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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.H., a Person Coming Under the  
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

A146763, A146845

(San Francisco County  
Super. Ct. No. JD143184)

D.B. (Mother) appeals an order terminating her parental rights to her daughter, J.H. (Minor) and setting a permanent plan of adoption. She contends the juvenile court abused its discretion because Minor would benefit from continuing a parental relationship with her. We shall affirm the order.

**I. BACKGROUND**

We are familiar with the background of this case through our review of Mother’s appeal of earlier jurisdictional and dispositional orders (*In re J.H.* (April 8, 2015, A142593) [nonpub. opn.] (*In re J.H. I*)) and her petition for an extraordinary writ after the juvenile court set a hearing pursuant to Welfare and Institutions Code<sup>1</sup> section 366.26

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

(*L.H. v. Superior Court* (Aug. 4, 2015, A145207) [nonpub. opn.]). For the background of this case, we begin by quoting from our opinion in *L.H. v. Superior Court*.<sup>2</sup>

### **A. Detention and Jurisdiction**

Minor was detained in May 2014, shortly after she was born. According to a detention report prepared by the San Francisco Human Services Agency, Family and Children’s Services Division (the Agency), Mother’s mother (Grandmother) had filed a missing person’s report for Mother about two weeks before Minor was born. After Mother was located, she was placed on a psychiatric hold pursuant to [ ] section 5150 (5150 hold) and labeled “Gravely Disabled” because of her hallucinations and delusions. She declined psychiatric treatment. The officer who found Mother reported that Mother appeared agitated and unfocused. She had been contacting the FBI to make complaints about a child pornography ring with which her brother-in-law, a police officer in another state, was allegedly involved. Although Mother denied having had any previous mental health holds, a social worker said she had been put on a 5150 hold in 2010, and had received no follow-up mental health treatment or psychotropic medication.

Minor’s father, L.H. (Father),<sup>3</sup> [ ] had a history of domestic violence, drug use, and assault, and was a registered sex offender. He had been convicted of rape in 1992, annoying or molesting children in 1994, failing to register as a sex offender in 2000, and sexual battery in 2004.

Minor was born at full term with no complications, was of normal weight, and tested negative for drugs. Mother behaved appropriately during her visits to the nursery.

A social worker spoke with Mother after Minor was born. Mother appeared calm. She told the social worker the mental health hold was the result of a mistaken identification. She said she had several lawsuits pending against defendants ranging from the medical clinic where she received her prenatal care to a university that had failed to

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<sup>2</sup> Empty brackets [ ] denote deletions from our opinion in *L.H. v. Superior Court*, or from the portions of *In re J.H. I* from which it quoted; brackets with material enclosed indicate matter added by this court, unless otherwise specified.

<sup>3</sup> Father is not a party to this appeal.

grant her a Ph.D. in clinical psychology, and that she had pending restraining orders against her biological family because of an “atrocious” that had occurred in her family in the past. She asked to have Minor’s last name changed in order to protect her from people wishing to harm her.

Mother was not aware Father was required to register as a sex offender and she said she had no concerns regarding him. She denied having received any current or past psychiatric care and said her mental health was not an issue.

The Agency filed a petition pursuant to section 300 alleging there was a substantial risk Minor would suffer serious physical harm or illness as a result of (1) the parents’ inability to protect her and (2) Mother’s mental illness, developmental disability, or substance abuse (§ 300, subd. (b)), and that there was a substantial risk Minor would be sexually abused by Father due to his criminal history (§ 300, subd. (d)).

## **B. Disposition Report**

In a July 2014 disposition report, the Agency said it had been unable to obtain documentation about Mother’s mental health because she had refused to sign releases. She said she had no mental health problems, had never been hospitalized, and had not been diagnosed with any mental illness. There was evidence, however, that she had been placed on a 5150 hold in 2010. Mother said she had completed all the coursework to obtain a doctorate in psychology, but that the university would not issue her degree; she said this was due to her family making false statements about her mental health.

Mother’s family had been concerned about her mental status for several years, since her mental health deteriorated toward the end of her graduate work. Grandmother had been actively seeking help for Mother for years, including trying to keep in touch with Adult Protective Services and Child Protective Services, and felt she had lost her daughter to mental illness.

Mother had refused to be assessed by an Adult Mobile Crisis psychiatrist, and had refused services when offered them by Adult Protective Services. An FBI agent told the Agency that Mother had sought to file a report on May 1, 2014, shortly before Minor was born, and that she had been to the FBI office multiple times. After receiving her reports,

the FBI determined they did not have merit and “were more indicative perhaps of someone with psychological issues.”

The report noted that Mother’s mental health had been a concern to most professionals with whom she came into contact. It appeared that she might be suffering ongoing delusions, and that she might have schizoaffective disorder or paranoid schizophrenia. She had refused to release her psychiatric records to the Agency, but it appeared she had declined any psychiatric services after being released from the recent 5150 hold.

Mother had no known history of substance abuse. Father said he occasionally smoked marijuana and drank alcohol. He denied having used harder drugs, but he had at least one conviction for narcotics possession. He said several of his criminal convictions had occurred when he was under the influence and behaved inappropriately by “rubbing up against people, etc.” He had not completed substance abuse treatment and did not think he needed it. A drug test had been positive for THC, the active ingredient in marijuana.

The disposition report provided a more detailed summary of Father’s criminal history: he was a registered sex offender and had suffered convictions for misdemeanor sexual battery in 1991, three counts of misdemeanor annoying or molesting children in 1991, misdemeanor obstructing or resisting a police officer in 1991, felony rape in 1992, felony annoying or molesting children in 1994, felony burglary in 1999, felony failure to register as a sex offender in 2000, felony narcotics possession and felony marijuana possession in 2003, misdemeanor sexual battery in 2004, and felony possession of concentrated cannabis in 2009. Mother had no criminal record.

Mother and Father lived together in the home of a relative of Father’s. Both parents denied that there was domestic violence in their relationship. Mother appeared to have obtained regular prenatal care during her pregnancy, although she had not signed releases to allow the social worker to see the documentation. Both Mother and Father handled Minor gently and with affection and were attentive to her needs at visits.

Minor had been placed in the home of a paternal great-aunt at the request of both parents. However, the great-aunt had recently reported that Mother's contact with her and other paternal relatives had "suddenly taken a very negative tone, somewhat bizarre tone." Grandmother had asked to have Minor placed with her, but Mother became so agitated at a discussion of her family that the Agency was concerned placement with Grandmother would interfere with the reunification process.

The Agency recommended that Minor remain in out-of-home placement and that both Mother and Father be offered reunification services, with a requirement that she undergo psychological assessment and adhere to any clinical recommendations for treatment. The disposition report noted that Mother was very bright and high functioning in many areas, but that she appeared to be suffering from delusions, paranoia, and an "inflated sense of self." She would make statements apparently meant to arouse interest or alarm, but then maintain an air of mystery about those statements. The Agency expressed concern as to whether Mother could care for Minor safely, since she appeared to be "actively psychotic and experiencing delusions," and psychosis "involves a degree of unpredictability that must be addressed when discussing the safe parenting of young children." Mother denied having mental issues, however, and was reluctant to participate in treatment. She had a history of feeling wronged by family members or care providers, and the Agency expressed concern that she would not be able to maintain relationships with Minor's service providers.

The Agency also recommended that Father undergo a psychological assessment, and expressed concern that Father was not more aware of or alarmed by Mother's mental state. He had attended several visits with Minor and behaved appropriately, but Mother had done much of the feeding and changing, and Father had left for periods of time during the visits.

### **C. Addendum Report**

In an addendum report filed on July 15, 2014, the Agency noted that its concerns about Mother's mental state had deepened since the original dispositional report was submitted. The visitation supervisor had reported that Mother appeared to be actively

suffering from paranoia and psychosis. Mother had reportedly been contacting authorities to report both a visitation center staff member, Lily McGowan, and the social worker. In Mother's email communications with the center, she referred to herself as "Dr. [Mother's name]/Agent Status," declared herself to be a "doctor and legal law enforcer," stated that McGowan, the visitation coordinator, was "in no way shape or form to be involved as Lily McGowan is misrepresenting Lily McGowan self," and made statements such as "committing crimes against any person assigned to visitations is never allowed or tolerated."

According to the addendum report, problems had arisen during visits between Mother and Minor. At a visit in late June, Mother was told Minor's pediatrician had recommended that Minor receive only a certain type of formula. Mother insisted on feeding Minor the formula she had brought herself, despite being told that it seemed to upset Minor's stomach. At a visit the next day, when the visit monitor entered the room with Minor in her car seat, Mother aggressively snatched the car seat away and said she did not want the monitor taking Minor out of it. The monitor explained she was trying to soothe the baby, and Mother became upset and told her to be quiet. Minor's caregiver had not provided a bottle for the visit, because Mother had insisted on providing her own formula at other visits. When it became clear that Minor was hungry, the monitor suggested Mother buy formula from the store next door. Mother said it "wasn't her problem," and let Minor cry for 25 minutes before she called Father, who arranged for the caregiver to drop off a bottle.

The addendum report noted that Father remained "highly protective" of Mother and did not view her mental state as a primary concern.

#### **D. Contested Hearing and Juvenile Court's Orders**

A contested jurisdictional and dispositional hearing took place on July 18, 2014. Social worker Jennifer Malcolm, who had prepared the detention report, testified as an expert in child welfare. According to Malcolm, when Mother was in the hospital after Minor's birth, she was calm and her behavior was appropriate. Mother had been placed on the 5150 hold two days before giving birth, and was released from the hold a day after

Minor was born. Malcolm's decision to detain Minor was based on the 5150 hold, Mother's refusal to obtain services, and a police report indicating she was in a paranoid and delusional state.

Briana Lewis, the social worker who prepared the disposition report and detention report, also testified as an expert in child welfare. According to Lewis, the visitation supervisor had contacted her to express concern about Mother's mental [health] and stability. The staff at the visitation center believed Mother was showing paranoia and delusions, and said Mother's statements were "rambling and not quite making sense to them." These facts had strengthened Lewis's recommendation that Minor remain in an out-of-home placement while Mother and Father received reunification services.

Lewis acknowledged that Mother had no criminal history, that she had received prenatal care and attended a prenatal class, that she had housing, and that Father was employed. However, Mother had not signed releases to allow the Agency to review her medical records, so Lewis did not know specifically what prenatal care she had received. Mother possessed basic parenting skills and had an understanding of child development topics. Lewis also acknowledged that because Mother and Father had never had custody of Minor, it was "challenging" to assess Minor's safety in their care. However, she was concerned that Mother's statements suggested she was sometimes out of touch with reality. She also believed that Mother's paranoia and hostility to service providers could jeopardize her ability to provide consistent care to Minor. Minor's hospital records indicated Mother might have a diagnosis of either paranoid schizophrenia or schizoaffective disorder.

According to Lewis, Father had been arrested for domestic violence in 2011. Father told her he had taken domestic violence classes. He had not been arrested since then, and Lewis did not believe Minor was at risk due to violence between Mother and Father. Father had been testing randomly for drugs; the first test came back positive for marijuana, and all subsequent tests had been clean. Lewis believed Father's history of sexual offenses created a risk to Minor, both because it raised concerns about his judgment and because it showed a pattern of inappropriate relationships with vulnerable

people. Father's last conviction for a sexual offense took place 11 years previously, and he had told Lewis his youngest victim was 16 years old.

Although Minor's current caregiver had been selected at Mother and Father's request, the caregiver had said she was not sure she was willing to continue to care for Minor in the long term because of Mother's increasingly hostile behavior.

An FBI agent testified that Mother went to the FBI office on May 1, 2014. His investigation showed she was the subject of a missing person report, and he called Mother's grandmother (Great-grandmother), who was listed as the contact on the missing person report. Mother had emailed the FBI on a number of occasions, and had come into the San Francisco office at least once previously. The story on the intake form Mother filled out was difficult to follow, and it appeared that the writer was disconnected from reality. According to the agent, Mother was "complaining about a conspiracy by local law enforcement entities to break into her car as retaliation for her reporting to the Central Intelligence Agency and the Department of Justice about a child pornography ring."

The agent spoke with Mother and told her he had spoken with [ ] Grandmother and Great-grandmother. Mother told him she had obtained restraining orders against [Grandmother] from the CIA and the Department of Justice. She indicated she had relationships with the United States Department of Justice and she named a contact within the CIA. The agent's investigation showed that she had no relationship with the Department of Justice, and that her CIA contact was a public relations official.

When the agent spoke with Grandmother, she expressed concern about Mother's mental state. The agent called the San Francisco Mental Health Crisis Hotline. He had seen that Mother was about eight months pregnant and thought a trained person should evaluate her. A few hours after Mother left the office, she called and asked to speak with the agent's supervisor. When he told her she could not do so, she said he would be hearing from her attorney.

Father testified that before Minor's birth, he and Mother had obtained clothing and other supplies for her. His last arrest was in 2010, for domestic violence. He had taken a

52-week domestic violence class as a condition of his probation. There had been no instances of sex crimes since his last conviction 11 years previously.

Father testified he was willing to engage in parenting classes. When asked if he would engage in therapy, he first replied, “It depends on what type of therapy you are talking about,” and later said he would have therapy. He was not willing to have a psychological evaluation because he did not see the purpose of it. He had visited Minor and wanted her home.

The juvenile court found true allegations pursuant to section 300, subdivision (b), that Mother was unable to care for Minor in that she had recently been put on a 5150 hold and labeled “gravely disabled” due to hallucinations and delusions and that she had been previously put on a 5150 hold but had refused treatment. The court amended the allegation to add the statement, “The mother currently suffers from a mental health disorder which prevents her from providing adequate care for the baby and the baby is at risk.” The court also found true the allegations pursuant to section 300, subdivisions (b) and (d), that Father was a registered sex offender. The court found Minor’s physical or emotional health required removal from the parents’ physical custody, approved placement with relatives, and ordered reunification services for Mother and Father. [ ]

#### **E. Six-Month Status Review**

In August 2014, the juvenile court entered a mutual stay-away order prohibiting Mother and Father from contacting each other, and ordered that Mother and Father visit Minor separately.<sup>4</sup>

In November 2014, the social worker assigned to the case filed a request for the court to suspend visits until Mother could show she was addressing her mental issues and her mental health had stabilized. According to the request, Mother had been unable to establish an emotional connection with Minor. During visits, she had difficulty soothing Minor, made Minor uncomfortable when Minor was calm and resting, and had to be told to feed Minor because she believed Minor was overweight. As a result, Minor cried

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<sup>4</sup> Mother told a visitation monitor in August 2014 that she and Father had recently separated.

through most of the visits and sought comfort from the visit supervisor or other adults in the room. The juvenile court ordered clinical visitation between Minor and Mother.

In its six-month status review report, filed in December 2014, the Agency noted that Mother was unwilling to speak directly with the social worker. Because Mother had not signed medical releases, it had been difficult for the Agency to gather information on her mental or physical health, housing, or social support system. Visits had taken place in San Francisco and in Patterson, where Minor was living with a paternal relative. Mother had visited Minor consistently in San Francisco, but had resisted visiting in Patterson since the stay-away order had been issued. Mother was described as having “a difficult time reading her child’s [nonverbal] cues,” and Minor often cried for extended periods when with Mother. Mother often responded aggressively to constructive criticism from Agency staff.

Visitation notes attached to the report indicated that Mother had told the social worker she had conducted research on the visitation monitor and that the monitor was a child molester. The monitor later refused to drive Mother to visits in Patterson due, in part, to Mother’s behavior in accusing the monitor of being a child molester and her prior allegations that her brother-in-law was involved in a child pornography network.

On a visit at the end of October 2014, Mother noticed that Minor’s ears had been pierced with Father’s consent. She became agitated and told Minor she would be filing a lawsuit. Mother was agitated for the majority of the visit and held Minor in an inappropriate and uncomfortable manner as she spoke of her concerns and threatened to remove the earrings. Minor cried and fussed during much of the visit, she often looked in the monitor’s direction, and she vomited. Mother attributed the vomiting to the foster mother’s “making her fat.”

Father was making an effort to improve his parenting skills, but the Agency remained concerned that he could not protect Minor. He had visited Minor inconsistently.

As part of the reunification plan, Mother and Father were to undergo psychological evaluations to address their ability to protect and care for Minor. Mother

had been offered testing for four consecutive months, but had not yet participated in an evaluation. Father had begun participating in his testing. Mother had been referred to individual therapy; she began attending in November 2014 and had attended three sessions. Father had not yet begun therapy. Father had been referred to parenting education classes, and attended the classes twice a week.

The report outlined additional services that had been offered. The social worker had met with Mother and tried to discuss her services in August 2014, but Mother said the social worker was not allowed to speak with her and directed her to communicate with Mother's attorney; the social worker spoke with Mother's attorney about how to communicate with Mother. The social worker mailed a letter to Mother providing contact information of a therapist. In September 2014, she provided coaching during Mother's visit with Minor. Mother was referred to a parenting program, which she declined. Over the next few months, the social worker regularly mailed letters outlining Mother's court-ordered services and offered her transportation support, housing support, and "Linkages" meetings.

The Agency recommended that reunification services be terminated and a section 366.26 hearing be scheduled.

The status review hearing was continued, and the Agency filed an addendum report on April 21, 2015. Mother had seen her individual therapist ten times between November 2014 and January 2015. She and the therapist had agreed to use a diagnosis of a "Phase of Life Problem," with treatment focused on "supportive individual psychotherapy" to address Mother's distress as a result of Minor being detained. The Department expressed concern that the focus of the therapy was not on the issues that brought the family to the Agency's attention—her delusional, psychotic, and paranoid behavior. This behavior continued to exist: In April 2015, a visit was cancelled due to a "mix up," and Mother went to a police station to report that Minor had been kidnapped by her foster parent.

Mother had begun a psychological evaluation with Dr. Maria Holden. Dr. Holden had recently told the social worker Mother had sent her a "very suspicious, belligerent,

and aggressive” email stating she would not continue her psychological testing and that she would be pursuing legal action against Dr. Holden. Dr. Holden told the social worker that although she been unable to complete the entire evaluation, she had enough material to submit a report, and that she had seen Mother exhibit “paranoid, psychotic and delusional behavior.”

Mother had visited Minor consistently. However, she still seemed unable to recognize Minor’s cues that she was hungry, uncomfortable, or sleepy, and the visits still required supervision. She often had to be asked several times to feed Minor. On one occasion, Mother trimmed Minor’s nails, although they did not need trimming, and cut her finger to the point of bleeding.

Father had only recently resumed visiting with Minor after a lapse of more than five months. He appeared to be trying to reestablish a relationship with Minor. He completed both his psychological evaluation and a parenting class in December 2014, and had five sessions with his therapist. The Agency remained concerned that Father continued to minimize Mother’s symptoms and as a result might be unable to protect Minor.

A contested hearing took place April 30 and May 1, 2015. The social worker testified that Minor tended to be very distressed during Mother’s visits and would cry for half an hour at a time. When the social workers gave Mother advice, she would become aggressive and tell them to “shut up.” The social worker had expected the visits to become less stressful as time went on; instead, they became more so. She also noted that Minor was calmer in her own home when Mother was not present. Mother had been participating in clinical visitations, in which the clinician provided guidance, since December 2014. However, she continued to behave aggressively toward staff, she needed to be reminded to feed Minor, and she continued to question the need to feed Minor so often. The social worker believed these comments were a result of Mother “not being in touch with reality” or understanding child development. Mother would direct the clinician to speak with her attorney rather than with her, and the lack of communication reduced the effectiveness of the visits.

Mother had asked the social worker not to speak to her directly, and they had not spoken face-to-face since August 2014. Instead, the social worker sent Mother letters reminding her of the services that were being offered, and she spoke with Mother's attorney. Several months previously, Mother had left phone messages that the social worker found "very aggressive and scary and very upsetting." She had not tried to set up meetings with Mother, her attorney, and services providers because Mother had told the social worker not to contact her, and Mother's aggressiveness caused her concern for her own safety.

The social worker acknowledged that Father had successfully completed his parenting classes, had been seeing a therapist since January 2015, and had begun visiting Minor again. However, she testified that Father continued to express little concern about Mother's behavior; when asked how concerned he was on a scale of one to ten, he said his concern was "at a one or two, and said . . . she's just having a bad day; it's a hard time." Father told the social worker the Agency should not have taken Minor and that it should give Mother a chance. In light of Father's lack of concern, the social worker believed he would be comfortable leaving Minor with Mother.

Over Mother's objection, the Agency called Dr. Maria Holden, the psychologist who carried out the incomplete psychological evaluation.<sup>5</sup> Dr. Holden testified that Mother showed "a great deal of resistance to taking the tests. . . . She presented with symptoms of a disordered thought process. She displayed fear and anxiety about being assessed. She demonstrated a great deal of guardedness, denial, and defensiveness. She demonstrated anger and even belligerence. She made threats. She displayed grandiosity." In particular, Mother told Dr. Holden she was violating her civil rights and that one of Mother's lawyers would be contacting Dr. Holden. At times, she used a threatening tone. She talked about individuals or agencies that had wronged her, such as her university and many of her relatives, and discussed her contact with the FBI. Her speech was "bizarre and halting," "paranoid and delusional." In her emails, Mother

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<sup>5</sup> Dr. Holden had three sessions with Mother, but did not complete the evaluation because Mother threatened to sue her.

referred to herself as “[E]valuator/[A]gent [S]tatus.” Dr. Holden opined that Mother’s behavior showed a disordered thought process, which could affect her ability to be a good parent. For instance, Mother’s paranoia and fear of other people and agencies could prevent her from taking Minor to doctor’s visits, day care, or even school. Dr. Holden concluded Mother was not open to treatment of a thought disorder.

Mother’s psychotherapist, Dr. Amy E. Parsons, testified she had been treating Mother since November 2014. They had agreed that the treatment would focus on a “phase of life problem,” which Dr. Parsons explained meant “there’s an occurrence in the person’s life that is causing disruption, and it’s a significant enough clinical concern that it becomes the focus of treatment.” Dr. Parsons had been informed that Mother had had a psychotic break during her graduate studies, but the treatment plan did not address that issue.

The program director of the agency that provided the clinically-supervised visitation testified that Mother had been receptive to redirection during some visits, but at other times had refused assistance from the visit supervisor. She generally complied with direction “[w]ithin one or two prompts.” Mother had generally been engaged with Minor during visits and usually engaged in age-appropriate activities. She brought toys and clothes to visits. [ ]

Mother testified against her counsel’s advice. She believed she was benefiting from her therapy with Dr. Parsons. She received a referral to Dr. Holden for an evaluation in November 2014 and contacted her immediately; however, Dr. Holden did not respond until late December, and her first available session was in mid-January 2015. Because Mother’s education included doctoral-level studies in psychology and she was trained in carrying out psychological evaluations, she believed she was not qualified to undergo a psychological evaluation.<sup>6</sup>

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<sup>6</sup> Mother testified that she had completed the coursework and requirements for a Psy.D., and that she was involved in litigation with her university over its refusal to grant her the degree.

Mother had been visiting with Minor; her activities included attending to Minor's basic needs, singing with her, encouraging her to walk, reading, and playing with toys. She testified that she had extensive experience working with children and had never presented a safety risk to them. She denied having neglected to feed Minor. She acknowledged that Minor's cuticle had started to bleed on one occasion as Mother trimmed her nails, but said Minor received appropriate first aid for the injury.

Mother did not believe she had a mental health problem, although she acknowledged she had been on a 5150 hold when Minor was born.

The juvenile court found that Minor's return would create a substantial risk of detriment to her safety, that Mother and Father had failed to participate regularly and make substantive progress in court-ordered treatment programs, that reasonable services were offered, and that there was no substantial probability that Minor could be returned to Mother or Father within six months. The court terminated reunification services for both parents and ordered a hearing pursuant to section 366.26. [We end our quotation from our opinion in *L.H. v. Superior Court*.] Mother petitioned this court for extraordinary relief under California Rules of Court, rule 8.452, and in *L.H. v. Superior Court*, we denied the petition on the merits.

#### **F. Section 366.26 Hearing**

In July 2015, the Agency prepared a report for the section 366.26 hearing, in which it recommended that parental rights be terminated and Minor be placed for adoption. Mother had been visiting Minor for three hours once a week in a clinically supervised setting. She had never had unsupervised visitation with Minor.

Minor had been living with her great-aunt since June 2014, when she was less than a month old. The great-aunt wanted to adopt her. She was willing to have Mother and Father visit with Minor once a month, and was also willing to have Minor's maternal relatives visit her. The great-aunt had a stable job, had been married for 24 years, was bonded with Minor, and treated her in the same way she treated her own children.

The section 366.26 hearing took place on November 9, 2015, when Minor was approximately 18 months old. A social worker who had been assigned to the case

testified that the visits Mother had been receiving, supervised clinical visits, represented the highest level of supervision. Mother was visiting Minor regularly. Minor's great-aunt was caring for her "wonderfully." Minor's great-aunt and her husband wanted to adopt Minor, and the social worker was satisfied that they could meet Minor's needs and their financial obligations.

Another social worker testified that during visits, Mother treated Minor with great affection, sang to her, played with her, read to her, and monitored her to keep her safe. She also testified that the prospective adoptive parents genuinely loved Minor, considered her a family member, and appeared capable of caring for her and meeting her needs. It was the social worker's understanding that Mother would be able to continue visiting with Minor after adoption.

Mother testified that she visited Minor regularly. During the visits, she would care for Minor by changing her diaper, feeding her, and monitoring her to keep her safe. She would play with Minor, read to her, sing with her, do activities with her, such as art and stickers, bring her clothes, and care for her hair. Minor would smile at Mother at the beginning of the visit and indicate she wanted to be picked up and shown affection. Mother testified that Minor knew she was her mother. She also testified that Minor knew that if Mother could not make a visit, it was "due to political reasons or scheduling reasons or reasons that are beyond mommy's control or beyond [Minor's] control."

The juvenile court terminated Mother and Father's parental rights and set a permanent plan of adoption. Mother has appealed from this order.<sup>7</sup>

## II. DISCUSSION

Mother contends the juvenile court abused its discretion in declining to apply the section 366.26, subdivision (c)(1)(B)(i), exception to termination of parental rights because she and Minor share a loving bond and Minor would benefit from continuing a parent-child relationship with her.

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<sup>7</sup> Mother also appealed from an order granting the great-aunt de facto parent status. She raises no issues in connection with this appeal.

Where reunification services have failed and a hearing pursuant to section 366.26 is held, the court must determine whether the child is likely to be adopted; if so, with limited exceptions, the court must terminate parental rights and order the child placed for adoption.<sup>8</sup> (§ 366.26, subd. (c)(1).) Under section 366.26, subdivision (c)(1), the denial of reunification services “shall constitute a sufficient basis for termination of parental rights” unless “(B) [t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . .” The parents have the burden of proving the applicability of the beneficial relationship exception. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*))

The *Autumn H.* court recognized that “[i]nteraction between natural parent and child will always confer some incidental benefit to the child.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) “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.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The beneficial relationship exception applies only when the relationship with the natural parent “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.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) Only 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 [is] the preference for adoption . . . overcome [so that] the natural parent’s rights are not terminated.” (*Ibid.*) The existence of this relationship is determined by “[t]he age of the child, the portion of the child’s life spent in the parent’s

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<sup>8</sup> Mother does not challenge the juvenile court’s finding that Minor is adoptable, and the record clearly shows she is likely to be adopted.

custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*Id.* at p. 576.)

There is some conflict in the courts of appeal as to the proper standard of review of a juvenile court’s finding on whether one of the exceptions to adoption applies. (See *Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–577 [substantial evidence standard applies to finding on the applicability of beneficial relationship exception]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [applying abuse of discretion but recognizing difference in standards not significant]; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 [applying combination of both standards].) We agree with *Jasmine D.* that the practical differences between the two standards in evaluating the beneficial relationship exception are not significant. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) On the record before us, we would affirm the court’s finding under either standard.

We recognize the evidence that Mother had visited Minor regularly and generally cared for her appropriately during those visits. Indeed, the juvenile court stated that it had “not a shred of doubt” about Mother’s love for Minor and that it was glad the prospective adoptive parents were willing to allow continuing contact. However, as we have explained, a parent must show more than frequent and loving contact or pleasant visits with the child. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 1229.) The record here fully supports the conclusion that severing the parent-child relationship would not “greatly harm[]” Minor. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Minor was removed from Mother the day she was born, and she had never lived in Mother’s care. She was approximately 18 months old at the time of court’s decision, and she had lived nearly her entire life with the prospective adoptive parents, who were meeting her needs. Mother had never had an unsupervised visit with Minor, and was currently receiving supervised clinical visitation, the highest level of supervision available. On these facts, the juvenile court could reasonably conclude the limited relationship between Minor and Mother did not constitute a “compelling reason” to determine that the termination of parental rights would be detrimental to Minor (§ 366.26, subd. (c)(1)(B)(i)) or that it

outweighed the benefit Minor would receive from the security of living in a permanent adoptive home (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575).

**III. DISPOSITION**

The orders appealed from are affirmed.

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Rivera, J.

We concur:

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Reardon, Acting P.J.

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Streeter, J.