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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOSEPH R., a Person Coming Under  
the Juvenile Court Law.

B241952

(Los Angeles County  
Super Ct. No. CK00324)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Zeke Zeidler, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Maria P.'s parental rights with respect to her son Joseph R. were terminated pursuant to section 366.26 of the Welfare and Institutions Code.<sup>1</sup> Maria P. claims on appeal that her son was not adoptable and that the juvenile court erred in failing to apply the parent-child relationship exception to the statutory preference for adoption. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Joseph R., then five years old, came to the attention of the Department of Children and Family Services (DCFS) in March 2010 based on a referral alleging that Maria R. was using drugs in front of him and hitting her children with a belt. Maria R. was alleged to have schizophrenia and bi-polar disorder, and to have been recently hospitalized involuntarily under section 5150. The referring party also alleged domestic violence by a male friend; alcohol problems in the family; and that Joseph R. was afraid of his mother and did not want to be at home.

DCFS investigated the family. Joseph R. was Maria P.'s tenth child and the only one in her custody. Maria P. reported that three of her children were adopted out to foster families and the others were in foster care. She attributed losing custody to neglect and her drug use. Maria P. denied the allegations against her. Maria P.'s initial drug test results were negative.

Joseph R. was found to have marks on his back and forehead that were consistent with the allegations made in the referral. Joseph R. first said that his mother hit him but then reported that neither of his parents was responsible for the marks. Maria P.'s sister told DCFS that she had seen Maria P. hit Joseph R. on the back with a belt and on the head with her hand.

An immediate response referral was made in late March 2010. The caller reported observing Maria P. hit Joseph R. all over his body, put a collar on him like a dog, and attempt to pull him. The abuse was alleged to have taken place the day before when

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

Maria P. was angered that Joseph R. was playing roughly with another child. Maria P. was also reported to have scared Joseph R. by telling him that if he confirmed that he had been physically abused he would be taken away from her. It was also reported by the caller that Joseph R.'s father, Joseph R., Sr., was living in the home. Joseph R., Sr. had just been released from incarceration for abuse of a minor.

Two unrelated persons who were among the families sharing the home with Joseph R.'s family confirmed that Maria P. hit Joseph R. One said that Maria P. "cannot control her impulses and hits the child really hard for no apparent reason"; that she had put a collar and leash around Joseph R.'s neck and pulled him with it; and that she had said to Joseph R., "I hate you, you bastard." The other described Maria P. as hitting Joseph R. impulsively and hard.

Maria P. denied hitting Joseph R., putting a collar on him, choking him, or yelling at him. She admitted that she had an anger management problem but said she had just enrolled in an anger management class. She denied that Joseph R., Sr. lived at the home in violation of DCFS instructions; but admitted that he did spend the night there sometimes. The social worker observed that Maria P. "does not see her discipline is inappropriate because it is lighter discipline than she used with previous children in which she has [committed] willful cruelty to a child."

DCFS detained Joseph R. He said goodbye to his mother without emotion and without looking back despite her audible screams. He reported domestic violence between his parents and that they yelled very loudly at each other. Joseph R. said that it made him feel really sad when they fought and that no one paid attention to him, so he just sat on the bed until they stopped.

Joseph R. was reported to be physically healthy and meeting developmental milestones. He was, however, aggressive toward other children at school and was easily distracted. He did not exhibit the typical range of emotions upon detention that the social worker expected: "Joseph had a blank affect and showed no emotion for the situation. Joseph did not ask about his Mother or being returned to his Mother. Joseph only asked about what the foster family has at his home for him. It appeared Joseph was not very

attached to his Mother and seemed to lack empathy and only wanted to know what was in it for him.” In a later interview, Joseph R. told DCFS, “I love my mom and I want to live with her.”

The juvenile court determined that Joseph R. was subject to the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b). The court found it was not in Joseph R.’s best interest for his parents to be offered reunification services.

Joseph R. was placed in foster care from March through October 2010, and was then placed with a second cousin in October 2010. The cousin was informed that Joseph R. required medication and counseling for attention deficit hyperactivity disorder. She failed to take him to counseling regularly. According to the cousin, Joseph R. threw himself to the floor, yelled, and hit his head on the wall. He tore his toys apart. He jumped on the bed and the dresser. Joseph threw tantrums in public settings and stole from stores. He ate paper, erasers, crayons, and pieces of his clothing. Joseph R. had not exhibited these behaviors in his previous placement. The cousin was overwhelmed and feared that he would hurt himself. She requested that he be placed elsewhere because of his behavioral problems, because she was also caring for a disabled adult family member, and because her work began at 3:00 p.m., leaving her unable to provide the attention and supervision that Joseph R. needed.

Joseph R. was returned to his previous foster care placement in early 2011 and reported loving being in his foster home because he knew the other children there. He was receiving individual counseling and wraparound services, and had been referred for an individualized education plan. The behaviors that Joseph R. had exhibited while in his cousin’s custody began to diminish.

Maria P. visited Joseph R. weekly in monitored visits. She was often late in arriving. Joseph R.’s cousin and his foster parent both reported that Joseph R. did not have a close relationship with his parents. He usually asked his parents what they had brought for him, then went off to play while his parents sat at a table and talked. The foster parent described “little engagement” between Joseph R. and his parents. Joseph R.’s social worker observed that Maria P. was “not appropriate” and “rather

childish” in her interactions with Joseph R. DCFS believed that “bonding has not occurred between the child and his mother to the extent that the department would be convinced that there is a mother-child relationship.” DCFS found there to be no evidence that Joseph R. would be greatly affected by the loss of contact with either parent.

The hearing pursuant to section 366.26 was set for April 20, 2011. Joseph R. still experienced attention deficit disorder and pica, and was taking medication for the attention deficit hyperactivity disorder. The behaviors that had made his placement with his cousin problematic were diminishing. The foster mother was interested in legal guardianship of Joseph R. but did not want to adopt him because he already had a relationship with his parents. The court ordered a search for prospective adoptive parents for Joseph R.

As of September 2011, Joseph R. was reported to have made significant progress with using his coping skills when he felt frustrated or upset, and he had not had any physical altercations at school in the prior five months. Joseph R. remained with his foster caregiver until September 2011, when she decided against becoming Joseph R.’s guardian. She could no longer handle his behavior and lacked time to meet his needs. Joseph R. was removed from his next placement after he hit the caregiver’s son on the head with a skateboard when the boy was not looking.

As of February 2012, Joseph R. had been in a new placement for about six weeks. DCFS described the foster parent as being very patient and loving with Joseph R. and reported that he was responding very well. Joseph R. had taken part in an adoption recruiting event, and six families expressed an interest in learning more about him. A meeting had recently been conducted during which DCFS matched Joseph R. with a family whose home study had already been approved. DCFS was awaiting a formal match notice in order to set a pre-placement conference and presentation to the family.

DCFS reported to the court in February 2012 that Maria P. had continued to visit Joseph R. over the prior several months, but that the visits were inconsistent. Sometimes three weeks would pass without a visit. Between September and November 2011 Maria P. had visited two or three times, but she did call. The caregiver at that time

reported that Joseph R. was affected negatively by contact with his mother. Maria P. had visited Joseph R. weekly from mid-January to early February. On February 9 she left the visit one hour early. The following week she did not appear and did not call to cancel the visit.

The next caregiver also found that Joseph R.'s behavior escalated when he saw his mother. She reported that Joseph R. asked his parents for things and became upset when he did not receive them. DCFS reported, "Mother has also told him that he will be going home with her and this confuses the child. The foster caregiver . . . stated that the child Joseph was given [an electronic] game months ago by the parents before she had the child in her care. The child had broken the game and mother asked for it back to get it fixed. The mother has not returned the game to him. The foster caregiver stated that . . . the first thing the child asks his parents, especially his mother[,] is for his game. The child is mostly focused on getting his game back from his parents. Mother tells the child not to ask anymore and then she will return the game back to him. He asks them after the visit, and mother tells him she will not give it back to him because he asked about it again. Per the foster caregiver, it does not appear to matter to the child whether his parents arrive for the visits or not. He does not get upset about it." DCFS described Joseph R.'s relationship with his parents as distant.

Joseph R. received weekly individual counseling and had begun therapeutic behavioral services. He was reading at grade level but was behind in writing and some mathematics. He interacted appropriately with his peers but was demonstrating some behavioral problems. Joseph R. was described as making progress in taking responsibility for his actions and following through with consequences.

In February 2012 the court postponed the section 366.26 hearing until June 2012 to permit progress on the selection of an adoptive home for Joseph R. In March 2012 the family that had been identified from the pool of interested families decided to move forward toward adoption. Four pre-placement visits occurred in April 2012, and weekend overnight visits took place over four weekends in May. Visits were going well and Joseph R. was looking forward to moving into the family's home. The prospective

adoptive parents had met with Joseph R.'s wraparound service providers and had independently researched resources in the area to assist with the transition. Joseph R. was scheduled to move in with the prospective adoptive parents in June 2012.

On June 11, 2012, the court took evidence and heard argument on the termination of parental rights. Joseph R. had moved into the adoptive home the prior week. Maria P. testified that she had not visited Joseph R. in the past two months, and she had seen him perhaps six or seven times in the four months before that. Their visits lasted one hour. They watched movies and read together; she would try to have him write, or color, or draw. She also downloaded games on her phone that he could play. Maria P. testified that prior to six months ago, that she had visited Joseph R. once or twice per week for a year, for approximately two hours per visit. At that time they met in a park and took small hikes and collected pinecones.

Maria P. testified that she was not speaking with Joseph R. because the foster parent had been saying he did not want to speak with her. She had last telephoned two or three weeks earlier but had stopped trying because she was upset to be told that Joseph R. did not want to speak with her.

The court asked Maria P. what she had done in the past 18 months to assume a parental role in her son's life. She described telling Joseph R. when he did something wrong, speaking with him about the incident with the skateboard, and giving him consequences for misbehavior. Maria P. described herself as the only caregiver who could deal with Joseph R. She said that when he lived with her she disciplined him with time outs and that she knew that she would have to make her voice less loud if he lived with her again.

When asked her position on termination of parental rights and freeing Joseph R. for adoption, she said she did not want that to happen because "I think I deserve a second chance because I've already lost two of my kids, and the only reason I allowed that adoption go to through was [was be]cause I was pregnant with Joseph." She believed termination of parental rights would be detrimental to Joseph. R. because "he was

mama’s boy, and I don’t know. I think right now with him not seeing me and stuff or hearing from me I think he’s really tripping.”

The court concluded that Joseph R. was adoptable and that termination of parental rights would not be detrimental to him under the statutorily-specified exceptions, then terminated parental rights. Maria P. appeals.

## **DISCUSSION**

“At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. When there is no probability of reunification with a parent, adoption is the preferred permanent plan. [Citation.] To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily specified exceptions (§ 366.26, subd. (c)(1)(A)-(B)), the juvenile court ‘shall terminate parental rights.’ (§ 366.26, subd. (c)(1).)” (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) Here, the juvenile court found that Joseph R. was adoptable, and, finding no reason that the termination of parental rights would be detrimental to him, terminated parental rights. Maria P. challenges the determination that Joseph R. was adoptable and asserts that the parent-child relationship exception to termination of parental rights was applicable here. Neither contention is meritorious.

### **I. Adoptability**

A juvenile court may terminate parental rights under section 366.26 only if it determines by clear and convincing evidence the child will likely be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204.) “The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor’s age, physical condition, and emotional state make it difficult to

find a person willing to adopt the minor. [Citations.]” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.)

“““Clear and convincing’ evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.”” [Citation.]” (*Jerome D., supra*, 84 Cal.App.4th at p. 1205.) Review of the juvenile court’s finding of adoptability is limited to determining whether it is supported by substantial evidence. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

Maria P. correctly observes that the record demonstrates Joseph R.’s behavioral problems and challenges over the course of the dependency proceedings. He acted aggressively toward people and property, was impulsive, and threw tantrums. He had been diagnosed with pica, a condition in which a person eats non-nutritive items; with attention deficit hyperactivity disorder; and with impulsivity disorder. Maria P. labels these “extreme medical, emotional and behavioral problems” and claims that he was therefore unadoptable. The record, however, does not mandate such a conclusion.

Although there was evidence that Joseph R. had behavioral problems and required psychological services, there was also sufficient evidence for the juvenile court to find by clear and convincing evidence that he was adoptable. Joseph R. was seven years old and in good physical health, with no developmental disabilities. He was taking medication to assist with the attention deficit hyperactivity disorder. He was also receiving individual counseling and therapeutic behavioral services to address his emotional and behavioral issues. Joseph R. was making progress in addressing his behavioral and social problems. He had set a personal mission: “I want to work on my temper tantrums and make friends at school.” Joseph R. was described as honest, receptive to interventions, and wanting to do better and to avoid getting into trouble. He was struggling to verbalize his feelings and had difficulty controlling his impulsive behaviors, but he was “able to take ownership for his misbehavior.” Joseph R. was “able to recognize negative behaviors and channel his energy in[to] positive outcomes.” He was helpful around the house and kept his room clean. He respected house rules and demonstrated good self-control when reminded of

the rules. Friendly, polite, and talkative, Joseph R. enjoyed socializing with his peers. He wanted to make friends and was working on positive social interactions.

In a Family Safety and Crisis Plan from September 2011, it was noted that Joseph R. had gone five months without any physical altercations at school. He had “made significant progress with utilizing his coping skills when he feels frustrated or upset.” He was described as “able to recognize when he becomes angry and . . . willing to take responsibility for his anger.” As of September 2011, he had succeeded in decreasing the severity of his temper tantrums and had not destroyed any property in the past six months, although he did still cry when he did not get his way. Although this report may have been made prior to Joseph R. hitting a child with a skateboard, it nonetheless shows his progress in addressing his inappropriate behaviors.

Joseph R.’s academic performance had also been improving, albeit slowly. He had begun completing his homework and class work on a consistent basis. He had become more organized with his school work. An individualized educational plan meeting had been requested to determine whether Joseph R. was eligible for special education or intervention services.

Joseph R., moreover, had drawn the attention of six families when he attended an adoptive parents’ recruiting event. The prospective adoptive parents with whom he was matched had spent several months getting to know him, with a month of visits followed by a month of overnight stays. Pre-placement visits had gone well and the placement process proceeded apace, indicating no concerns as to Joseph R.’s ability to connect and to form attachments. His ability to form attachments had never been questioned—the record includes multiple references to Joseph R. adapting well to new placements and forming connections with his caregivers and foster families.

This evidence is sufficient for the juvenile court to have concluded, as it did, that based on his age, physical condition, and emotional state, as well as the existence of prospective adoptive parents, it was likely that Joseph R. would be adopted. (§ 366.26, subd. (c)(1); *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.) “Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that

the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.*, *supra*, at pp. 1649-1650.)

Maria P. contends that Joseph R.'s age and his attachment to her would make it difficult for him to bond with adoptive parents. She does not cite to any evidence in the record to support this speculation, and indeed, the record tends not to support the contention that he and his mother were bonded to any degree that this attachment would impede a connection with adoptive parents. Joseph R. was noted to be protective of his mother, to have initially said he wanted to live with her, and to say he enjoyed visits with her, but caregivers and social workers characterized the relationship as "distant" and involving "little engagement" between Joseph R. and his mother. Joseph R. was "not very attached" to his mother, did not seem to care whether visits occurred, and was affected negatively by contact with his mother.

## **II. Termination of Parental Rights**

Maria P. contends that the parent-child relationship exception to termination of parental rights was applicable here. We review the determination whether a beneficial parental relationship exists for substantial evidence and the conclusion as to whether the existence of that relationship constitutes "a compelling reason for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)) under the abuse of discretion standard. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 622.)

"Section 366.26 provides an exception to the general legislative preference for adoption when '[t]he court finds a compelling reason for determining that termination would be detrimental to the child' (§ 366.26, subd. (c)(1)(B)) because '[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.' (§ 366.26, subd. (c)(1)(B)(i).) The '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.’ [Citations.] 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.’ [Citations.] 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.’ [Citation.] 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.’ [Citation.]” (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

Here, the juvenile court found that neither prong of the parental relationship exception was satisfied: Maria P. had “not had the level of visitation and contact that at this point has created an ongoing parental role and relationship or to any extent that it has it clearly doesn’t outweigh the benefits of permanence in adoption[,] especially in this case where this is the mother’s tenth child coming into the system.”

The court’s finding that Maria P. had failed to maintain regular visitation and contact with Joseph L. is supported by substantial evidence. Maria P. admitted she had not seen her son in two months and that in the four months before that she had seen him a total of six or seven times. She had stopped trying to contact Joseph R. by telephone because she found his repeated refusals to speak with her too upsetting. Although she had visited Joseph R. since he entered the dependency system, her visitation had been inconsistent, with Maria P. sometimes arriving late, canceling visits, or failing to show.

The juvenile court also concluded that even if Maria P.’s visitation was sufficient to demonstrate regular contact, the parent-child relationship was qualitatively insufficient to constitute a compelling reason for determining that termination of Maria P.’s parental rights would be detrimental to Joseph R. We review this determination for an abuse of discretion and find none. Maria P. described a few instances in which she had advised

Joseph R., asked him to discuss emotions with her, or brought behaviors he needed to change to his attention, and she testified that they communicated well, but this testimony was the sole evidence to suggest that she had acted in a parental role over the years he had been a dependent of the court. Maria P. may have attempted to influence Joseph R.'s behavior for the better while she was visiting, and Joseph R. may have enjoyed his visits with her, but there was also evidence that Maria P. and Joseph R. had a distant relationship. Joseph R. did not seem to care if she failed to appear for visits and was primarily concerned with what she had brought for him when they did visit together. During visits, Maria P. tended to talk with Joseph R., Sr. or to talk on her cell phone rather than engaging with Joseph R. DCFS did not observe Maria P. and Joseph R. to be bonded and saw no evidence that he would be greatly affected by the loss of contact with her. Joseph R.'s attitude and behavior worsened after contact with his mother.

There was no evidence that termination of the parent-child relationship would be detrimental to Joseph R. or that the relationship conferred benefits to him more significant than the permanency and stability offered by adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [exception applies only if the severance of the parent-child relationship would “deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed”].) We cannot say that the juvenile court abused its discretion when it concluded that the benefits to Joseph R. that would arise from adoption outweighed any detrimental impact that might come from severing his relationship with his mother.

### **DISPOSITION**

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.