told that Alondra would not be at the scheduled visit, appellant failed to show up at the visit at all, which greatly upset M.S., who was waiting for her. On November 21, 2012, appellant told a social worker that she was planning to leave the country in March 2013, because she was pregnant, wanted to have her baby in Mexico, and did not want to return to the United States. She said she did not want to explain this to her children and felt that it would be best to “ ‘disappear’ ” so that her children would forget her.

contact between appellant and Alondra. The foster mother had “always said that she realizes that the relationship between mom and Alondra are [*sic*] important, and she is willing to continue to support that.”

The foster mother would also support post-adoption contact between Alondra and her siblings, with whom separate visits were planned to begin in February. The foster mother was willing to arrange for post-adoption sibling visits because she believed it was important to do so if the siblings wished to see each other. The social worker acknowledged that the difficulty of the logistics of arranging visits could keep sibling visits from taking place, especially since both of Alondra’s siblings were in long-term foster care in different placements. Appellant’s brother, J.S., had missed many of the visits that had already taken place.

The foster parents were open to long-term foster care if they could not adopt Alondra, but did not want legal guardianship because it would be “almost as if [they are] only fostering a child . . . even though there is some legal recourse.”

Villalta believed that Alondra would “suffer some detriment” if she did not see her mother again because she had a connection with appellant that was important to her. She did not believe Alondra had a strong bond with appellant because she had never asked to live with her mother. She did think it was important that the contact between appellant and Alondra continue, although if appellant were demonstrating symptoms of her mental illness, it would not be detrimental to cut off visits.

At the conclusion of the section 366.26 hearing, the juvenile court found that Alondra was adoptable, and also found by clear and convincing evidence that she was likely to be adopted. The court further found that neither the parent-child nor sibling relationship exceptions to adoption applied, and therefore terminated appellant’s parental

rights.⁶ The court referred the matter to mediation to develop a plan for post-adoption sibling contact and visitation.⁷

On January 28, 2013, appellant filed a notice of appeal.

DISCUSSION

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

“Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for permanency and stability. [Citation.]” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) “At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred plan. [Citation.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) When the court finds that the child is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds by clear and convincing evidence, pursuant to one of the statutorily-specified exceptions, “compelling reason[s] for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The parent has the burden of proving that termination of parental rights would be detrimental to the child under any of these exceptions. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

Here, appellant does not claim that Alondra is not adoptable. Rather, her contention is that the juvenile court improperly concluded that the beneficial parent-child and sibling relationship exceptions to adoption did not apply.

Appellate courts have differed on the correct standard of review for determining the applicability of a statutory exception to termination of parental rights. (Compare,

⁶ The court also terminated the parental rights of Alondra’s biological father, Cesar S., who is not involved in this appeal.

⁷ Counsel for Alondra had recommended finding both exceptions inapplicable, and had further recommended termination of parental rights and a permanent plan of adoption. He had also recommended that the matter be referred to mediation to discuss a plan for sibling visitation.

e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [applying substantial evidence standard]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [applying abuse of discretion standard]; *In re K.P.*, *supra*, 203 Cal.App.4th 614, 621-622 [applying substantial evidence standard of review to whether beneficial parent-child relationship exists and applying abuse of discretion to standard to whether that relationship provides a compelling reason to apply exception]; accord, *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) The “practical differences” among these various standards of review “are not significant” (*In re Jasmine D.*, at p. 1351), and, on this record, our conclusion would be the same under any one of them.

I. 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, with respect to the first prong of this exception—regularity of visitation—the juvenile court found: “[A]s to quantity [of visits], you don’t pass that test, because there’s unrefuted evidence that you have missed at least a half of your visits, and that’s unfortunate We know over the months and the years that you’ve had various difficulties with your finances, with your housing, with your mental health, though you’ve come a long way. And these factors, I’m sure, have interfered with your ability to be consistent in your visitation, but unfortunately, that is a factor here. I have to find that your visits have been inconsistent.”

The evidence in the record shows that appellant was initially consistent with her visitation, participating in weekly supervised visits with Alondra from the time Alondra was removed from her care in July 2010, until they began weekly unsupervised visits in March 2011. In June 2011, the visits became inconsistent, with appellant cancelling visits for various reasons, such as health problems or because she said she did not want to reunify with Alondra. Between January and March 2012, while appellant had weekly

unsupervised visits with Alondra and M.S., she cancelled visits a few times. In March 2012, after appellant reported making suicide attempts and told the social worker that she would harm herself if Alondra were adopted, the court ordered visits to be supervised. Appellant's visitation thereafter continued to be inconsistent. For example, she cancelled a visit in March after being told that the length of the visit would be two hours, instead of the four hours she desired. In April, she cancelled a visit after a disagreement with a transportation worker about pickup times and, in May, she cancelled a visit due to lack of transportation. Overall, since April 2012, appellant had missed nearly half of her visits with Alondra.

In sum, the record reflects that appellant visited Alondra consistently only during the first 10 or 11 months of the two and one-half years Alondra was out of her care before the section 366.26 hearing began in November 2012. Her visitation during the almost one and a half years that followed was inconsistent. The evidence thus supports the juvenile court's finding that appellant had not "maintained regular visitation and contact with" Alondra (§ 366.26, subd. (c)(1)(B)(i)) and, therefore, did not satisfy the first prong of the beneficial parent-child relationship exception to termination of parental rights. (*Ibid.*; see *In re C.F.*, *supra*, 193 Cal.App.4th at p. 554 ["Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption"].)⁸

In addition, even had appellant maintained regular visitation, the evidence supports the juvenile court's finding that appellant did not satisfy the second prong of the parent-child relationship exception: that Alondra would benefit from continuing the relationship. The juvenile court stated: "What about the quality of those visits? I think

⁸ We find unpersuasive appellant's attempt to liken her situation to that of the mother in *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537, who had visited her children "consistently for the entire lengthy period of this dependency case, to the extent permitted by the court's orders," as well as the mother *In re Amber M.* (2002) 103 Cal.App.4th 681, 690, who had "visited as often as she was allowed." Here, the evidence shows that appellant did *not* visit Alondra consistently to the extent permitted by the court.

generally very positive. While unsupervised, . . . there were some problems; there's this business about Alondra being uncomfortable around a boyfriend or a partner of yours. . . . [¶] . . . [¶] There's also this business about a cell phone and explicit sexual photos on a cell phone. . . . [¶] And then at some point, the Court did change the visits from unsupervised to supervised. And the main reason . . . why is because I was concerned about your mental health. Your statements that you are going to self-harm. . . . [¶] . . . But even if you [had unsupervised visitation], would it be in the best interest to continue the parent-child relationship[?] After hearing Alondra, after reviewing the transcript, after considering all of the evidence, I cannot make that finding. I cannot find that the parent beneficial exception applies.”

In *In re C.F.*, *supra*, 193 Cal.App.4th, 549, at page 555, the appellate court explained that it had “interpreted the phrase ‘benefit from continuing the relationship’ in section 366.26, subdivision (c)(1)(B)(i) to refer to 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.’ [Citation.]

“A parent must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . .’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment between child and parent. [Citations.] Further, to establish the section 366.2, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her

relationship with the parent were terminated. [Citation.]” (Quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, fn. omitted.)

“Because 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.” (*In re Jasmine D.*, *supra*,] 78 Cal.App.4th at p. 1350.)

“Application of this exception is decided on [a] case-by-case basis and a court takes into account such factors as the minor’s age, the portion of the minor’s life spent in the parent’s custody, whether interaction between parent and child is positive or negative, and the child’s particular needs.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 471.)

In the present case, the evidence shows that, other than a few distressing episodes, Alondra enjoyed her visits with appellant and wanted them to continue. Social worker Villalta believed that Alondra would suffer “some” detriment if she did not see appellant again because she had a connection with appellant. She also believed, however, that Alondra did not have a strong bond with appellant and that appellant did not occupy a parental role in her life. Alondra never asked to see appellant when she was upset and did not rely on appellant to meet her emotional needs. Rather, it was the foster parents to whom Alondra turned to have her needs met, and she was thriving in their care. They were providing the parental guidance, nurturing, and stable environment that Alondra needed and were committed to adopting her.⁹ (See *In re C.F.*, *supra*, 193 Cal.App.4th at

⁹ Appellant argues that the juvenile court terminated parental rights to accommodate the foster parents’ desires, rather than to advance Alondra’s best interests. According to appellant, the foster parents’ refusal to consider the option of legal guardianship demonstrates their lack of love for and commitment to Alondra. We disagree. In *In re C.F.*, *supra*, 193 Cal.App.4th 549, 556, the maternal aunt had “testified that she preferred to adopt the children, rather than be their legal guardian, to give them more stability and structure. The aunt feared that with a guardianship, [the mother] may later bring legal proceedings to regain custody of the children, and then relapse again. She intended to allow [the mother] visitation if she maintained sobriety.” Here too, the foster parents’ desire for adoption rather than guardianship does not show a lack of love

p. 557 [“While the two older children preferred to keep visiting [mother], it is apparent that all the children look to the maternal aunt and grandmother to fulfill all of their emotional and physical needs”; thus mother did not occupy a parental role for children].) Moreover, although the juvenile court explicitly did not “defer to” Alondra’s wishes in making its decision to terminate parental rights, Alondra had told both the social worker and her foster parents that she wanted to be adopted by the foster parents.¹⁰

Other evidence further demonstrates that appellant does not occupy a parental role in Alondra’s life. (See *In re C.F.*, *supra*, 193 Cal.App.4th, at p. 555.) In addition to the inconsistent nature of her visitation, during supervised visits, she sometimes had to be redirected to interact more with her children. During one visit, she called the foster mother to say Alondra and M.S. were fighting and she could not control them. At one point, when her mother had not called her in over a week, Alondra stated that, when appellant “ ‘gets a boyfriend, she forgets about us.’ ” Moreover, even though Alondra had lived with appellant for the first almost six years of her life, the bonding study showed that although appellant’s attachment to Alondra was “elevated,” her attachment was weak “and she does not feel a sense of emotional closeness to her child.” As Dr. Kohbod wrote, “An elevated attachment is not sufficient, she has to understand her child’s feelings and needs, and be able to protect them.” The juvenile court thus

or commitment but, instead, an understandable desire to provide a stable home for Alondra, with a guarantee of permanency for their family.

¹⁰ Appellant argues that “Alondra may have been happy to remain [in] the caretakers’ home, but there was no evidence that she appreciated what ‘adoption’ might mean to her future relationship with her mother.” She cites *In re Scott B.*, *supra*, 188 Cal.App.4th 452, 471-472, in which it was “clear that Scott did not understand that his foster mother would have the right to cut off his contacts with Mother if she adopted him. It is also clear from the record that Scott’s emotional make up will not enable him to endure interruption of his long-standing frequent visits with Mother.” Here, it is not clear from the record whether Alondra understood that her foster parents could “cut off” contact with appellant if they adopted her. But, as previously discussed, this case is very different from *In re Scott B.*, in which the court found that Scott’s mother provided stability in Scott’s life and that adoption might not do so, given his strong emotional attachment to his mother and his continued precarious emotional state. (*Id.* at p. 472.)

reasonably found that appellant simply does not occupy a parental role in Alondra's life, " 'resulting in a significant, positive emotional attachment between' " them that outweighs the stability and permanence Alondra will gain from being adopted.

Appellant likens this case to *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1209, in which the appellate court reversed the order terminating parental rights. There, the child had, much like Alondra, lived with his mother for the first six of his nine years and called her "mom." Unlike Alondra and appellant, however, a psychologist had found that the child and his mother "shared a 'strong and well[-]developed' parent-child relationship and a 'close attachment,' " and mother tried to meet his needs. (*Id.* at p. 1207.) Even the juvenile court had recognized their relationship as "parental." (*Ibid.*) Here, as already discussed, while appellant and Alondra had a connection, they did not have 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. (*In re C.F., supra*, 193 Cal.App.4th at p. 555.)

Appellant asserts that the juvenile court improperly relied on the foster parents being open to post-adoption contact between appellant and Alondra in deciding to terminate parental rights. At the section 366.26 hearing, appellant's counsel objected after the Agency's counsel asked social worker Villalta whether there was a plan for post-adoption contact with appellant. Counsel argued that such questioning was untimely and speculative, observing that either the foster parents or appellant could change their mind with respect to any agreement for post-adoption contact. In overruling the objection, the court stated: "The issue today, so we can stay on the issue, is whether or not this child is likely to be adopted and what all of that means. And I think within the realm of what all of that means is, is that it's possible that there will be continued contact between the subject child and the subject parent. I would think it's very relevant. It's not a determination. I have not made a determination yet whether or not the parental benefit exceptions apply, but I think I need all this information today." Villalta then responded

in the affirmative to counsel's question regarding whether the foster mother was "open to post-adoption contact" between appellant and Alondra.

There is simply no evidence that the court's decision to terminate appellant's parental rights was based on any presumed post-adoption contact between her and Alondra. The court neither stated nor implied that the foster parents' possible willingness to maintain visitation between Alondra and appellant had any part in its decision. The court merely permitted testimony that consisted of vague language about the foster parents' being "open" to future contact, with no promises of continued visitation. The foster parents' expressed openness to post-adoption contact between Alondra and her mother does reflect positively on their sensitivity and desire to promote Alondra's wellbeing after adoption, but it plainly is not a promise of such contact. The court did not mention post-adoption contact in its findings and there is absolutely no indication that it relied on the possibility of such contact in reaching its termination decision.¹¹ (Compare *In re C.B.* (2010) 190 Cal.App.4th 102, 128 [given that termination of parental rights "effectuates a complete and final legal termination of the parental relationship," whereby any "substantial, positive emotional attachment between a child and a parent has no legal protection," juvenile court had "injected an improper factor into the weighing process, namely, the prospective adoptive parents' willingness to allow the children to have continued contact with mother"]; *In re S.B.* (2008) 164 Cal.App.4th 289, 300 [same].)

In conclusion, while Alondra clearly loves her mother and enjoys spending time with her, the juvenile court properly found that appellant had not satisfied her burden of showing that she maintained regular visitation, that she occupies a parental role, and that the relationship between her and Alondra promotes Alondra's wellbeing "to such a degree as to outweigh the well-being [she] would gain in a permanent home with new, adoptive parents'" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.) Accordingly, the court

¹¹ In contrast, the court did refer post-adoption *sibling* contact to mediation. (See pt. II, *post.*)

did not err in finding that the parent-child beneficial relationship exception did not apply. (See 366.26, subdivision (c)(1)(B)(i).)

II. *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 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, in reaching its conclusion that the sibling relationship exception to adoption did not apply, the juvenile court stated, *inter alia*: “I think there will be some difficulties because of logistics to get the children together. . . . The 16 year old may not want to always visit, and that child is not going to be forced to visit. I’m hoping that the quality of the visits, the relationship amongst the three siblings, will be such that they will want to visit, but we’ll have to leave that to the future.

“I believe that the sibling relationship exception does not apply, because the Agency will do what it can given all the logistical concerns to make sibling contact occur. And I’m going to take up [Alondra’s counsel’s] very good suggestion, that the Court order mediation as to sibling relationship in this particular matter. . . . So the Court does order mediation on that issue And with that, the Court does adopt the Agency’s recommendations.”

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 relationship 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 by evaluating the nature and

extent of the 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.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [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. . . . ¶¶ Moreover, even 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 pp. 952-953; accord, *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1018-1019, disapproved on another ground in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5.)

In the present case, the evidence shows that Alondra enjoyed visits with her siblings, each of whom has a permanent plan of long term foster care. She had lived with M.S. for much of her young life and, although her contact with J.S. was limited and both of her siblings had behavioral problems, she very much wanted to continue to have contact with them. The foster parents understood the importance of these sibling relationships to Alondra, and agreed to support ongoing contact between them. When it terminated parental rights, the juvenile court also ordered mediation to plan for post-adoption contact between Alondra and her siblings.

In finding that the sibling relationship exception to termination of parental rights did not apply, the court focused on the likelihood of ongoing sibling contact after termination. It did not expressly discuss the possible detriment to Alondra that would result from severing her sibling relationships; nor did it expressly weigh the benefit of continuing those relationships against the benefit she would gain from being adopted. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) This does not, however,

negate the court’s determination that the sibling relationship exception does not apply. Any excessive focus by the juvenile court on “the mitigating influence” of continuing visitation (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1384) does not undermine the correctness of its ruling since “there is no ‘real doubt’ that the juvenile court would have reached the same decision” in any case. (*In re Steven A.* (1991) 230 Cal.App.3d 349, 353; cf. *In re Noreen G.*, at p. 1384 [in context of Probate Code section 1516.5 proceedings, “the [trial court’s] finding that termination and adoption by the guardians is in the minors’ best interest is not flawed by any mistaken consideration by the trial court of the mitigating influence of the order for continuing visitation” since ruling itself was correct].)

First, the foster parents agreed that post-adoption sibling visitation is important and, while there is no guarantee, there is a process underway to formalize such ongoing contact. (See § 366.29; *In re S.B.*, *supra*, 164 Cal.App.4th at p. 300 [with sibling relationship exception, “the court considers future sibling contact and visitation . . . [since,] [u]nlike the parent-child relationship, sibling relationships enjoy legal recognition after termination of parental rights”].)¹²

Second, as the social worker testified and the juvenile court stated, even if appellant’s parental rights were not terminated, there would be no assurance that Alondra would be able to have frequent contact with her siblings, due to logistical challenges related to their different placements, their age differences, and the siblings’ behavioral issues. (See, e.g., *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 [“The children’s best interests were served by adoption, and the selection of an alternative permanency

¹² “The determination that the sibling relationship exception is inapplicable does not necessarily prevent postadoption sibling contact (See Fam. Code, § 8616.5; Welf. & Inst. Code, § 366.26, subd. (a); see also . . . 366.3, subd. (g)(7) [report for section 366.3 hearing after termination of parental rights must include ‘[w]hether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29’]; § 366.29, subd. (a) [‘With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact’].)” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 131, fn. 8.)

plan would not resolve the family hostilities that had jeopardized the children's safety and prevented continued sibling visitation”]; *In re Jacob S.*, *supra*, 104 Cal.App.4th at pp. 1018-1019 [finding that “additional factors beyond termination of parental rights will determine whether [the siblings] have a continuing relationship,” which “will depend largely on whether [the older sister] wants it to, and not as much on whether parental rights are terminated”].) Finally, as the juvenile court had already found, in the context of the parent-child relationship exception, through adoption, the foster parents will be able to provide the stability, nurturing, and guidance that Alondra needs and that will allow her to continue to thrive. (See pt. I., *ante*; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.)

Based on all of this evidence, the juvenile court could reasonably conclude that, to the extent adoption would interfere with Alondra’s sibling relationships, “the benefit of continuing those relationships . . . was outweighed by the benefit of adoption and, therefore, the sibling relationship exception to termination of parental rights did not apply.” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 131.)

In sum, the court did not err in concluding that appellant failed to satisfy her burden of establishing applicability of the sibling relationship exception to termination of parental rights. (See § 366.26, subd. (c)(1)(B)(v).)

DISPOSITION

The juvenile court’s order terminating appellant’s parental rights with respect to Alondra S. is affirmed.

Kline, P.J.

We concur:

Haerle, J.

Brick, J.*

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.