

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Angelina T., a Person Coming Under  
the Juvenile Court Law.

SAN MATEO COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.T.,

Defendant and Appellant.

A148061

(San Mateo County  
Super. Ct. No. 82132)

Angelina T. was declared a dependent child at 10 months old. Four years later she was freed for adoption by an order terminating the parental rights of her parents, A.L. and S.T. (Mother and Father; Parents). Father challenges the termination order, arguing the juvenile court should have applied the beneficial parental relationship exception. (See Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> We find the juvenile court did not abuse its discretion in ruling Father failed to establish that the benefit of continuing his relationship with Angelina outweighed the benefits of adoption, and affirm.

**I. BACKGROUND**

We reviewed the early history of this case in a prior writ opinion and only briefly summarize it here. (See *S.T. v. Superior Court* (July 15, 2015, A144865) [nonpub. opn.].) The juvenile court sustained a petition filed on behalf of Angelina in March 2012,

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

removed her from parental custody, placed her with her maternal grandparents (Grandparents), and ordered reunification services for Parents. The following September, she was returned to Parents' custody with family maintenance services. Parents' second child, Isabella, was born the following year. In 2013, there were incidents of domestic violence and Father did not consistently engage in services to treat his mental health issues. In 2014, Mother and the children started living separately from Father, there were further incidents of domestic violence, Father did not consistently participate in services, and Father harassed Mother. In October 2014, the Agency filed supplemental petitions seeking removal of the children, and the children were detained with Grandparents. In April 2015, the court sustained the supplemental petitions, removed both children, placed them with Grandparents, denied further reunification services in Angelina's case, and bypassed reunification services in Isabella's case. We affirmed all of the court's orders except the bypass of services for Isabella, which we reversed. (*S.T. v. Superior Court, supra*, A144865.)

During Angelina's initial removal in 2012 and after Parents' separation in 2014, Father regularly attended supervised visits and was appropriate and loving toward the children. In March 2014, the San Mateo County Human Services Agency (Agency) reported: "[I]nitially [Father] [w]as overwhelmed handling a busy two-year-old and a toddler. However, more recently the [social worker] observed [Father] has a continued strong bond with his children, he is very observant of their needs, he engages in appropriate children's play, he changes diapers, and feeds them lunch. [Father] always ends the visit with 'My beautiful princess Angelina' [and] 'I love you Isabella.'" Mother reported Father had "done a great job in helping her with the children and . . . being positive and appropriate when he is present with the children." In the summer of 2014, Father admitted alcohol and marijuana use, and his therapist reported Father was not participating in mental health treatment. Nevertheless, Father's visits with the children remained positive and appropriate and were enjoyed by both girls.

After detention with Grandparents in October 2014, the children "consistently appeared to be doing well" in Grandparents' care. The children seemed "happy and

loved as Angelina consistently stated ‘I love my Mimi my Papa,’ ” referring to Grandparents. When placed for a couple of months with maternal cousins as prospective adoptive parents, the children showed significant distress at being separated from Grandparents and an older half-sibling (Mother’s son, who also lived with Grandparents). Thereafter, the permanent plan was changed to adoption by Grandparents.

Father continued to visit regularly and appropriately in late 2014. He brought the children gifts, played with them, and was affectionate with them. Angelina looked forward to the visits. The social worker noted Father’s “continued devotion . . . to the children” and his “consistency with visitation.” In early 2015, the Agency again reported Father consistently participated in visitation, actively engaged in positive play with the children, and both children seemed happy during visits.

We issued our writ opinion in July 2015. In September, the Agency reported Angelina had been diagnosed with posttraumatic stress disorder (PTSD) with symptoms of “difficulty in falling and staying asleep, hyper-vigilance, exaggerated and startled response, separation anxiety, anxious affect, difficulty with self-regulation and defiance.” Father continued to regularly visit the children and act appropriately, and the children enjoyed the visits. However, Father sometimes became emotional, with Angelina reporting “daddy cries a lot at visits,” and at one visit Father reportedly smelled of alcohol in disputed circumstances. Also, when the social worker drove Angelina to Grandparents’ home after visits, she would yell, “ ‘I’m home! I’m home! This is my house! My Mimi’s house is my house! I love my Mimi.’ ” In the social worker’s opinion, Angelina was bonded to Grandparents, who had agreed to adopt her and to allow her to maintain contact with Parents if it seemed to be in her best interest.

In September 2015, Father filed a section 388 petition seeking reinstatement of reunification services in Angelina’s case, alleging he had consistently visited with the children, the children were happy to see him, he was engaging in services in Isabella’s case, and he had ceased communication with Mother. He alleged the change would be in Angelina’s best interest because she “is very bonded to the father. It would be better for her to continue her relationship with her father and not have that relationship interrupted

by adoption.” The court scheduled a hearing on the petition at the same date and time as the section 366.26 hearing. Mother filed a similar petition, and the court granted Mother’s request for a continuance so that bonding study could be completed.

In December 2015, the Agency reported Father was homeless and living out of his vehicle but continued to work and financially support himself. He did not consistently participate in services, and he had tested positive for marijuana, methamphetamine and opiates in September. He continued to regularly visit with the children and show them love and affection. The Agency continued to recommend termination of parental rights.

In March 2016, the Agency reported Father was not engaged in any reunification services in Isabella’s case. Father’s psychiatrist reported that Father “really questions whether or not he can care for his children. He has been really open about that. I think he’s just really afraid of not having a relationship with them.” The psychiatrist reported Father was heavily abusing marijuana and needed residential treatment, but he had not agreed to participate. It was also difficult for him to comply with his medication regime for diagnosed schizophrenia. The psychiatrist opined, “I don’t see how he can care for his girls. He makes some pretty poor choices.” Again, the Agency recommended termination of parental rights.

At the combined section 388 and section 366.26 hearing, Father called Dr. David Brodzinsky, an expert in child development and child attachment theory, to testify about a bonding study he had conducted. Brodzinsky had reviewed part of the juvenile dependency record, observed Father’s interactions with his children, and interviewed Father twice. The observation involved what is known as a “strained situation,” where the child is separated from the parent and left with the evaluator (a stranger), and then reunited with the parent. “[W]e are looking at a differential response to an unfamiliar adult . . . versus a parenting figure.” When Angelina first saw Father in the waiting room, she called out, “ ‘Daddy,’ in a very pleasant and somewhat excited sort of way,” but did not approach him. In the play room, she “initially was a little reserved but quickly entered into interaction with him. She shared toys with him. She asked him questions. She sought his help. [¶] [Father] responded in generally a very appropriate way, rather

low key.” When Father left Angelina, “she watched him leave. She didn’t protest. But after a while, she asked about him a couple of times. I mentioned that he was in the other room. [¶] And several minutes later, she got up and left the room on her own volition. . . . She was not satisfied just playing with me. [¶] . . . [S]he was seeking out her dad. And she went into the other room, and she hugged him. So there was preferential responding there.” At one point, Angelina also spontaneously asked about going to Father’s house and bringing her toys.

In Brodzinsky’s opinion, Angelina had a moderately secure attachment with Father. “I didn’t see the kind of physicality that I usually see in a child who has a stronger attachment. [¶] I did not see as much with trying to get the parent involved in the play with them directly.” However, she was comfortable with him, showing no anxiety. Brodzinsky’s assessment “was a judgment call. Did I think she was strongly attached, as I have seen in most kids? No. [¶] Moderately attached? Yes. [¶] . . . [¶] I wouldn’t necessarily expect to see a very strong attachment given the amount of disruption in her life away from him over the last year and a half or two years now.”

Brodzinsky testified that children usually experience grief, sadness and confusion when a moderately secure attachment is broken, but the harm caused by disrupting that attachment was affected by the quality of care following the disruption. When told Angelina had been diagnosed with PTSD, Brodzinsky said maintaining her relationship with Father would be especially important, but he then qualified that opinion by stressing that continuing the relationship would be beneficial only if Father was “supportive” of Angelina during visits and did not, for example, arrive intoxicated or with untreated schizophrenia. “The fact that he has a history of mental illness and a history of addiction in and of itself is not an issue, per se. It is whether or not it continues and impacts on [Angelina’s] ability to feel safe and for him to create a safe environment.”

The social worker acknowledged Father was appropriate and loving at visits, and the children were excited to see him at visitation. However, in Grandparents’ care, “the children feel very safe and very secure[.] . . . [T]hese are consistent caregivers in their lives. [¶] . . . [¶] . . . It is very rare that the children end their visits [with Father] in

distress . . . . [T]he children will always ensure that I am taking them to Mimi's house.” The social worker did not believe it would be beneficial to Angelina to continue her relationship with Father, and she had concerns about doing so: his visits had always been supervised, he was engaging in substance abuse, and he had made no progress in meeting his case plan goals. Nevertheless, Grandparents were willing to continue as the children's guardians if the children were not freed for adoption.

During cross-examination of Brodzinsky, Father interjected a comment and walked out of the courtroom while proceedings were underway. Father also had an outburst during the social worker's testimony and, in the court's words, “stared down” the bailiff, causing the court to call a brief recess. Father had another outburst during oral argument.

Father's counsel argued that, if the court declined to reinstate services for Father, it should apply the beneficial parental relationship exception to termination of parental rights. “[Brodzinsky] opined that Angelina was moderately secure in her attachment to [Father]; that this was an important relationship to Angelina and that we would be putting her at risk if we severed this relationship. [¶] . . . [¶] The concern is if we sever parental rights today [Father] will just be ripped out of the children's lives, and that is not in their best interest.” The Agency countered that Brodzinsky was not fully informed of the “breadth and depth of [F]ather's addiction issues . . . [or] the history of domestic violence,” and that the best plan for Angelina was adoption.

The trial court denied the section 388 petitions. On the section 366.26 issue, the court stated, “It is mind boggling to me and unfathomable that these children, especially Angelina, does not have permanency in a case that originated in 2011. . . . [¶] . . . [¶] . . . [W]e don't settle for guardianship where adoption should be the plan. We give children the best chance for a great future, and adoption is the best chance.”

## **II. DISCUSSION**

Father argues the juvenile court erred in declining to apply the beneficial parental relationship exception to termination of his parental rights. The Agency defends the court's ruling, and we affirm.

“By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount. [Citations.] . . . 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.’ ” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Id.* at p. 1350.)

At a section 366.26 hearing, the juvenile court must first determine by clear and convincing evidence whether it is likely the dependent minor will be adopted. (§ 366.26, subd. (c)(1).) If the court finds a likelihood of adoption, the court *must* terminate parental rights and order the child placed for adoption *unless*, as Father contends applicable here, it finds a “compelling reason” that termination would be detrimental under one of the exceptions listed in section 366.26 subdivision (c)(1)(B). A party arguing one of those exceptions applies has the burden of producing evidence that establishes the exception. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343 [discussing former § 366.26, subd. (c)(1), predecessor of § 366.26, subd. (c)(1)(B)].) Under the beneficial parental relationship exception, the court must find a “compelling reason” termination would be detrimental because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The court must find “the benefit of continuing a parental relationship outweighs the child’s interest in the stability and permanence of adoption.” (*In re Logan B.* (2016) \_\_\_ Cal.App.5th \_\_\_, \_\_\_ [2016 Cal.App. Lexis 819].) “We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child.” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

“The existence of interaction between the natural parent and child will always confer some incidental benefit to the child.” (*In re Lorenzo C., supra*, 54 Cal.App.4th at p. 1342.) The beneficial parental relationship exception requires more—“that the parent-

child relationship promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents.” (*Ibid.*) “[T]he 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.) “ ‘The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’ ” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.)

Here, there was no dispute that Angelina was adoptable or that Father had maintained regular visitation. The disputed issues were the quality of Angelina’s relationship with Father and the relative benefits of preserving that relationship by choosing guardianship as a permanent plan or affording Angelina the stability and permanence of adoption. (See *In re Logan B., supra*, \_\_\_ Cal.App.5th at p. \_\_\_ [2016 Cal.App. Lexis 819].) At five years old, Angelina had spent less than two years living with Father. Brodzinsky testified that Angelina had a moderately secure attachment to Father, showed a clear preference for Father over unfamiliar adults, and showed excitement and some physical affection for him. He testified that maintaining a positive relationship with Father would assist her in dealing with her symptoms of PTSD, but only if Father’s substance abuse and mental health conditions did not interfere with his ability to support Angelina during their visits. There was evidence that Father was abusing drugs and refusing substance abuse treatment, was not complying with his psychological medication regime or obtaining other treatment for his schizophrenia, had cried during some visits, arrived to one visit apparently intoxicated. He repeatedly lost self-control during the combined section 388 and section 366.26 hearing.

On this record, the court reasonably found that continuing Angelina's relationship with Father risked introducing trauma, confusion and instability into Angelina's life. Such turmoil would likely aggravate rather than mitigate Angelina's PTSD, which inferably was caused by the instability she had experienced in early childhood due in large part to Father's conduct. It was undisputed Angelina would receive quality care from Grandparents, thus mitigating disruption in her moderate attachment to Father. There was ample evidence that Angelina had a strong bond with Grandparents, including the social worker's opinion, Angelina's need for reassurance she would return to their care after visits (and no distress when separating from Father after visits), and Angelina's significant distress when separated from Grandparents to live with maternal cousins. On these facts, the court reasonably could have found the benefits of a permanent placement with Grandparents were weighty and Father failed to prove they were outweighed by the lesser benefit of continuing his relationship with Angelina. The court did not abuse its discretion in ruling the beneficial parental relationship exception did not apply.

### **III. DISPOSITION**

The order terminating Father's parental rights is affirmed.

---

BRUINIERS, J.

WE CONCUR:

---

JONES, P. J.

---

SIMONS, J.

A148061