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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B236103
(Los Angeles County
Super. Ct. No. CK72863)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARISSA H.,

Defendant and Appellant.

APPEAL from orders and findings of the Superior Court of Los Angeles County.
Marilyn Kading Martinez, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Cristina Gabrielidis Lechman, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

This is the second appeal concerning the minor, Sofia A. (Sofia, born Feb. 2010). In the prior appeal, Isaias A. (father) challenged a juvenile court order denying him reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10).¹ On December 1, 2010, we affirmed the juvenile court's order. (*In re Sofia A.* (Dec. 1, 2010, B223771) [nonpub. opn.])

In this appeal, Marissa H. (mother) raises three issues: (1) She contends that the juvenile court erred by summarily denying her section 388 petition without a hearing; (2) She argues that the juvenile court erred in denying her a contested section 366.26 hearing; and (3) She asserts that the juvenile court erred when it found that the parental-benefit exception did not apply (§ 366.26, subd. (c)(1)(B)(i).)

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Family Background and Prior Dependency Case

Prior to Sofia's birth, this family consisted of father, mother, mother and father's four sons, and mother's daughter from a prior relationship, R.S. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 2].)

In April 2008, the Department of Children and Family Services (DCFS) received a referral alleging that father had sexually abused R.S. The four sons were detained from father and placed with mother. Father moved out of the home and R.S. was placed with her maternal grandmother. Family maintenance services were initiated. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 2].)

A section 300 petition was filed, and in May 2008, the juvenile court sustained allegations that father had sexually abused R.S. and that father and mother had engaged in violent arguments in the children's presence. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 2].)

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Following noncompliance of juvenile court orders and the case plan, on November 6, 2009, the four sons were detained and placed in foster care. Specifically, mother allowed father into the home and allowed him unmonitored access to the children. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 2].)

Sofia is Born and Immediately Detained

While the prior section 300 petition regarding the four sons was pending, Sofia was born. The day after her birth, DCFS requested a hospital hold as her four siblings were detained and in foster care. DCFS reported that mother failed to protect her four sons from father. In particular, she and father ““failed to understand why the children were in danger of abuse or neglect despite the sustained court order stating that [father] sexually abused [R.S.], and despite the sustained count of domestic violence between them. With regards to the sexual abuse, they believe[d] that because [R.S.] no longer ha[d] contact with them . . . there [was] no reason to have a case open. [Mother] admit[ted] making a mistake in allowing [father] in the home and providing access to the children.”” (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [pp. 2–3].)

Father continued ““to be in denial of the sustained counts and . . . stated that he [did] not understand why [DCFS] . . . detained his children. He [refused] to take responsibility for his actions and [continued] to blame [DCFS] for his children being in foster care.”” (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 3].)

In addition to his history with the dependency court, father had a lengthy criminal record. He had been convicted of assault with a deadly weapon likely to produce great bodily injury and was sentenced to a year in jail in 1986. In 1990, he was convicted of battery. In 2000, he was convicted of battery on a spouse, ex-spouse, or cohabitant and placed on probation. In 2005 and 2006, he was convicted twice for driving under the influence; he was sentenced to 60 days in jail for the latter conviction. In 2007, father was arrested for robbery; the case did not result in a conviction. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 3].)

Although mother and father had enrolled in counseling, they had only just begun and DCFS opined that they were not ready to provide a safe home for Sofia. (*In re*

Sofia A., supra, B223771 [nonpub. opn.], at [p. 3].) Sofia was placed in the foster home of Mr. and Mrs. P.

According to a progress letter from father’s therapist, father had attended five sessions of therapy and was responsive. “However, per the letter, . . . father [had] not acknowledged that he willfully molested [R.S.] and minimized the extent of the domestic violence. Per the letter, . . . father [appeared] motivated to change but need[ed] more time.” The therapist recommended that he continue with the programs related to alcohol abuse and that he continue to attend conjoint counseling session with mother. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 3].)

Section 300 Petition Concerning Sofia

Based on the foregoing, DCFS filed a section 300 petition on behalf of Sofia, alleging that she came within the jurisdiction of the juvenile court pursuant to subdivisions (a), (b), (d), and (j). (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 3].) As sustained under subdivision (b) only, the petition alleged:

Count b-2: Father had a history of alcohol abuse that periodically limited his ability to provide Sofia with regular care; father had a criminal history of two convictions for driving under the influence of alcohol; and father’s alcohol abuse placed Sofia at risk of harm;

Count b-3: Father and mother had engaged in violent arguments in the presence of R.S. and the four sons; on one occasion, father had pushed mother; father did not complete court-ordered individual counseling to address case issues, including domestic violence; father’s lack of completion of counseling placed Sofia at risk;

Count b-4: On July 29, 2008, the juvenile court found that father had sexually abused R.S.; father failed to comply with court orders to complete sex abuse counseling; mother failed to follow court orders in allowing father to be in the family home frequently without an approved monitor; “[s]uch sexual abuse, the parents’ failure to comply with the Court orders and mother’s failure to protect the children place . . . Sofia at risk of physical and emotional harm”; and

Count b-5: Mother established a filthy and unsanitary home for the four sons; this home environment endangers Sofia's physical and emotional health and safety and placed her at risk of physical and emotional harm. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [pp. 3–4].)

Last Minute Information

On February 22, 2010, DCFS reported that mother and the paternal grandmother visited Sofia on February 17, 2010. Father showed up during the visit and held Sofia for a short period of time. Father became upset during the visit because the social worker was speaking in English and the paternal grandmother is Spanish-speaking. He also became upset when the case and its possible outcomes were being discussed. When he got upset, Sofia became agitated as well. He gave Sofia back to mother and left the visit. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 4].)

DCFS recommended that reunification services not be granted to father pursuant to section 361.5, subdivision (b)(10). (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 4].)

February 22, 2010, Hearing

At the February 22, 2010, hearing, the juvenile court sustained the section 300 petition as amended. (*In re Sofia A., supra*, B223771 [nonpub. opn.], at [p. 5].)

DCFS was ordered to provide reunification services to mother.

Status Review Reports

DCFS reported that on March 10, 2010, Sofia had been seen by her cardiologist and had an echocardiogram. The test showed that she had a couple of heart defects and required follow-up visits. Mrs. P. was “proactive” and “in constant communication with [Sofia’s] cardiologist and pediatrician to ensure Sofia’s health and development.”

On April 9, 2010, DCFS reported that Sofia was doing well in her foster care placement. She had bonded with Mr. and Mrs. P., who were described as “excellent advocates for Sofia.”

Meanwhile, Sofia's older siblings were placed together in one foster home and doing well. Sofia remained in the foster home of Mr. and Mrs. P., was doing well, and had bonded with her foster parents.

On August 23, 2010, DCFS informed the juvenile court that Sofia had adjusted to her home and was sleeping through the night. Mrs. P. stated that Sofia would only wake up once during the night and could be soothed back to sleep. She was healthy, growing, and meeting all of her developmental milestones.

Mother continued to live in the same one-bedroom apartment, but indicated that the apartment had been repaired and was now clean. She also told the social worker that father no longer lived there; he was living downstairs from mother. At the time of the report, the social worker had not had the opportunity to assess mother's home.

Mother had enrolled in individual counseling. The social worker spoke with mother's therapist, Dr. Bennett, who stated that mother had made a great deal of progress. Although mother showed somewhat impaired cognitive ability, she displayed a high level of common sense and had turned around from a depressive state. Dr. Bennett and mother had discussed healthy relationships and aspects of relationships that may be unhealthy for children. Mother met with Dr. Bennett weekly and had been consistent with her appointments.

In addition, mother had commenced conjoint therapy with father. Her therapist reported that mother presented as someone who may be suffering from depression. And, mother attended a child abuse support group for parents and completed the program on June 30, 2010. She had learned the different discipline techniques, like taking away privileges and given children "time out[s]."

Mother visited with Sofia on Tuesdays and Thursdays for three hours. Mrs. P. reported that mother was appropriate, able to change Sofia's diaper, feed her, and play with her. She did not report any concerns with mother's interaction with Sofia. Mrs. P. did indicate that mother had come to half of the visits with father. Mother also left several visits early, claiming that father had to work. Mrs. P. further informed the social worker that during telephone calls on days when mother did not visit, mother never asked

about Sofia's heart condition. Even when Mrs. P. engaged mother and asked her if she had any questions, mother would respond, "No, just how she's doing." There were also numerous occasions when Mrs. P. had telephoned mother and either heard father in the background or father had answered the telephone.

DCFS indicated to the juvenile court that mother had had an open family maintenance plan for two years and subsequently had her children detained because she had failed to protect them from father. Mother had been advised that if she continued to allow father access to the children, she was not protecting them from risk of abuse. Father denied abusing R.S. and continued to blame DCFS, and mother was continuing to have a relationship with father, despite his failure to address the issues that brought his family before the juvenile court. DCFS opined that the children could not be safely returned to mother's custody and recommended that the juvenile court terminate mother's family reunification services.

Status Review Report (January 7, 2011)

Mrs. P. reported that Sofia had become very attached to her. When she did not carry Sofia and instead put her down, Sofia would start crying and looking for Mrs. P. Sofia also struggled on the days of visits with mother. Mrs. P. informed DCFS that after the visits, Sofia required constant reassurance that she was not alone; she had to be comforted. Sofia generally had a difficult time adjusting after visits and looked to Mrs. P. for constant comfort.

The social worker assessed mother's home and found it appropriate. Mother informed the social worker that father did not live with her; he resided in an apartment downstairs.

Regarding visitation, it was reported that mother and father visited Sofia's older siblings together. Father was problematic during visits, accusing the monitor of not working with him. The monitor also reported that mother and father would bring sweet snacks and junk foods for the children right before their dinner time. Mother struggled during visits with Sofia as well. She would overfeed her or not change her diaper properly. Mother had not followed through with Sofia's services plan. For example,

mother insisted on carrying Sofia around and not allowing her to attempt crawling. She also required Sofia to sleep right after eating; she did not understand that Sofia had grown and no longer needed to sleep after eating. Mother also was unable to read Sofia's cues. And, mother failed to inquire about Sofia's doctor visits, her heart condition, or her daily activities. Mother cancelled her Tuesday visits with Sofia and still attended visits with father. When questioned by the social worker, mother did not explain why she did not visit Sofia on her own, and she admitted that nothing had changed since the last court hearing.

Sofia's heart condition was still being monitored. The cardiologist reported that her condition had improved, but he wanted to continue monitoring her heart to ensure no further complications.

Mother continued to attend her counseling sessions, but she did not state that she was benefitting from the service. She just told the social worker that she was complying. Mother's therapist, Dr. Candace Benton, spoke with the social worker and learned that mother was visiting the children with father. Dr. Benton remarked that she was seeing a different picture of mother than what the social worker was describing.

DCFS concluded that during the latest period of supervision, mother had not demonstrated improved parenting skills, had not taken an interest in inquiring about her children, had become even more dependent on father, and had admitted that nothing had changed during that time. Consequently, DCFS again recommended that the juvenile court terminate mother's reunification services.

Review Hearing (January 7, 2011)

At the hearing, mother asked that the matter be set for a contested hearing. After several continuances, the matter was set for May 26, 2011.

Last Minute Information for the Court

On March 14, 2011, the social worker visited mother's home to discuss mother's visitation with the children. Upon arrival at the home, the social worker saw father in the bedroom talking on the telephone. The social worker reminded mother that father was not supposed to be in the home. She asked mother whether mother had visited the

children by herself. Mother replied that she had not. The social worker then advised mother not to continue the visits with father. She explained that visiting alone would demonstrate mother's independence and her ability to protect the children from father.

Regarding visitation, Mrs. P. reported that on several occasions, Sofia had come home very anxious after her visits with mother. She did not want Mrs. P. to be out of sight. On March 25, 2011, Mrs. P. reported that Sofia had a hard time falling asleep the day of visits; the bedtime routine that was usually pleasant and relaxing was, on visiting days, filled with anxiety and tears.

Interim Review Report (May 26, 2011)

On May 10, 2011, the social worker spoke with Dr. Benton. Dr. Benton reported that mother had come a long way since she first began her therapy sessions. Mother had attended all of her sessions and called when she was unable to keep an appointment. During the last two therapy sessions, mother had started talking about being with father. According to Dr. Benton, mother was able to say that she was "okay" without father.

The social worker asked Dr. Benton about mother's visits with Sofia. The social worker explained that she did not see that mother was bonded to Sofia or able to read her cues. The social worker further informed Dr. Benton that Mrs. P. had reported that mother did not engage Sofia or inquire about how she was doing. Dr. Benton informed the social worker that her therapy sessions with mother were not focused on visitation or how proactive mother was with her children; rather, they focused on how mother would handle getting custody of her children. Dr. Benton stated that she therefore could not comment on something she had not seen.

Regarding visitation, DCFS noted that mother continued to rely on father for transportation to the visits, despite the fact that she had been given monthly bus passes. Mother also continued to attend visits with father, which further demonstrated her reliance upon him. DCFS had concerns about mother's ability to protect the children if they were returned to her custody. It indicated that while mother did demonstrate compliance with her court-ordered case plan, she had not been able to apply the information she had learned, did not inquire about her children, and was not proactive in

caring for them. She had not shown an attachment to Sofia and was unable to read Sofia's cues regarding feeding and diaper changes. After visits, Sofia had a hard time adjusting to her routine and seemed anxious. Sofia looked to Mrs. P. for comfort and security. Sofia also would get anxious anytime Mrs. P. left the room.

DCFS again recommended that the juvenile court terminate mother's reunification services.

Section 366.21 Hearing

At the section 366.21, subdivision (f), hearing on May 26, 2011, the juvenile court received various DCFS reports into evidence. Dr. Benton testified that she had received a copy of the section 300 petition, mother's case plan, and DCFS reports, and that she had been working with mother since 2009. Dr. Benton stated that she initially believed that the case was about a dirty home because that was what mother had told her. After reading the DCFS reports, Dr. Benton learned that the case was "a bit more compound." Thus, Dr. Benton and mother began addressing how to recognize child abuse, the parent's part in preventing such abuse, and integrating parental safeguards with the daily role of being a mother. They recently had started discussing father no longer being in the home. Dr. Benton stated that she did not know "what [mother's] longstanding relationship" with father was, but had started talking to mother about the importance of father not being in the home. Dr. Benton reported that it took a while to start formulating this concept.

Dr. Benton further testified that she and mother also discussed mother's self-esteem and self-affirmation. She stated that mother had shown a lot of progress, demonstrated more self-confidence, and talked about living without father as if it were something she was able to do.

Additionally, Dr. Benton testified that while mother had not undergone any testing, she had diagnosed mother with "adjustment disorder, with depression."

On cross-examination, Dr. Benton testified that for a short period of time, they were headed down the wrong road in therapy, because both Dr. Benton and mother believed that the goal was family reunification, including father. Dr. Benton stated that mother knew from the beginning that father was not to be in the home, but believed that

the juvenile court would eventually allow them to be together again. The children's attorney asked Dr. Benton about the point in therapy when mother realized that she should not be with father. Dr. Benton responded: "I would say about, probably—we started working on that, maybe, about five months ago; four—five months ago."

Dr. Benton further stated that she had never seen mother interact with her children. While mother was aware that father was alleged to have sexually abused another child, mother did not believe the allegations. Mother did not see father as a risk; she saw him as a loving father and a good provider.

Mother testified next. According to mother, she had an open dependency case because of "child abuse" and because her house was dirty. She had attended parenting classes and as participating in counseling sessions. She was also visiting with the children, although she had not attended any of the Individualized Education Plan (IEP) meetings. She stated that she asked Mrs. P. about Sofia's doctor appointments. During her visits with Sofia, they would play with Legos and mother would feed and change Sofia. She had started visiting the children by herself on April 9, 2011, and had done so on two occasions.² Mother testified that she considered herself and father to be a couple.

The juvenile court found that mother had not made sufficient progress with her court-ordered case plan in addressing the issues that had brought her family to the juvenile court's attention. Thus, it terminated mother's reunification services.

DCFS's Section 388 Petition

On July 12, 2011, DCFS filed a section 388 petition regarding father's visitation orders. It was reported that father would call Mr. and Mrs. P. at inappropriate hours of the night to complain about case issues and insult the foster parents. Father also had been inconsistent with visits and would often cancel and then expect them to be rescheduled at

² The trial court noted that the log indicated that mother had visited the children with father four times since April 9, 2011; mother stated that she had visited the children with father only twice since April 9, 2011. On the other two occasions, he did not attend because he had to work.

his convenience. He once contacted Mrs. P., telling her to go to Cambodia or Mexico if she wanted to adopt a baby.

DCFS recommended that the juvenile court set predetermined times for father to call his children and that he not directly speak with the foster parents. The petition was granted.

Mother's Section 388 Petition

On August 24, 2011, mother filed a section 388 petition, asking the juvenile court to return Sofia to her custody or to provide her with additional reunification services and unmonitored visits, including overnights and weekends. She asserted that the requested modification was in Sofia's best interest because mother was continuing to participate in court-ordered services, ended her relationship with father, and had a strong bond with her children.

The juvenile court summarily denied mother's petition because the requested modification did not promote Sofia's best interests.

Section 366.26 Report (August 25, 2011)

DCFS reported that Sofia had developed a strong bond with Mr. and Mrs. P., who were committed and ready to proceed with Sofia's adoption.

While mother and father continued visiting the children, the monitor reported that it was important to keep an eye on mother because she was unable to set appropriate boundaries for the children and did not prevent the children from getting in trouble. When mother would visit Sofia alone, she failed to engage her child, and Sofia would stop interacting with mother. Mother also failed to keep up with Sofia; for example, mother would continue reading a book long after Sofia had moved onto another activity.

DCFS recommended that Sofia be freed for adoption with DCFS providing her with permanent placement services.

Section 366.26 Hearing

At the August 25, 2011, hearing, the juvenile court denied the parents' counsels' request to set the matter for a contested hearing. In so doing, it noted that while the parents had been consistent in visiting with the children, the visits were not always

appropriate and mother required direction. The juvenile court further explained that there was no evidence that Sofia would be detrimentally harmed if parental rights were terminated. Sofia had lived with Mr. and Mrs. P. since her birth, had never been in mother's custody, and mother and father had never parented her.

The juvenile court found by clear and convincing evidence that Sofia was likely to be adopted and terminated parental rights.

Appeal

Mother's timely appeal ensued.

DISCUSSION

I. Section 388 Petition

A. Standard of Review and Applicable Law

Section 388 provides, in relevant part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstances or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made." (See also *In re Brandon C.* (1993) 19 Cal.App.4th 1168, 1172; Cal. Rules of Court, rule 5.570(f).) "Section 388 provides the 'escape mechanism' . . . built into the process to allow the court to consider new information. [¶] . . . Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances. . . . [¶] . . . [T]he Legislature has provided the procedure pursuant to section 388 to accommodate the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

That being said, "[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529; § 388, subd. (b).) Some factors which "provide a reasoned and principled basis on which to evaluate a section 388 motion" include "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the

strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*In re Kimberly F.*, *supra*, at p. 532.)

“[T]he burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

A section 388 petition must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) That being said, when a section 388 petition fails to allege changed circumstances or fails to explain how the proposed change in the juvenile court’s orders would serve the child’s best interests, the juvenile court may deny the petition without setting a hearing on the petition. (Cal. Rules of Court, rule 5.570(d); *In re Angel B.* (2002) 97 Cal.App.4th 454, 461; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431–432.)

“Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685; see also *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318–319.) Thus, we will not reverse a juvenile court’s denial of a section 388 petition “““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].””” (*In re Stephanie M.*, *supra*, at p. 318.)

B. Analysis

Mother did not demonstrate a change of circumstances. In her petition, mother alleged that she had completed parenting classes and was attending individual counseling. But, this information was known to the juvenile court on May 26, 2011, when family

reunification services were terminated; thus, it was not new evidence. Moreover, while mother asserted that she was now visiting the children without father, we do not know how many visits she actually attended without father and mother qualified her statement by noting that sometimes father's visits "overlap[ped]" with hers. Furthermore, other than her uncorroborated, self-serving statement, there was no evidence that she was no longer dependent on father. Finally, perhaps most importantly, there was no evidence that mother acknowledged the sexual abuse father had perpetrated and that she was ready and able to protect the children from father. In fact, at the May 26, 2011, hearing, mother still considered father and herself to be a couple.

Even if mother had demonstrated a change of circumstances, her section 388 petition was still rightly denied as she did not show that a modification was in Sofia's best interests. Sofia had lived with Mr. and Mrs. P. her entire life and had never been in mother's custody. She was bonded to Mr. and Mrs. P. and sought them out for comfort. She was anxious when she was away from them, and was often anxious after her visits with mother. Also, mother's visits with Sofia were problematic, and mother needed constant direction. It follows that there was ample evidence to support the juvenile court's implicit finding that removing Sofia from Mr. and Mrs. P.'s home and placing her with mother was not in Sofia's best interest.

II. *Order Denying Mother a Contested Section 366.26 Hearing*

A. Procedural Background

At the outset of the section 366.26 hearing, mother requested that the juvenile court set the matter for a contested hearing regarding the parent-child benefit exception. For an offer of proof, her attorney stated that mother "has maintained regular contact with Sofia. She does have a bond with [Sofia] and I would argue that the exception applies." Finding the offer of proof insufficient, the juvenile court stated: "It is true that the parents have been consistent in visiting [Sofia]. In fact, visiting all of the children. According to the report, the interactions are not always appropriate. Mother does need [redirection]. [¶] The issue is not whether or not the parent is bonded to the child, and there isn't any evidence other than bald statements that this child would be detrimentally

harmful if I terminated parental rights. In fact, this child has lived since birth with her current caretakers and she was born February . . . 2010. She has never been in the custody of these parents. They have never parented her. [¶] Visitation in and of itself is insufficient to persuade the court that it will be detrimental to terminate parental rights. These parents[] occupy the roles of visitors and not a parental role. It's the caretakers who have been parenting this child since her birth.”

B. Harmless Error

Mother argues that the juvenile court denied her due process right to a contested section 366.26 hearing. Under *In re James Q.* (2000) 81 Cal.App.4th 255, 266, it is error for a juvenile court to deny a request for a contested hearing at the review stage of dependency proceedings on a matter relevant to the hearing. That reasoning, however, has been questioned. (See, e.g., *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1120–1123.) We need not decide the issue of whether the juvenile court was permitted to condition a contested hearing on an adequate offer of proof. Assuming, without deciding, that the juvenile court erred by denying mother a contested section 366.26 hearing, that error was harmless beyond a reasonable doubt. (*In re Dolly D.* (1995) 41 Cal.App.4th 440, 447.) Mother has not shown that it is reasonably probable that the result would have been more favorable to her but for the error. (*In re Celine R.* (2003) 31 Cal.4th 45, 59–60.)

There is no evidence or even a suggestion in the appellate record that mother and Sofia were bonded. As noted above, Sofia has been in the care and custody of Mr. and Mrs. P. since birth; she was never in mother's care. Moreover, mother never progressed past monitored visits. And, during those visits, mother had to be redirected constantly. In short, as set forth below, Sofia did not have such a beneficial relationship with mother such that her well-being was promoted.

In her appellate brief, mother writes: “If given the opportunity to cross-examine witnesses and present evidence, it is likely that [m]other could have established the beneficial relationship exception applied.” Which witnesses? What would they say?

What evidence would she present? These critical questions remain unanswered, compelling us to disagree with mother's position.

Ingrid E. v. Superior Court (1999) 75 Cal.App.4th 751, 754–755 is distinguishable. In that case, the appellate court directed the juvenile court to vacate various orders and grant mother's request for a contested hearing where, in support of her request for a hearing, mother provided a detailed written statement and named prospective witnesses that would testify on her behalf. (*Id.* at pp. 756–757.) Here, mother's counsel did nothing more than make a vague statement that mother had been visiting Sofia and that she and Sofia had a bond.

III. *Parental-Benefit Exception*

A. Standard of Review and Applicable Law

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

At the section 366.26 hearing, the juvenile court's task is to select and implement a permanent plan for the dependent child. When there is no probability of reunification with a parent, adoption is the preferred permanent plan. (§ 366.26, subd. (b)(1); *In re Marina S.* (2005) 132 Cal.App.4th 158, 164.) If the juvenile court finds by clear and convincing evidence that a child is likely to be adopted, the juvenile court must terminate parental rights, unless one of several statutory exceptions applies. (§ 366.26, subd. (c)(1); *In re Marina S.*, *supra*, at p. 164.)

To satisfy the parent-child exception to termination of parental rights in section 366.26, subdivision (c)(1)(B)(i), a parent must prove he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i); see *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [“parent has the burden to show that the statutory exception applies”].) The “benefit” prong of the exception requires the parent to prove his or her relationship with the child “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 re*

Autumn H. (1994) 27 Cal.App.4th 567, 575 [“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”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) The relationship that gives rise to this exception to the statutory preference for adoption “characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” (*In re Casey D., supra*, 70 Cal.App.4th at p. 51.)

Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

A court may consider the relationship between a parent and a child in the context of a dependency setting, e.g., amount of visitation permitted, whether the parent was ever the child’s primary caretaker. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537–1538.) But the overriding concern is whether the benefit gained by continuing the relationship between the biological parent and the child outweighs the benefit conferred by adoption. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1155–1156; *In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

B. Analysis

Ample evidence supports the juvenile court’s finding that this exception to termination of parental rights did not apply. While mother consistently visited Sofia, those visits were not always appropriate and mother needed direction. Mother could not engage Sofia and had not shown an attachment to Sofia. She was unable to read Sofia’s cues regarding feeding and diaper changes, and Sofia looked to Mrs. P. for comfort and security. Mother had not followed through with Sofia’s services plan. She failed to inquire about Sofia’s doctor visits, her heart condition, or her general daily activities.

While Sofia may have enjoyed her visits with mother, her emotional attachment and bond were with Mrs. P. In other words, there is no evidence that mother stood in a parental role. It follows that there is substantial evidence to support the juvenile court's finding that Sofia would not be greatly harmed by the termination of parental rights and that the parental-benefit exception did not apply.

DISPOSITION

The juvenile court's orders and findings are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ