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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

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

SOLANO COUNTY DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MONICA M.,

Defendant and Appellant.

A139355

(Solano County  
Super. Ct. Nos. J41051, J41052)

Monica M. (mother) appeals a juvenile court order terminating her parental rights and placing her two children for adoption. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother acknowledges the statutory preference for adoption when children cannot be returned home but contends an exception applies here because she has maintained regular visitation with the children and they would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) We shall affirm the order.

**Statement of Facts**

Mother was in a five-year marriage that produced two children, a daughter, E.H., born in 2002 and a son, Benjamin, born in 2004. The family was living in Florida when the children’s father died in 2005. Mother and the children moved to California, mother’s birthplace. Mother became addicted to opiates, including Oxycotin. Several reports of

<sup>1</sup> All further section references are to this code.

child neglect were filed in 2005 but “evaluated out.” Mother was arrested in 2007 and 2008 for battery on a cohabitant but the charges were dismissed. Mother was convicted in 2008 of forging a narcotic prescription and placed on probation. She violated probation in 2009 by forging another prescription.

In January 2010, a report of child neglect was filed against mother and a live-in boyfriend. Mother “was advised of her protective responsibilities” and the case was closed. Another man, William W., moved in with mother and the children in March 2010. Mother and William W. were both on probation at the time and met in a “recovery” class. In September 2010, William W. was arrested for domestic violence. Mother told the police there was a history of domestic violence between them and said William W. shoved her and threatened to set the house on fire. Mother allowed William W. to return home after his release from jail.

In April 2011, six-year-old Benjamin arrived at school hungry, having had no breakfast, and “blurted out that his father hit him with the belt six times.” Benjamin said his eight-year-old sister was also hit with a belt that morning. A social worker interviewed the children. The children said William W. beat them with a belt on multiple occasions and the social worker saw belt marks on Benjamin’s buttock and lower back. The social worker placed the children in protective custody.

The Napa County Health and Human Services Department filed a juvenile dependency petition alleging mother’s failure to protect her children. (§ 300, subd. (b).) The petition averred that mother and William W. were “on formal probation for substance-related issues and have had documented domestic violence incidents” and that mother knew William W. hit her children with a belt on multiple occasions but “did not intervene.” The court sustained the petition at a jurisdictional hearing mother did not attend, but she was represented by counsel. The children were continued in foster care.

The court adopted a family reunification plan at the May 2011 dispositional hearing that required mother to secure safe housing, refrain from physical punishment of the children, demonstrate knowledge of age-appropriate child discipline, obtain a substance abuse assessment, submit to drug testing, attend counseling to address abuse

issues, and participate in parenting and anger management classes. In October 2011, the case was transferred from Napa County to Solano County upon mother's relocation to Vallejo. The children had lived in a Vallejo foster home since April 2011 and remained there.

A six-month review hearing was completed in December 2011. The Solano County Health and Social Services Department (department) reported that Mother visited the children weekly but failed to comply with anger management and counseling requirements. Mother also continued to live with William W. and thus failed to secure safe housing. Mother told the department social worker she was not living with William W. but mother's probation officer said mother and William W. came into the probation office together in October 2011 and used the same Vallejo address. The court denied mother's request for return of the children, concluding that mother "has made minimal progress with her case plan."

The department filed a report in advance of the June 2012 twelve-month review hearing. Mother did not have stable housing and was living with friends in Napa "off and on." However, mother was seeking subsidized housing in Vacaville and had made good progress with her case plan. The department reported that mother "has several positive attributes and strengths that ultimately make the probability of reunification promising at this point." The court extended reunification services in the hope of returning the children to mother's care in the future.

An 18-month review hearing was held in October 2012. The department reported that mother received approval for subsidized housing but had not yet located a residence. The department recommended continued reunification services, noting that "mother has regularly visited with the children and has made substantive progress with her case plan services." Reunification services were continued and mother was given unsupervised visitation with her children.

In January 2013, the department petitioned the court for modification based on changed circumstances. (§ 388.) The department reported that mother lied about ending her relationship with William W. and asked the court for supervised visitation,

termination of reunification services, and scheduling of a permanent plan hearing. Mother moved into Vacaville subsidized housing in November 2012. During a social worker's home visit, mother insisted she had no contact with William W. The social worker later learned that mother listed William W. as her "boyfriend" and emergency contact on the rental application and completed a guest information form saying William W. would be a guest at her apartment "on and off" from the starting date of her tenancy. The apartment manager said William W. was living with mother. In January 2013, the police were called to mother's apartment upon a report of domestic violence. Mother told the police William W. hit her and the police found her "very bruised" with a swollen eye.

The social worker met with mother to discuss William W. Mother said William W. came to the house to help her move and was not living at the apartment. The social worker asked mother if she allowed William W. to have contact with the children and mother said no, "they're not ready." Mother said she "still has feelings" for William W. When the social worker expressed concern about William W.'s abuse of Benjamin, mother "became argumentative and stated 'In my eyes he is a good person and it was not abuse.'" The social worker spoke with the children and "substitute care providers" and learned that mother "has allowed unauthorized in-person contact between Mr. [W.] and the minors . . . during weekly unsupervised community visitation. She has also allowed Mr. [W.] contact with the children during her telephone calls to them at the substitute care providers' home."

In February 2013, the court terminated reunification services. A permanent plan hearing was set for June 2013. (§ 366.26.) Mother was permitted supervised visitation. Mother did not file a petition for an extraordinary writ to contest the court's order.

In May 2013, the department filed a report recommending that the court terminate mother's parental rights and free the children for adoption. Mother petitioned for renewed reunification services, claiming changed circumstances. (§ 388.) Mother asserted she had not been in contact with William W. since March 2013 and was in the process of obtaining a restraining order against him.

In July 2013, the court held the permanent plan hearing at which it also addressed mother's petition. On mother's petition claiming changed circumstances, the department reported that mother and William W. were involved in a "domestic violence incident" in March 2013 and that mother was still associating with William W. The department noted that one of its social workers saw mother driving William W.'s truck in June 2013 and that residents of mother's apartment reported William W. at the apartment in July 2013. Mother denied any contact with William W. after March 2013. She testified that William W. gave her the truck to use and that her neighbors do not like her, suggesting a motive to lie. Mother said she did not feel threatened by William W., was unafraid of him, and saw no need to take a domestic violence class. While disagreeing with her case plan, mother enrolled in a domestic violence class a day before the hearing, and two years after being directed to do so, "in order to get my children back."

Attorneys for the department and for the children argued that mother had not addressed domestic violence that threatened the children's welfare and should not be granted renewed reunification services. The court agreed, denying mother's claim of changed circumstances. The court observed that mother lacks "insight into the problem."

The court proceeded to permanent plan considerations. The department reported that a paternal aunt and her husband living in Florida maintained regular contact with the children throughout the two years of the dependency proceedings and wanted to adopt them. The children's foster parents also expressed interest in adopting the children. A social worker testified that the children were "ideal candidates for adoption."

The social worker acknowledged that mother visits regularly with the children and has a "close" relationship with them. But the social worker testified that the relationship is "not a healthy one." The social worker said the children were "parentified," i.e., used by mother to meet her emotional and physical needs rather than meeting her children's needs. When they lived with mother the eight-year-old daughter was put in charge of dressing herself and her younger brother and feeding them in the mornings. When in foster care, mother urged the daughter to conceal mother's continued contact with William W. During visits, mother "consistently" talks to the children about her personal

problems and “adult issues,” which creates anxiety and worry in the children, according to the children’s therapist. The social worker testified that, in his opinion, the benefits of adoption outweighed the benefits of continuing the parent-child relationship because the children “will be able to be children, be in a safe home, and be children and actually not worry about their mother’s well-being.” The children’s therapist also recommended adoption as the permanent plan.

The children expressed differing views. Mother’s 10-year old daughter said she wanted to go home with her mother. Mother’s eight-year-old son was uncertain, sometimes saying he wanted to go home with mother and other times saying he wanted to be adopted by his Florida relatives. The children’s attorney did not state a position at the hearing.

The court found “clear and convincing evidence that it’s likely the children will be adopted, balancing all the factors involved, and I’ll find that adoption is in their interests, notwithstanding the close bond they have with their mother.” The court noted “this ongoing turmoil is obviously a detriment to them.” The court terminated mother’s parental rights and ordered the children placed for adoption. Mother timely filed a notice of appeal.

## **Discussion**

### *General principles*

“Section 366.26, subdivision (c)(1)(A), provides that if the juvenile court determines, by a clear and convincing standard, that it is likely a minor will be adopted, then it *shall* terminate parental rights and order the child placed for adoption *unless* the court finds a compelling reason for determining that termination would be detrimental to the child. One such reason is that the parent has maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

There is a legislative preference for adoption where reunification efforts have failed. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “The Legislature has declared that in the ordinary case, a parent’s failure to reunify and the termination of

reunification services at a prior hearing are a sufficient basis for terminating parental rights.” (*Ibid.*) “The child has a compelling right ‘to [have] a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.] Adoption is the Legislature’s first choice because it gives the child the best chance at such a commitment from a responsible caretaker.” (*Ibid.*)

“To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B., supra*, 97 Cal.App.4th at p. 466.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*Ibid.*)

Where, as here, a trial court terminates parental rights upon finding no exceptional circumstances to preclude adoption, its “ ‘findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’ ” (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.) Balancing the benefits of adoption against the benefits of maintaining the natural parent-child relationship “is a quintessentially discretionary determination.” (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

*The evidence supports the trial court’s determination that the benefits of adoption outweigh the benefits of maintaining the natural parent-child relationship.*

The department concedes that mother maintained regular visitation with the children and “shares a strong bond” with her children. The issue is whether the parent-child bond is sufficiently positive and beneficial as to outweigh the benefits of adoption. The trial court found in favor of adoption. As a reviewing court, we do not reweigh the

evidence. We must affirm the trial court's decision if its findings of fact are supported by substantial evidence.

There is substantial evidence that “severing the natural parent-child relationship” will not “deprive the child[ren] of a substantial, positive emotional attachment such that the child[ren] [will] be *greatly* harmed.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) A social worker testified that the parent-child relationship here is “not a healthy one” and noted that the children were “parentified” because mother uses the children for emotional support instead of providing support to the children. During visits, mother “consistently” talks to the children about her personal problems and “adult issues.” The children’s therapist of two years reported that the behavior of the elder, female child “varies depending on after she has a visit with her mother. For the most part she is doing fine, but it’s when she returns from the visits with her mother or talks with her mother over the phone is when [E.H.] will experience some anxiety about her mother’s personal situation.” The younger child, Benjamin, also experiences “anxiety when it comes to his mother’s situation.”

The evidence in this case distinguishes it from cases in which the courts found a sufficiently positive parental relationship to preclude adoption. In *Amber M.* (2002) 103 Cal.App.4th 681, 689, a psychologist evaluated the family and concluded it would be detrimental to sever the mother-child relationship. A therapist for one of the children reported that it was “important that the[] relationship continue,” and the court appointed special advocate (CASA) agreed. (*Ibid.*) In *Amber M.*, “[t]he common theme running through the evidence from the bonding study psychologist, the therapists, and the CASA is a beneficial parental relationship that clearly outweighs the benefit of adoption.” (*Id.* at p. 690.) The evidence here is to the contrary. The children’s therapist reported that visits with mother creates anxiety and worry in the children. and recommended adoption as the permanent plan.

*In re S.B.* (2008) 164 Cal.App.4th 289, upon which mother relies, is also distinguishable. In that case, the child “derived comfort, affection, love, stimulation and guidance from her continued relationship” with her father. (*Id.* at p. 300.) The father’s

“devotion to [his daughter] was constant, as evinced by his full compliance with his case plan and continued efforts to regain his physical and psychological health.” (*Ibid.*) Here, mother’s compliance with her case plan was partial and grudging. She denied the damage suffered by her children from domestic violence, continued to bring the children into contact with the man who abused them, and enlisted the children in her efforts to hide her continuing relationship with the abuser. Upon this evidence, the trial court could reasonably find that mother’s relationship with her children was not sufficiently beneficial as to outweigh the benefits the children will gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Mother argues that she has a significant relationship with her children as she was the children’s primary caregiver for most of their lives. Certainly, the age of the children and the time spent in a parent’s care are relevant considerations in weighing the benefits of continuing a parental relationship. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 470-471.) But other factors must also be weighed, including “whether interaction between parent and child is positive or negative, and the child’s particular needs.” (*Id.* at p. 471.) Mother contends she has positive interactions with her children and relies upon reports prepared early in the dependency period that praised mother’s loving and attentive conduct during visits. While these reports are significant, later reports also bear consideration. The children’s therapist prepared both the early and later reports and, ultimately, concluded that mother’s interactions with her children were unhealthy. The therapist’s “therapeutic assessment” was that “the benefit of a permanent plan decision of adoption . . . far outweighs the detriment of severing the parental rights of their mother.”

The evidence, viewed as a whole, supports the trial court’s determination to terminate parental rights and place the children for adoption. As mother’s counsel acknowledges, adoption is the legislatively preferred plan and “[a]pplication of the continuing beneficial relationship exception to preclude the termination of parental rights is rare.” We cannot say the trial court erred in finding that the circumstances were not sufficiently exceptional as to preclude termination of mother’s parental rights.

**Disposition**

The order is affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.