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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

GRACIELA M.,

Defendant and Appellant.

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B238880

(Los Angeles County  
Super. Ct. No. CK76813)

APPEAL from orders of the Superior Court of Los Angeles County,  
Sherri Sobel, Referee. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County  
Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and  
Respondent.

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## INTRODUCTION

Graciela M. (Mother) appeals from orders denying her Welfare and Institutions Code section 388<sup>1</sup> petition and terminating parental rights to her child, Angel G. We conclude that Mother's section 388 petition did not meet her burden of showing a change of circumstances or that the proposed modification of the order was in Angel's best interests, and therefore denial of the petition was not an abuse of discretion. We also conclude that Mother did not establish the beneficial relationship exception to termination of parental rights in section 366.26, subdivision (c)(1)(B)(i), and affirm the order terminating parental rights.

## FACTUAL AND PROCEDURAL HISTORY

*Detention and Petition:* Mother came to the attention of the DCFS on February 27, 2009, when a referral alleged that her children A. E. (age two), Alexis D. (age four), and Angel G. (age eight) were victims of general neglect by Mother, who abused methamphetamine in their presence. A glass pipe was found among Mother's personal items. Mother neglected the children, especially when high on the drug, and provided no supervision. Mother spent social security and AFDC funds to buy the drug, and there was no food in the home.

On March 13, 2009, Mother said that the last time she used drugs was methamphetamine three years earlier, and she was willing to drug test. Mother did not appear for a drug test scheduled for March 13, 2009, and did not return a CSW's call about the missed test. On March 23, 2009, Mother drug tested negative.

On March 13, 2009, Mother reported that Humberto E., father of her youngest child, A. E., was arrested for domestic violence that occurred on December 11, 2008, when Humberto E. beat Mother while the children were present and then fled as Mother lay unconscious in front of her children. Mother had a black eye and contusions to her forehead. Humberto E. was arrested and incarcerated for four months. Mother said she intended to have Humberto E. return to the home despite the violent episode.

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<sup>1</sup> Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions code.

On March 18, 2009, maternal grandmother said Mother had used drugs in the past but she did not suspect that Mother used drugs at the present time. Maternal grandmother feared for Mother's safety if Humberto E. returned to the home.

At a team decision meeting on April 2, 2009, Mother minimized the domestic violence incident, denied there was a fight with Humberto E., and changed her story several times. Angel had reported that Humberto E. punched Mother three times, causing three bumps on her forehead, and also tried to cut Mother with a knife. When confronted with the fact that the children reported witnessing the domestic violence, Mother said they were lying and repeating what the CSW told them.

On April 2, 2009, the three children were detained.

On April 7, 2009, the DCFS filed a section 300 petition alleging that Angel, Alexis, and A. were described by section 300, subdivision (b). Count 1 alleged that Mother and Humberto E. had a history of engaging in violent altercations in the children's presence, and on December 11, 2008, Humberto E. struck Mother, inflicting contusions to her head and swelling and bruising to her eyes, resulting in his incarceration. Previously Humberto E. tried to stab Mother in the children's presence. Count 2 alleged Mother's history of illicit drug use, including methamphetamine, which rendered her incapable of providing regular care and supervision of the children.

At the April 7, 2009, detention hearing, the juvenile court found that a prima facie case was established to detain Angel, Alexis, and A. as persons described by section 300, subdivisions (a) and (b), and ordered them detained and placed in the custody of the DCFS. The juvenile court ordered the DCFS to provide family reunification services, ordered monitored visits for Mother twice per week, and ordered Mother to participate in a domestic violence counseling support group, a parenting class, a drug treatment program with random testing, and individual counseling.

*Adjudication and Disposition:* In its April 27, 2009, jurisdiction/disposition report, the DCFS reported that Mother continued to deny she had a history of drug use or currently used methamphetamine. Mother admitted using methamphetamine on one occasion, New Year's Day, of an unknown year. Victor D. (father of Alexis D.) stated that he and Mother were heavy methamphetamine users throughout their relationship, and Mother offered him drugs on February 14, 2009. Mother tested negative on two on-demand drug tests on March 23 and April 16, 2009, but missed her drug test on March 13, 2009. According to the foster parents, in visits Mother was appropriate with the children but lacked understanding of their developmental stages.

As of May 28, 2009, Mother said she was enrolled in counseling. Mother failed to drug test on April 28 and May 12, 2009. On May 26, 2009, mother tested positive for amphetamines and methamphetamine.

At the June 2, 2009, adjudication, the juvenile court amended the subdivision (b) counts of the petition and sustained those counts, found Angel G., Alexis D., and A. E. to be persons described by section 300, subdivision (b), and declared them dependent children of the court. The juvenile court ordered the DCFS to provide family reunification services, and ordered Mother to participate in individual counseling, parenting class, drug counseling, random drug testing, and domestic violence support group counseling. Mother was to have monitored visits at least twice per week.

On September 18, 2009, the three children were detained from their maternal grandmother's custody because of her non-compliance with court-ordered visitation by the fathers of Alexis and A.

As of October 22, 2009, the children were placed with a foster caregiver. Mother had 8-hour monitored visits on Saturdays. The foster caregiver reported that the children enjoyed spending time with Mother.

As of December 1, 2009, placement of the children in the home of A.'s paternal grandmother, Maria E., was approved. Since being placed in foster care, Angel wanted visits with Victor D. (father of Alexis D.) and had asked the CSW if he could live with Victor D. Although he said Mother was upset with him when visited Victor D., he said he would rather live with Victor D. than with Mother. Mother completed parenting education on June 15, 2009. She was enrolled at Avalon-Carver Substance Abuse Program, although her counselor had not responded to two requests for a progress report. Mother was enrolled with Pacific Toxicology but had not tested consistently with them; between June 24 and October 28, 2009, she tested negative five times but did not appear for tests seven times. Mother said she was enrolled in a domestic violence program but did not provide a location and phone number of that program. As of November 9, 2009, Mother had attended 18 individual counseling sessions since April 12, 2009, but had failed to appear seven times and had canceled two sessions. Mother visited the children regularly on Saturdays for 8 hours, had not missed any visits, and was appropriate with the children.

On November 20, 2009, the children were placed in Maria E.'s home.

*Six-Month Review Hearing:* In the December 1, 2009, hearing, the DCFS informed the juvenile court that although Mother promised evidence that she had tested regularly, Mother's program had not responded when contacted. The juvenile court ordered mother to provide five consecutive, random, clean drug tests, and set a contested hearing for Mother to provide information on her compliance with court-ordered programs.

On December 29, 2009, the juvenile court found Mother had not complied with the case plan sufficiently for the children to be safe in her custody. The juvenile court, however, found that Mother had regular and consistent contact with the children, made significant progress in resolving the problems which led to removal, and showed the ability to complete objectives of the treatment plan and provide for the children's safety, protection, and physical and emotional well-being. The juvenile court ordered the DCFS

to provide family reunification services to Mother, and gave the DCFS had discretion to increase Mother's monitored visits in time and duration.

*Twelve-Month Review Hearing:* During this period, Angel and his siblings lived with Maria E., who was bonded to them and ensured their basic needs were met. Angel enjoyed being in Maria E.'s house and reported that he was well cared for. Although he had stated he was bored with visiting Mother, recently Angel had asked to live with her. Angel did not explain why he felt this way.

Mother had completed 25 sessions with her individual therapist at the Coalition of Mental Health Professionals, with her last session on May 25, 2010. A staff person at the Coalition of Mental Health professional reported to the CSW that Mother said 25 sessions was all she needed to complete individual counseling. Since the previous period of supervision, Mother had attended only five individual counseling sessions.

On March 12, 2010, Mother's substance abuse counselor at Avalon Carver Community Center reported that Mother was discharged from the program due to non-compliance. On April 13, 2010, Mother enrolled in an inpatient program with Rena B. Recovery Center. She attended for two weeks, but left early because being in the inpatient program risked losing her Section 8 housing benefits.

As of December 1, 2010, Mother had not complied with the court's order to provide five consecutive, random, clean drug tests. Although Mother said she had proof otherwise, she had not submitted that proof to the CSW. In this six-month period, Mother submitted to random drug testing only twice. She said she had done random drug testing in her programs but produced no documentation or test results.

Mother had attended no domestic violence support group sessions after December 2009, and attended only four sessions in the previous 12 months.

Maria E. allowed Mother to tuck in the children at night and spend time with them in the home. After Mother showed up unannounced several times and took some of the children's clothes and Angel's x-box to her house without reason, however, Maria E. said she no longer wanted Mother to come to her home. Mother's erratic behavior also caused concerns. Maria E. said that she sent the children with new clothes to visit Mother, who

took their clothes and changed them into old dingy clothing. In the previous two months Mother's visits stabilized and there were no concerns. The children sometimes reported that they were bored at Mother's home because she did not do anything with them. Angel reported that he desired to live with Mother.

On July 15, 2010, the DCFS reported that Mother had enrolled in substance abuse and domestic violence programs, individual counseling, and parenting with Esperanza Drug and Alcohol Program. Mother tested positive for amphetamines on May 26, 2010, and did not appear for drug tests on June 3 and June 17, 2010. Mother was currently five months pregnant.

For Mother's 12-month status review hearing on August 12, 2010, the DCFS reported that Mother did not appear for three drug tests on July 7, July 19, and August 2, 2010.

After the August 12, 2010, 12-month status review hearing, the juvenile court found Mother not in compliance with the case plan, and that Mother had not consistently and regularly contacted and visited with the children, had not made significant progress in resolving the problems that led to their removal from the home, and had not demonstrated the ability to complete her treatment plan and provide for the children's safety, protection, physical and emotional well-being. The juvenile court ordered family reunification services terminated for Mother and set the matter for a permanent plan hearing for Angel pursuant to section 366.26.

*Mother's Section 388 Petition and Order Terminating Parental Rights to Angel:* On November 1, 2010, the DCFS filed a section 300 petition as to Mother's child, Baby Girl M., born October 17, 2010. The petition alleged, inter alia, that Mother used illicit drugs during her pregnancy and had a positive toxicology screen for amphetamines and methamphetamines on May 26, 2010. Baby Girl M. was ordered detained on November 1, 2010.

On November 5, 2010, the DCFS reported that Mother had been very inconsistent in visiting Angel and his siblings Tuesdays and Thursdays for two hours at a CSW's office. At times Mother called and said she was coming but did not arrive for the visit and did not call to cancel. Because of Mother's inconsistent visitation her visits were reduced to once per week for two hours. Mother continued not visiting regularly, and in the previous six months had decreased the frequency of visits with Angel.

Angel had been placed with his current caregiver since December 2009. At times he still hoped to be reunited with Mother, but otherwise said he wanted to live with his maternal uncle, Edgar M. An adoption home study was not yet completed for Maria E., who expressed interest in adopting Angel.

Mother failed to appear for a holiday visit with her four children on December 23, 2010.

On January 5, 2011, the juvenile court terminated jurisdiction as to Angel's sibling A. E.

Mother did not appear for drug tests scheduled for January 28 and 31, February 1, 3, 9, 17, and 22, and March 3, 2011. Attempts were made to notify her about on-demand drug testing, but she did not answer the phone or return phone messages. Mother had not appeared for 25 drug tests between March 13, 2009 and March 3, 2011.

On March 5, 2011, Mother was arrested and charged with a felony, and was incarcerated, with a criminal court hearing scheduled on March 8, 2011.

On March 15, 2011, Mother tested positive for amphetamines and methamphetamines.

On March 22, 2011, the juvenile court found Baby Girl M. to be a person described by section 300, subdivision (b), declared her to be a dependent child of the court, and ordered no family reunification services for Mother pursuant to section 361.5, subdivision (b)(10), (11), and (13).

In a section 366.26 report filed on May 5, 2011, the DCFS reported that Angel was developing age appropriately and did not suffer from any emotional or mental problems. Mother had monitored visits with Angel and his siblings, but her visits were inconsistent and their frequency had decreased. Mother went long periods without visiting and then appeared without making any arrangements. The caretaker allowed Mother to visit Angel, but reported that on Mother's last visit, she appeared not to be doing well and to be "coming down," and fell asleep on a bed with the children while watching television. Mother had appeared at the caretaker's home while under the influence. The caretaker reported that Mother wanted to bring boyfriends into the home, and reported occasions when Mother and her boyfriend parked outside of the house and smoked in the car and did not come into the home.

Since November 20, 2009, Angel had lived with Maria E. She said she loved Angel, did not want him placed in another home, wanted to ensure that he maintained a connection with his siblings, and expressed her desire to adopt Angel. Angel had done well in the care of Maria E., who provided all his basic needs.

On July 5, 2011, Mother's letter to the juvenile court stated that she was deeply sorry for not being able to comply with requirements of the DCFS and the juvenile court. Mother stated that she suffered from depression, which became worse when her children were removed from her. She said that she had a disability that did not let her finish any task she started, and had been in and out of therapy and medication. She said she loved her children but felt helpless, hopeless, and overwhelmed. She desired adoption of her children by her mother, her brother Edgar M., or her cousin.

On August 2, 2011, the juvenile court ordered termination of Mother's parental rights to Baby Girl M.

On November 10, 2011, Mother filed a section 388 petition seeking a change in the order placing Angel G. in a legal guardianship and allowing Mother monitored visits with the children. Mother's petition stated that she participated in an intensive 90-day inpatient program, transitioned to an outpatient program that she was currently attending, and was now clean and sober, visiting the children regularly, and was prepared to commit

to being a good parent and making sure her children were her priority. Mother stated that she and her children were very bonded, that she had maintained regular contact, and that her children told her they wanted to be back in Mother's care.

On November 18, 2011, the juvenile court ordered jurisdiction terminated as to A. E.

On December 12, 2011, the DCFS informed the court that the adoption home study for Maria E. was approved. The juvenile court granted a hearing on mother's section 388 petition and granted Mother a Christmas visit with Angel.

On January 9, 2012, the juvenile court conducted a hearing on Mother's section 388 petition and a section 366.26 hearing. Angel, age 11, testified that he lived with his grandmother, Humberto E., and his brother A. E. Mother visited on Saturdays, but sometimes arrived late for visits. Sometimes they went to a movie theater or a park. Angel said his visits with Mother lasted about two hours, were good, and that he would like to have more visits with her, two or three times a week for longer than two hours. When asked how he felt about living with Mother, he answered that he did not know. He did not know where Mother lived, and testified that he did not want to be able to spend the night at her house.

Mother testified that in July 2011 she enrolled in the Mujer Proposito drug program in Tijuana, Mexico, where she stayed in an inpatient program for 90 days. The program had Narcotics Anonymous and Alcoholic Anonymous meetings, psychiatric counseling, job training, and group meetings and classes. There was no drug testing. She completed the program on October 24, 2011. The next day she signed up for Shiloh Ministries, an outpatient program where she took drug and alcohol classes, anger management, victims of domestic violence, and spiritual classes, and had one-on-one counselors. There was drug testing at Shiloh, where Mother was still enrolled, with an expected completion date of January 24, 2012. Mother testified that the last time she used illegal drugs was five months previously. On cross-examination, Mother testified that since 2009 she had enrolled in four programs, but did not complete the first two.

Maria E. testified that Angel had lived with her for two years. Mother formerly had visits once a week, but those visits were reduced five months previously and she was now scheduled to visit twice a month. Maria E. testified that if she were allowed to adopt Angel, he could continue to have visits with Mother as long as he wanted to. Although Mother formerly came to Maria E.'s house to see the children, lately Mother had not come to Maria E.'s house.

Christina Herrera, a DCFS social worker, arranged visits for Mother and Angel. Herrera believed that Angel would be at risk if he were returned home to Mother, because Mother had been sober only for approximately five months, and had been in her outpatient program for only two months. Herrera offered Mother visits with Angel at the DCFS office, but Mother said she could not make visits there.

The juvenile court denied Mother's section 388 petition, finding Mother had not maintained sobriety for even six months and that Mother could not show changed circumstances. The juvenile court found that the proposed change of order would not promote the child's best interest. The juvenile court also found no exceptions to the termination of parental rights, ordered parental rights to Angel G. terminated, and ordered care, custody, and control of Angel G. transferred to the DCFS for adoption planning and placement.

Mother filed a timely notice of appeal from the order terminating parental rights.

## ISSUES

Mother claims on appeal that:

1. The juvenile court abused its discretion by denying Mother's section 388 petition because Mother addressed her substance abuse problem and showed that returning Angel home promoted his best interests; and
2. Mother met her burden of establishing the beneficial relationship exception by caring for Angel most of his life and where Angel desired more contact with Mother.

## DISCUSSION

### 1. *The Juvenile Court's Order Denying Mother's Section 388 Petition Was Not an Abuse of Discretion*

Mother claims that the order denying her section 388 petition was an abuse of discretion, and that the juvenile court erroneously found that Mother failed to show changed circumstances or that returning Angel to her care would promote his best interests. We disagree.

#### A. *Standard of Review*

Once the juvenile court orders termination of reunification services, a rebuttable presumption arises that continued care is in the child's best interest. The focus shifts away from the precedence formerly given to the parent's interest in reunification and toward the child's need for permanency and stability, and the court is not required to consider the issue of reunification at the section 336.26 hearing. To revive the reunification issue, the parent bears the burden of rebutting the presumption by proving in a section 388 petition that changed circumstances warrant further consideration of reunification. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.)

"Under section 388, a parent may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that [1] there is a change of circumstances or new evidence, and [2] the proposed modification is in the minor's best interests." (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119.) The petition is addressed to the sound discretion of the juvenile court, whose decision this court will not disturb absent a clear abuse of discretion, defined as whether the juvenile court exceeded the bounds of reason. (*Ibid.*)

#### B. *Mother's Petition Did Not Meet Her Burden of Showing a Change of Circumstances or That the Proposed Modification Was in Angel's Best Interests*

##### i. *Mother Did Not Show Changed Circumstances*

Mother argues that circumstances had changed in that she had completed two drug counseling programs and was testing clean.

Mother, however, failed to appear for random drug testing several times in January and February 2011. Mother tested positive for amphetamine and methamphetamine on March 15, 2011. In this period Mother had appeared at the caretaker's home while under the influence. Mother admitted using illegal drugs five months before the January 9, 2012, hearing on her petition. Thus the evidence supported the juvenile court's finding that Mother could not show changed circumstances or even changing circumstances. The fact that five months previously Mother had continued to use illegal drugs showed that she had not overcome the drug dependency which led to the juvenile court jurisdiction. To show real reform of drug addiction one must be "clean" for a much longer period than five months. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251.) In July 2011, Mother admitted that she had been unable to comply with the court-ordered case plan. She had attended court-ordered individual counseling inconsistently and attended few domestic violence group counseling sessions. She failed to reunify with her three other children.

"A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The juvenile court correctly found that Mother had not even alleged changing circumstances, much less changed circumstances.

ii. *Mother Did Not Show That the Proposed Modification Was in Angel's Best Interests*

Mother argues that she shared a close relationship with Angel and that returning Angel to her care promoted his best interests.

Section 388 requires not only the parent's showing of a genuine change of circumstances. It also requires a parent to show that setting aside the prior order would promote the child's best interests. (§ 388, subd. (a), (d); *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) The child's best interests involve a consideration of the following factors: "(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.” (*Id.* at p. 532.)

One of the two main problems that led to the dependency was Mother’s use of the illegal drugs amphetamine and methamphetamine, a serious problem. As we have stated, Mother had not shown that the problem had actually been removed or ameliorated. Mother did not show that the second factor—the strength of relative bonds between Angel and Mother and Angel and Maria E.—required the granting of the petition. Mother’s visitation remained monitored throughout the dependency proceeding. Mother’s visitation had become inconsistent during the first five months of 2011, when long periods passed without Mother visiting. From May to November of 2011, Mother’s frequency of visits with Angel decreased. At the time of the January 9, 2012, hearing, Angel had not lived with Mother for nearly three years, having been detained from her custody on April 2, 2009. While in foster care in 2009, Angel asked to go and live with his sibling’s father, Victor D., and said he would rather live with Victor D. than with Mother. Angel lived with Maria E., his sibling A.’s paternal grandmother, since November 20, 2009, and thus by January 9, 2012, had lived with Maria E. for more than two years. In that period Angel said he desired to live with Mother, but also said he desired to live with his maternal uncle, Edgar M. At the section 388 hearing when Angel was asked how he felt about returning to live with Mother, he answered that he did not know. He did not know where Mother lived and testified that he did not want to be able to spend the night at her house. In Maria E.’s home, Angel’s needs were met, he was with his siblings, he had done well in school, and he was in a stable environment free of exposure to drugs or domestic violence. Angel said he felt safe and well cared for in Maria E.’s home. Mother did not show that her bond with Angel outweighed his interest in living in a safe, stable home.

Mother's section 388 petition did not meet her burden of rebutting the presumption that continued care is in the child's best interest by showing that changed circumstances warranted further consideration of reunification. (*In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 309-310.) Mother did not show she was able to offer Angel a stable, safe environment free from the risk of exposure to her drug use or to domestic violence. (See *In re B.D.* (2008) 159 Cal.App.4th 1218, 1230.) Even if Mother was progressing in her treatment, she was not yet ready to have Angel returned to her and that change of custody would not be in Angel's best interests. (See *In re Amber M.* (2002) 103 Cal.App.4th 681, 687.) Denial of Mother's section 388 petition was not an abuse of discretion.

2. *Mother Did Not Establish the Beneficial Relationship Exception to Termination of Parental Rights of Section 366.26, Subdivision (c)(1)(B)(i)*

Mother claims that the juvenile court erroneously rejected Mother's showing of the beneficial relationship exception to termination of parental rights because Mother cared for Angel the majority of his life and Angel desired more contact with her. We find that substantial evidence supports the juvenile court's ruling.

A. *Standard of Review*

“ ‘Adoption, where possible, is the permanent plan preferred by the Legislature.’ [Citation.] If the court finds a minor cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the minor under one of five specified exceptions.” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

The burden then shifts to the parent to show that termination of parental rights would be detrimental to the child under an exception in section 366.26, subdivision (c)(1). Pursuant to section 366.26, subdivision (c)(1)(B)(i), the beneficial relationship exception to the adoption preference applies if termination of parental rights would be detrimental to the child because the “ ‘parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ” (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

This court reviews a finding that the beneficial parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply according to the substantial evidence test. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 227-228.)

“The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 947.)

*B. Mother Did Not Meet Her Burden of Showing Evidence of Regular Visitation and Contact With Angel*

Although Mother maintained regular visitation and contact during the first year of Angel’s dependency, by the August 12, 2012, 12-month status review hearing, the juvenile court found she had not consistently and regularly contacted and visited her children. In the next six-month period, Mother’s visits became inconsistent, and at times she called and said she was coming but did not arrive for a visit or call to cancel. Mother’s inconsistent visitation resulted in her visits being reduced to once per week for two hours. By November 5, 2010, Mother continued not visiting regularly, and the frequency of her visits with Angel decreased. Mother did not appear for a holiday visit with her children on December 23, 2010. By May 2011, Mother’s visits with Angel remained inconsistent, and Mother went long periods without visiting and then appeared without making any arrangements. There were occasions when Mother appeared at the caretaker’s home while she was under the influence. Mother did not visit from July through October 2011, when she was in a drug program in Mexico. At the time of the January 9, 2012, hearing, Angel had not lived with Mother since being detained from her

custody on April 2, 2009. Mother did not meet her burden of showing regular visitation and contact.

*C. Mother Has Not Shown That Angel Would Benefit from Continuing the Parent-Child Relationship*

As to whether Angel would benefit from continuing his relationship with Mother, the “benefit of relationship” test has several factors. “A beneficial relationship . . . ‘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.’ [Citation.] 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 custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs.’ [Citation.]” (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 689. Although the statute does not define the exact nature of the parent-child relationship which must exist to apply the statutory exception to terminating parental rights, “the relationship must be such that the child would suffer detriment from its termination.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.)

Angel was 11 years old as of the January 9, 2012, hearing, but had not lived with Mother for more than two years and eight months since he was detained on April 2, 2009. Angel had lived in the home of Maria E. since November 20, 2009, and thus by January 9, 2012, had lived with Maria E. for more than two years. Angel was well cared for in Maria E.’s home, his basic needs were met, and he lived with his siblings. When Angel was asked how he felt about living with Mother, he answered that he did not know. He did not know where Mother lived and testified that he did not want to be able to spend the night at her house. There was no particularly “positive” effect of the interaction between Mother and Angel, and as noted Mother’s visitation and contact with Angel had become inconsistent and had reduced in frequency in the previous year. Mother, moreover, had not overcome her drug addiction despite enrollment in four different programs in the previous two and a half years. There was no evidence that Angel would suffer detriment from the termination of his relationship with Mother, and Mother did not show that “severing the natural parent-child relationship would deprive [Angel] of a substantial,

positive emotional attachment such that the child would be greatly harmed.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466, italics omitted.) There was no evidence that Angel and Mother had a beneficial relationship that promoted Angel’s well-being to such a degree as to outweigh the well-being he would gain in a permanent home with new, adoptive parents. (*Ibid.*) The evidence showed that in Maria E.’s home, Angel lived with siblings in a stable environment where he was doing well. Substantial evidence supported the juvenile court’s finding that Mother had not provided evidence to satisfy the beneficial relationship exception to termination of parental rights.

Mother argues that the juvenile court’s statement in the January 9, 2012, hearing relied on an improper factor in determining that the beneficial relationship exception did not apply. The juvenile court stated: “I don’t believe that the mother will not be able to see this child. I do believe that the father of . . . his sibling is certainly going to allow her to see the child. [¶] And I have . . . absolutely no intention of fashioning visitation orders once I terminate parental rights. That will not happen.”

Mother cites *In re C.B.* (2010) 190 Cal.App.4th 102, which found that the juvenile court injected an improper factor—the prospective adoptive parents’ willingness to allow the children to have continued contact with the mother—into the weighing process. (*Id.* at p. 128.) *In re C.B.* held: “[I]f a juvenile court determines that a parent has ‘maintained regular visitation and contact’ (§ 366.26, subd. (c)(1)(B)(i)), that there is a ‘substantial, positive emotional attachment’ between child and parent benefitting the child [citation], and that the benefit from continuing that parent-child relationship in a tenuous placement ‘promotes the well-being of the child to such a degree as to outweigh’ the benefit that child would gain from the stability and permanency of adoption [citation], then the parent-child relationship exception is established. In those circumstances, the court cannot nevertheless terminate parental rights based upon an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and a biological parent, even if substantial evidence supports that expectation.” (*In re C.B.*, at p. 128.)

Here the juvenile court did not determine that Mother had maintained regular visitation and contact or that the benefit from continuing the parent-child relationship promoted Angel's well-being to such a degree as to outweigh the benefit he would gain from the stability and permanency of adoption. Thus unlike in *In re C.B.*, the parent-child relationship exception was not established. We do not find that the juvenile court erroneously injected an improper factor into its weighing process.

DISPOSITION

The orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.