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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.A., et al., Persons Coming Under  
the Juvenile Court Law.

SOLANO COUNTY HEALTH AND  
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

MARGARET M.,

Defendant and Appellant.

A139296

(Solano County  
Super. Ct. Nos. J40775, J40776)

Margaret M. (Mother), the mother of N.A. and C.M., appeals from an order terminating her parental rights. Our review is limited to two narrow questions: whether the finding that the children are likely to be adopted within a reasonable time is supported by substantial evidence, and whether the court abused its discretion when it determined the benefits of continuing Mother's relationship with the children did not outweigh the benefits of adoption. Each of the rulings has adequate support in the record, so we affirm.

## **BACKGROUND**

### **Removal and Detention**

In March 2011, the Solano County Department of Health and Social Services (the Department) initiated dependency proceedings after three-month old N.A. was taken to the emergency room with a broken arm and her parents provided inconsistent explanations for how the injury occurred. Shortly thereafter it was discovered that N.A. also suffered four fractured ribs.

Mother has a long history of noncompliance with the management and treatment of her severe diabetes. She is 31 years old, and has had 286 emergency room visits for her diabetes since she was diagnosed at the age of nine and some 86 hospital visits in the past two years. Her medical history also includes several mental health issues, bulimia, anxiety and depression. When Mother's blood sugar is high she appears confused or drunk, stumbles around, breathes heavily, and is uncoordinated and lethargic. When her blood sugar is low she passes out or feels very weak or uncoordinated. These episodes pose obvious safety concerns for her children when under Mother's care. Since 2009, she had been referred to the Department four times due to concerns that her uncontrolled diabetes put N.A. and C.M. at risk.

N.A. and C.M. were detained and placed in foster care. In June 2011 Mother submitted to juvenile dependency allegations under Welfare and Institutions Code section 300, subdivisions (b) and (e).<sup>1</sup> The court authorized a minimum of two supervised visits

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<sup>1</sup>The sustained allegations are as follows: "b-1) On or about March 16, 2011, the child . . . suffered: a fracture of the left humerus shaft and . . . fractures to the right fourth and fifth posterior ribs and . . . fractures to the left sixth and seventh posterior ribs while under the care and supervision of the mother, Margaret [M.], and the father, [H.A.]. Such severe injuries are highly unusual for a 3 month old child and consistent with non-accidental trauma. The parents have no explanation for the child's injury. Such conduct and/or neglect on the part of the parents endangers the child's physical health and safety and places her and her sibling, [C.M.], at risk of serious physical harm and damage. [¶] b-2) The mother . . . has uncontrolled diabetes which results in such conduct and behaviors

per week, with unsupervised and overnight visits to be permitted in the Department's discretion. By a 90-day interim review in October 2011 the court granted the Department discretion to place the children with Mother before the 6-month review if she complied with her case plan and controlled her diabetes.

### **The Six and 12-Month Review Hearings**

By the six-month review hearing in January 2012 Mother was actively engaged in visitation, drug testing, and a parenting class, but she was not managing her diabetes and had not sought or obtained psychiatric and medical treatment required to comply with her case plan. She continued to experience medical emergencies due to her blood sugar levels. Mother was still visiting the children twice weekly, and the quality of visitation was appropriate with the exception of one incident when N.A. almost choked on an inappropriate snack that Mother gave her. The Department's status review report warned that Mother "absolutely must demonstrate compliance with her diabetes care and mental health during the upcoming six months."

The Department submitted its report for the 12-month status review hearing on July 13, 2012. The children had been placed with B.B., who had been Mother's legal guardian and "is considered to be a family member." The girls were thriving in B.B.'s

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where she is unable to adequately supervise the children. . . . The mother has received intensive services to address her diabetic condition and despite these services the mother continues to be unable to manage her diabetic condition. The mother's condition places the children at substantial risk of physical and/or emotional harm. [¶] The Father, [H.A.], has a history of substance abuse that periodically renders his ability to safely and adequately provide care for the child. . . [¶] b-4) The mother . . . has a history of substance abuse and mental health issues that periodically renders her ability to safely and adequately provide care for the children. . . ." The court also sustained allegations under section 300, subdivision (e) that on or about March 16, 2011, NA. suffered a fractured arm and ribs while under her parents' care, and that "[s]uch severe injuries are highly unusual for a 3 month old child and consistent with non-accidental trauma. The parents have no explanation for the child's injuries. Such conduct and/or neglect on part of the parents endangers the child's physical health and safety and places her and her sibling, [C.M.], at risk of serious physical harm and damage."

care and appeared comfortable and content. Mother continued to ignore her diabetes care regimen. She had missed or cancelled several medical appointments, visited the emergency room at least six times, and on at least some of those occasions she left the hospital without medical approval. She had been advised to check her blood at least four times daily, but had done so only once in the past month. According to one of her doctors, Mother's diabetes was "totally out of control. Her high blood sugar could lead to blindness and amputations, while her hypoglycemia-related episodes of unconsciousness and confusion put her at risk of injury or death. One of her doctors put it quite starkly: Mother needed to eat three meals a day and take insulin "or she dies."

Mother transitioned to unsupervised visitation in mid-January 2012, but the Department reinstated the supervision requirement in February after Mother left the emergency room, picked the girls up from foster care and took them to an undisclosed and unapproved location. Nonetheless, the Department encouraged liberal visitation at B.B.'s house, and Mother was visiting five days per week for at least two hours. She was generally attentive, affectionate and appropriate with the girls during visits, but provided them inappropriate sugary snacks and drinks.

The 12-month review hearing took place on August 8. The Department social worker testified that Mother was compliant with her medical requirements but had lost her housing. She had also been in a physical altercation with her brother that left her with a swollen face and a missing braid, and there had been a report of domestic violence involving Father in January. But, the social worker believed Mother realized that she would not be able to reunify with her children unless she controlled her diabetes, and that she would be able to do so.

Mother had not been hospitalized since July 1, and had reported, although her doctors had not confirmed, that she was testing her blood four times a day. The court voiced some reservations, but found there was a substantial probability that the children would be returned within six months. Accordingly, it continued reunification services

and set an 18-month review hearing for December 13, 2012. The Department was authorized to allow unsupervised visitation if Mother avoided further hospitalizations for two months.

But in large part because Mother had “failed to be in compliance with her medical appointments and Diabetes medical care and self-maintenance, with severe physical consequences,” the Department’s report for the 18-month review hearing recommended terminating reunification services and setting a section 366.26 hearing. Mother had passed out and been taken to the emergency room at least 12 times between July 24 and November 20. On the last of these occasions she almost lost her life due to hyperglycemia, a serious tooth infection and compromised lung functioning.

Three-year-old C.M. was developmentally on target but was being closely monitored because she displayed symptoms of the onset of Type 1 diabetes. One-year-old N.A. was also developing on target and was in good health. Both girls were thriving and happy in B.B.’s home. Except for her frequent hospitalizations, Mother continued to visit the children each day and was generally attentive and appropriate with the girls during the visits. However, she continued to ply them with sugary snacks, “suggest[ing] a serious deficiency in insight and regard for a child who shows enough symptoms of possible onset of Type 1 Diabetes to be getting daily blood glucose monitoring and follow-along care by an Endocrinologist.” On one unauthorized overnight visit, Mother went into a diabetic coma and was taken to the emergency room. The children had a positive connection to Mother, although N.A. would sometimes seek out B.B. instead of Mother during her visits.

Mother submitted to the Department’s report and recommendation at the 18-month review hearing. The court terminated reunification services and set a section 366.26 hearing.

### **The Section 366.26 Hearing**

The Department's report for the section 366.26 hearing recommended terminating parental rights with a permanent plan of adoption. Mother continued to visit and help B.B. with the children's care almost daily, arriving in the late morning and typically staying until the evening. She was generally appropriate with the children but still would bring them sweets despite direction to bring more appropriate, healthy snacks. Unfortunately, Mother had shown no progress in stabilizing her health, and during one visit she passed out and collapsed onto C.M. Although C.M. was traumatized by the incident, she was physically unharmed.

Both children were "adorable little girls," developmentally on track and apparently mentally and emotionally stable. Four-year-old C.M. was described as a happy, independent little girl, despite occasional tantrums if she did not get her way. N.A. was a "cuddler" who was able to seek out comfort from her caregiver. B.B. had noted some concerns about N.A. exhibiting sexual behavior and agreed to bring it up with her pediatrician. B.B. was attached to the girls and hoped to remain in their lives once they transitioned into a permanent home, but she could not adopt them.

The Department identified other prospective adoptive parents, who had been advised of the girls' history and special needs and appeared to be committed to their adoption. The couple had been married for nine years and had three biological children, a five-year-old girl and two younger boys, for whom they felt C.M. and N.A. would be a good match. They were financially stable, lived in a spacious home containing abundant age-appropriate toys for the children, and came from large families. The girls' visits with the family were going well.

The section 366.26 hearing was held on July 18, 2013. The adoptions social worker testified that the girls had been placed in the prospective adoptive home on July 8. The family had a home study on file and there was no doubt they would be approved for adoption. The children had been having transitional visits of increasing length since

April 18. They had warm and positive interactions with the prospective adoptive parents, called them mom and dad, and said they loved them. B.B. also reported that the girls really loved the family and enjoyed their visits. The social worker testified that N.A. and C.M. “seem very bonded and connected. They appear to feel safe in the presence of the [adoptive] family. The family will scoop them up and give them hugs, and they allow the family to do so. At the last visit with [B.B.], when I had indicated that the foster mom was waiting in the lobby, [C.M.] was—she seemed like she was anticipating being able to go back. She kept asking if she could see the foster parent, and then once she saw her, she ran to her to embrace her.”

The girls’ transitions back to the prospective adoptive parents after visits with Mother or B.B. always went smoothly. They were generally excited to see Mother, but on one recent transition to a visit with Mother C.M. cried and had to be repeatedly reassured that she was only going for a visit and would be returning to her foster parents. The social worker did not doubt that Mother loved her children, but she believed the benefits of adoption outweighed the benefits of the continued parental relationship and recommended that parental rights be terminated.

There had been a recent incident just before the hearing in which the prospective adoptive family’s five-year-old son was found clothed in bed with four-year-old C.M., who was naked. The prospective adoptive parents promptly reported the incident and the Department was conducting an investigation.

Mother testified about her daily visits with the girls over the 13 to 15 months of dependency, during which she helped care for them, played with them and took them on outings. The children were bonded to Mother and called her mom. Mother said she had been eating starchy foods to keep her blood sugar up and had not been taken to the hospital since late May or early June. She did not have a regular doctor because she was in the process of changing her primary care physician.

The court found by clear and convincing evidence that the girls were specifically and generally adoptable, and rejected Mother's position that the benefits to the girls of adoption were outweighed by the value of continuing their relationship with her. Accordingly, the court terminated Mother's parental rights and selected a permanent plan of adoption. This timely appeal followed.

## **DISCUSSION**

### **I. Substantial Evidence Supports The Adoptability Finding**

#### A. Legal Principles

The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204.) The issue of adoptability "focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) While it is not necessary that the child already be in a prospective adoptive home or that there be a proposed adoptive parent "waiting in the wings," "[u]sually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*Id.* at pp. 1649–1650; *In re Asia L.* (2003) 107 Cal.App.4th 498, 510.)

"We review the factual basis of a termination order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find a factual basis for termination by clear and convincing evidence." (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we resolve all conflicts in favor of the prevailing party before

the juvenile court and draw all legitimate inferences to uphold the order. If more than one inference can reasonably be deduced from the facts, we are without power to substitute our deductions for those of the trier of fact. (*Jason L., supra*, at p. 1214.)

### B. Analysis

We have no difficulty concluding that the evidence supporting the finding that the children are adoptable meets this standard. It is uncontradicted that four-year-old C.M. and two-year-old N.A. are healthy and engaging little girls, developmentally on track, and mentally and emotionally stable. There are no indications of developmental, psychological or physical problems that might make it difficult to place them in an adoptive home. To the contrary, from all reports they have settled readily into a warm and loving relationship with prospective adoptive parents who have an approved home study and the wisdom and experience gained from raising three young children. The couple appears to be committed to expanding their family by adopting C.M. and N.A. In addition, the social worker testified that numerous other families would be interested in adopting the girls if the anticipated adoption were not to work out.

Mother objects that the incident of purportedly sexualized behavior between the couple's five-year-old son and four-year-old C.M. indicates the prospective adoptive parents cannot safely supervise five young children. She also argues the proposed adoptive family is not adequately committed to adopting the children. The juvenile court reasonably viewed the evidence differently and its assessment is supported by the record, so its findings will not be disturbed on appeal.

### **II. The Court Appropriately Rejected The Beneficial Relationship Exception**

Mother contends the court erred when it declined to find that the benefits of her relationship with the children precluded the termination of her parental rights. We review

this finding for abuse of discretion. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)<sup>2</sup>

If a child is found adoptable at the section 366.26 hearing, the juvenile court must terminate parental rights and place the child for adoption *unless* it finds termination would be detrimental to the child because, inter alia, “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.] The parent must demonstrate more than incidental benefit to the child. In order to overcome the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment of the child to the parent.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) The child’s relationship with the parent must “promote[] 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Only in extraordinary cases will preservation of the parent’s rights prevail over the

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<sup>2</sup>While we recognize that other courts have reviewed such a determination to see whether it is supported by substantial evidence (see, e.g., *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228), we will not address the divergence here. As we observed in *In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1351, the practical differences between the two standards of review in these cases are minimal and not outcome determinative. In this case, beyond any doubt, the result would be the same under either test.

Legislature's preference for adoption. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

This is not a case where the girls' relationship to their mother outweighs the well-being they could gain in a permanent adoptive home. We don't question that Mother deeply loves her daughters, and she has consistently participated in their care and their lives. But "a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Here, although Mother had a close relationship with her children, the effects of her failure to control her diabetes have severely impinged upon her ability to fulfill a parental role in their lives. Largely as a result of Mother's inability to control her disease, the girls were removed from her custody at very early ages and have spent the greater part of their young lives in the care of others. Mother's unmanaged diabetes continues to result in frequent losses of consciousness and emergency room visits, thus putting the children at risk when they are with her and boding poorly for her prognosis.

On the other side of the balance, the children appear to be happy and thriving with their prospective new family. They enjoy their visits with Mother, and have shown no indication of sadness or distress when the visits end and they return to their foster parents. On this record, we cannot conclude the court abused its discretion in declining to find their well-being better served by continuing Mother's parental relationship than through offering them the stability and permanence of an adoptive home.

**DISPOSITION**

The order terminating Mother's parental rights and selecting a permanent plan of adoption is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.