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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A.G., A Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

WENDY J.,

Defendant and Appellant.

B235606

(Los Angeles County  
Super. Ct. No. CK82145)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Sherri Sobel, Juvenile Court Referee. Affirmed.

Judith Weissberg-Ortiz, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County  
Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and  
Respondent.

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Appellant mother seeks to reverse the trial court's judgment terminating her parental rights with respect to her daughter. She contends that the trial court's finding that the "beneficial parent-child relationship" exception did not apply was not supported by the evidence. Thus, she argues, the judgment based on such finding was erroneous. We disagree and hold that the mother failed to produce evidence sufficient to show that the child would benefit from continuing a relationship with her or that termination of her parental rights would be detrimental to her daughter.

***FACTUAL AND PROCEDURAL BACKGROUND***<sup>1</sup>

Appellant Wendy J. (mother) is the mother of Amanda G.<sup>2</sup> (Amanda). Amanda was born in April 2010 and came to the attention of the Department of Children and Family Services (DCFS) shortly thereafter when she began showing symptoms of methamphetamine withdrawal. Medical reports showed that mother's methamphetamine use while pregnant caused Amanda to suffer from acute bilateral parietal lobe infarction. Amanda was placed on hospital hold and remained hospitalized for 11 days.

DCFS filed a Welfare and Institutions Code<sup>3</sup> section 300 petition on May 10, 2010 alleging that Amanda was born with a detrimental health condition resulting from

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<sup>1</sup> The factual and procedural background was taken from the record which consists of a three-volume Clerk's Transcript and a three-volume Reporter's Transcript.

<sup>2</sup> Throughout the record, Amanda appears as "Amanda J." However, this is inconsistent with her birth certificate.

<sup>3</sup> All section references are to the Welfare and Institutions Code unless otherwise noted.

mother's amphetamine abuse and that such abuse rendered mother incapable of providing Amanda with proper care and supervision. While pregnant with Amanda, mother and her boyfriend were arrested on September 3, 2009 for using methamphetamines. However, mother denied using any drugs during her pregnancy or afterwards despite stating that she and her husband previously separated due to her drug use. Her breast milk, pumped while in the hospital, tested positive for methamphetamines. The court found that DCFS had made a prima facie case at the detention hearing and ordered that Amanda be detained with non-related extended family member Tamara T. (Tamara). It also ordered that mother be provided with monitored visitation at least three times per week. Mother indicated a desire to have Amanda placed with her maternal grandparents.

At the pre-trial resolution conference held on May 28, 2010, the trial court continued Amanda's detention with Tamara, but authorized DCFS to detain her with the maternal grandparents if mother moved out of their home and mother drug tested clean. Mother was ordered to participate in random drug screening, to attend parenting courses for children with special needs and to not breastfeed Amanda. The court also ordered monitored visitation for mother at least three times per week. Tamara was not permitted to be the monitor until mother tested clean for drugs six consecutive times.

Due to concerns with Tamara's noncompliance with court orders, DCFS detained Amanda with her current foster family on June 3, 2010. The trial court issued the order on June 17, 2010.

The trial court sustained the petition as amended and declared Amanda a dependent of the court on July 8, 2010. It ordered reunification services for mother and allowed her to retain her right to make education, medical and regional center decisions on Amanda's behalf. DCFS was ordered to provide mother with monitored visitation at least three times per week, with discretion to increase the time and duration but not to liberalize to unmonitored visitation. Mother was ordered to participate in parenting and drug counseling, to submit to random drug testing and to find appropriate housing.

At a progress hearing on August 11, 2010, the court ordered that Amanda be transitioned to maternal grandparents' care beginning with visitation every weekend from 9 a.m. Saturday through 6 p.m. Sunday. DCFS was given authorization to add an additional day as maternal grandparents learn how to care for Amanda's special needs.

The section 366.21 hearing was held on January 6, 2011. The trial court limited maternal grandparents' visitation due to concerns regarding their ability to meet Amanda's special needs and their refusal to acknowledge mother's drug abuse. The court ordered that their visits be limited to once per week on a day that mother visited with Amanda. DCFS reported that mother visited Amanda approximately two to three times per week but was often late. Mother tested positive for amphetamines and methamphetamines on June 8, 2010, August 25, 2010, September 2, 2010 and December 21, 2010. She was a "no show" on July 19, 2010, September 13, 2010, September 14, 2010, October 26, 2010, November 29, 2010 and December 10, 2010.

No changes were made to mother's visitation, but she was found to be noncompliant with the case plan.

The hearing was continued to January 20, 2011. On that date, the trial court found, by a preponderance of the evidence, that Amanda's return to mother created a substantial risk of detriment, that mother was noncompliant with her case plan, that Amanda could not be returned to mother's custody within six months and that reasonable reunification services were provided. It then terminated reunification services for mother. It stated, "The court finds that the mother has consistently and regularly contacted and visited with the minor, that the mother has not made significant progress in resolving the problems that led to the minor's removal from the home, and that the mother has not demonstrated the capacity and ability both to complete the objectives of her treatment plan and to provide for the minor's safety, protection, physical and emotional well-being, and special needs." Mother was subsequently arrested on May 8, 2011 for attempting to use counterfeit money.

At the section 366.26 hearing on June 23, 2011, the trial court found that Michael J. (father) was the presumed father of Amanda. It then determined Amanda was adoptable and terminated mother and father's parental rights. Mother appealed.

### ***CONTENTIONS***

Mother contends that the trial court erred by (1) refusing to find that the "beneficial parent-child relationship exception," found in section 366.26, subdivision (c)(1)(B)(i), applies because she maintained regular visitation and contact

with Amanda and Amanda would benefit from continuing the relationship; and  
(2) terminating her parental rights as a result of its failure to apply such exception.

### ***DISCUSSION***

#### 1. *The Standard of Review*

We review a trial court's findings that no exceptional circumstances exist for sufficiency of the evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment." (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.) In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment, if possible. When a judgment is attacked as being unsupported, our power begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. And when two or more inferences can be reasonably deduced from the facts, we are without power to substitute our deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

2. *The Trial Court Did Not Err by Concluding That the Exception in Section 366.26, Subdivision (c)(1)(B)(i) Did Not Apply*

Mother contends that the trial court erred by refusing to find that the beneficial parent-child relationship exception found in section 366.26, subdivision (c)(1)(B)(i) applied. We disagree.

Section 366.26 provides that if a trial court finds, “by a clear and convincing standard, that it is likely [a child subject to dependency jurisdiction] will be adopted, the court *shall* terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1); italics added.) However, parental rights need not be terminated if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to . . . [¶] . . . [the parent’s having] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i)) “After [a] parent has failed to reunify [with his or her child] and the court has found the child likely to be adopted, it is the parent’s burden to show exceptional circumstances exist. [Citation.]” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.)

The beneficial parent-child relationship exception requires two things to be shown. As a threshold matter, the parent must show that he or she maintained regular visitation and contact with the child. Although the trial court made no findings at the section 366.26 hearing with respect to the beneficial parent-child relationship exception other than to find it does not apply, the parties agree that it had previously found mother had consistently and regularly contacted and visited with Amanda. However, even

assuming mother continued such regular visitation and contact from the date of that finding (January 20, 2011) through the date of the section 366.26 hearing (June 23, 2011), the trial court's finding that the exception did not apply was not in error as mother failed to show that she satisfied the second requirement.

To satisfy the second requirement, “the parent has the burden of showing either that (1) continuation of the parent-child relationship will 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 [citation] or (2) termination of the parental relationship would be detrimental to the child. . . . [Citation.] [¶] 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. [Citations.] 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. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

“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. [Citation.]” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) The circumstances in this appeal are very similar to those in *In re Angel B.*, which also involved a mother seeking to reverse the termination of her parental rights under the beneficial parent-child relationship exception.<sup>4</sup> Like the child in *In re Angel B.*, Amanda is so young that it is unlikely she understands the concept of biological parentage, and she was detained by DCFS at birth, spending the majority of her life with her foster mother versus relatively little time with mother through monitored visitation. Although the record indicates that mother's visits with Amanda were pleasant and mother prepared bottles, fed Amanda and changed her diapers during such visits, there is no indication that mother was able to meet Amanda's very specific medical needs. Amanda suffers from a serious medical condition that limits her vision and has resulted in significant developmental delays, which are likely to become progressively worse. She requires assistance in exercising every day as part of her physical therapy and in attending her frequent medical appointments. Although mother may have shown that Amanda derives some benefit from their relationship, she has not shown, based on Amanda's special needs, that continuation of this parent-child relationship would promote Amanda's well-being to such a degree as to outweigh the well-being she would gain in a permanent home with her adoptive parents who can provide for her special needs.

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<sup>4</sup> The court in *In re Angel B.* addressed the beneficial parent-child relationship exception as it was found in section 366.26, subdivision (c)(1)(A), before the 2007 amendments which renumbered the exception as section 366.26, subdivision (c)(1)(B)(i). The language remains the same and the analysis found in *In re Angel B.* continues to apply.

Additionally, there is no evidence in the record showing that termination of mother's parental relationship with Amanda would be detrimental to the child. Based on the foregoing, the record supports the trial court's finding that the exception to the termination of parental rights found in section 366.26, subdivision (c)(1)(B)(i), did not apply under these circumstances.

3. *The Trial Court Did Not Err in Terminating Mother's Parental Rights*

As explained above, under section 366.26, a court is required to terminate parental rights if it finds, by clear and convincing evidence, that a child is likely to be adopted unless an exception applies. Here, such finding was made and the beneficial parent-child relationship exception did not apply. Therefore, the trial court did not err in terminating mother's parental rights.

***DISPOSITION***

The judgment is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.