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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MICHAEL G. et al., Persons Coming
Under the Juvenile Court Law.

B251043

(Los Angeles County
Super. Ct. No. CK83589)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROSEMARY R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Amy M. Pellman, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Rosemary R. (Mother) appeals from an order of the juvenile court terminating her parental rights to her children, Michael G. and Lucille G. Mother contends that, given the nature of her relationship with the children, the juvenile court erred in failing to find applicable the statutory exception which would have avoided termination of her parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We conclude the juvenile court did not abuse its discretion by terminating parental rights and affirm the challenged order.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Section 300 Petition, the Adjudication, and the Prior Appeal

Before the section 300 petition was filed in this case on August 12, 2010, the Los Angeles County Department of Children and Family Services (the Department) had received several prior referrals regarding this family. In June 2008, it substantiated an allegation that Mother posed a substantial risk to her children, Michael (born in June 2004) and Lucille (born in Jan. 2007).

The facts in this section are taken almost entirely from our prior opinion in *In re Michael G.* (May 24, 2011, B228138) [nonpub. opn.].) As stated there, they are as follows:

“A case was opened under the Department’s voluntary family maintenance plan. Three subsequent referrals regarding Mother were determined to be unfounded. In June 2009, Mother began receiving family preservation services through the Department and both children were placed in foster homes through the voluntary family reunification program. During that time, Michael was diagnosed with attention deficit hyperactivity

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

disorder and began receiving medication. Lucille was returned to Mother in December 2009 and Michael was returned in March 2010.

“The incident that led to the filing of the instant petition occurred on August 9, 2010. A witness told police she had seen a man hitting a child in the face with a drumstick in a car in a fast food restaurant parking lot. The officers stopped the car, which was driven by Mother’s boyfriend, Abel G. Mother was in the front passenger seat and the children were in the rear seat, along with numerous empty plastic and glass bottles. Michael was bleeding from a cut on his nose. He told the officers that Abel had hit him with a stick. There were two drumsticks on the floor of the car with blood on them. Abel told the police he did not hit Michael. Mother told police she did not see the incident and claimed that Abel had never hit the children.

“One of the officers took Michael to a hospital for treatment and Michael told the social worker that Abel had hit him ‘all over the head.’ The social worker saw redness under Michael’s right eye. Mother told the social worker that she had gone into the fast food restaurant to use the bathroom while Abel stayed in the car with the children. She said several times that she did not believe Abel had hit Michael because she had never seen him hitting the children. However, she admitted that Michael did not have an injury to his nose prior to stopping at the restaurant. Mother also said that Michael had been known to lie. Mother then told the social worker, ‘I can not handle Michael, take him.’ Mother signed a document stating that she could not handle Michael and acknowledging her wish to voluntarily place him with her aunt, Julia L.

“When the social worker interviewed Abel, he said that Michael had been sitting in the back of the car hitting some cans with drumsticks. He saw that Michael’s nose was bleeding. Abel tried to stop the bleeding but panicked and drove away when a woman started yelling at him. He came back to get Mother, and the police arrived.

“Abel was arrested and charged with felony child abuse. He pled guilty to the allegations.

“The social worker interviewed Lucille, who said that Abel hit Michael. She also said that Abel had hit Michael on prior occasions.

“Julia L. told the social worker she had informed Mother that another aunt had seen Abel ‘overdoing it’ while spanking Michael and that a neighbor had witnessed Abel hitting Michael. Julia L. said that the children’s maternal grandfather (Christopher R.) did not believe Abel should have been arrested.

“The children were placed with a foster parent pending investigation into the suitability of Julia L.’s home. Julia L. had been trained as an assistant to special needs children.

“The Department confirmed earlier information that Michael had been diagnosed with severe impulsive type attention deficit hyperactivity disorder and had delayed development. He was going into first grade, was working with a therapist, and had an Individual Education Plan in place. Lucille was healthy and appeared to be developing normally.

“On August 10, 2010, Christopher R. wrote a letter to the Department saying that Michael was constantly seeking attention and trying to gain control of his mother. Christopher R. criticized Michael’s difficult behavior and lack of ‘structure,’ and claimed that Abel ‘has only tried to help’ Michael. Two weeks after expressing this opinion, Christopher R. told Julia L. that Abel had admitted hitting Michael.

“The social worker’s September 2, 2010 report indicated Julia L. said that Mother and the children had been living with Christopher R. and that he had obtained a restraining order forbidding Abel to be near the house. As a result, Mother moved out of Christopher R.’s home and left with Abel. The social worker also reported Mother was controlled by Christopher R. Mother was concerned that if the children were detained, she would be unable to pay the rent and end up homeless. She also told the social worker that the reason she had asked for the return of her children from voluntary family reunification was that Christopher R. had made her do it.

“In an interim report prepared for the September 23, 2010 hearing, the social worker reported that Mother had missed a visit with the children scheduled for September 5. Mother explained she had gone to Las Vegas with a band because she ‘needed to clear her head in regards to everything that was going on.’ On September 17,

2010, Mother called the social worker to tell her she could not attend the visits as presently scheduled because she was required to wake up at 6:00 a.m. in order to make it to Pomona, where the visits took place.² Mother visited her children on two occasions. In this report, Christopher R. told the social worker that he and his daughter went to file a restraining order against Abel. Nonetheless, Christopher R. said that he and Mother still did not believe Abel had done anything wrong.

“At the September 30, 2010 jurisdictional hearing, Mother testified that she had learning disabilities, anxiety disorder, and panic attacks, and admitted Michael had behavioral problems that she could not handle. She said she had started a parenting class for special needs children but had attended only one class. She claimed she had never seen Abel hit the children and that Michael had intentionally hit himself to get his sister in trouble. She said she had obtained a restraining order against Abel and had not been in contact with him since. She did not think Abel was a danger to Michael. Mother admitted that Christopher R. had physically abused her when she was young. Although she was currently living with him, she did not think he was a threat to her children. She did not remember being told by an aunt or a neighbor that Abel was hitting her children.” (*In re Michael G., supra*, B228138 [at pp. 2-5].)

The juvenile court sustained numerous allegations as to Mother, as well as an allegation that the children’s biological father had failed to provide for the children and his whereabouts were unknown.³ The children were removed from Mother’s custody and the Department was given the discretion to place them with Julia L. Mother was allowed monitored visits twice weekly and ordered to participate in counseling and a support group for parents of children with special needs.

² The foster mother lived in the Moreno Valley and Mother lived in Hawthorne. Mother would take the bus to Julia L.’s house in Downey and Julia L. would drive Mother to a halfway meeting point in Pomona.

³ The biological father has never appeared in this action, and he is not a party to this appeal.

Mother filed a timely appeal from the jurisdictional and dispositional orders. In an unpublished May 2011 opinion, we affirmed the juvenile court's jurisdictional findings that the children are persons described in section 300, subdivisions (b) and (j). (*In re Michael G., supra*, B228138.) Specifically, we affirmed the juvenile court's finding that the following conditions existed and supported the conclusion that the children were in danger of suffering physical or emotional harm: Mother's developmental disabilities; her failure to protect Michael from Abel's abuse and refusal to believe Abel hit Michael despite an independent witness attesting to it; her living with her controlling father, Christopher R., who had physically abused her in the past and blamed the family's problems on Michael's misbehavior; and Mother's ambivalence about caring for the children, especially given the difficulty of handling Michael's behavioral issues.

II. The Six-Month Review Hearing (§ 366.21, Subd. (e))

The children were placed with Julia L. in November 2010. The Department reported in late March 2011 that Michael in particular was thriving in her home. She was providing him with the structure and stability that he needed, and he was much better able to control himself. Under Julia L.'s guidance, for the first time he had begun focusing enough to complete his homework.

Mother was permitted twice weekly monitored visits. She regularly visited on Sundays when Christopher R. could transport her, but she was inconsistent with her weekday visits. She often ended visits early and interacted minimally with the children. The children looked to Julia L. and the social worker during the visits when they needed something. The social worker observed that Mother continued to display limitations in her parenting ability, including in her ability to control Michael's behavior. Mother was compliant with the court's orders for counseling and other services.

At the six-month review hearing on March 28, 2011, the court found that continued placement with Julia L. was appropriate, found Mother in partial compliance with the case plan, and found the Department had made reasonable efforts to reunify the

family. The Department was ordered to provide Mother with six additional months of family reunification services.

III. The 12-Month Review Hearing (§ 366.21, Subd. (f))

The social worker reported in September 2011 that the children were doing very well in Julia L.'s care and had grown quite attached to her. The children said they liked living with Julia L., but they also said they wanted to live with Mother. Mother's visits continued to be monitored. She had learned new parenting techniques and attempted to apply them, but she was still unable to control the children and became frustrated and experienced anxiety and panic attacks during visits. The children did not view Mother as an authority figure and tended to "walk all over her."

As of September 2011, Mother was participating in all court-ordered counseling and other services. Mother said she had not seen Abel since shortly after the incident when he struck Michael in August 2010. However, Julia L. reported that several people had seen Mother with Abel. The social worker saw a note that fell from Mother's purse that said "Abel's community service." Mother claimed the note was old. Mother told the social worker she realized it had been wrong to take Abel's side when he hit Michael. However, she did not seem to comprehend how her poor decisions could result in harm to her children. She did not understand why Lucille had also been removed from her care. The Department recommended that Mother be provided with an additional six months of reunification services.

Mother had been evaluated by an expert appointed pursuant to Evidence Code section 730. Dr. Collister reported that Mother maintained that Michael had lied about Abel intentionally hitting him. She gave varied answers about when she had last seen Abel. Dr. Collister thought it was likely Mother was mildly mentally retarded. She exhibited significant difficulty in correctly and rationally analyzing problems and arriving at the correct course of action based on sound judgment. She also exhibited traits associated with dependent personality disorder. In addition, she was suffering from major depression with anxiety. Taken together, these factors indicated Mother would

have difficulty adequately parenting her children, especially given the significant behavioral and emotional challenges Michael presented. Dr. Collister recommended Mother be evaluated to determine whether she could receive comprehensive services from the Regional Center.

The Department reported in October 2011 that Mother continued to bring Christopher R. to visits, even though she had been told not to. Christopher R. clearly favored Lucille over Michael, and told the children Lucille would be returned to Mother soon but Michael would not be. Visits thereafter began taking place at the Department's office. Mother asked the social worker to write Christopher R. a letter informing him he could not attend the visits because he would not listen to her.

At the review hearing held on October 25, 2011, the court found Mother was in compliance with the case plan, and found the Department had made reasonable efforts to reunify the family. The Department was ordered to provide Mother with six additional months of family reunification services.

IV. The 18-Month Review Hearing (§ 366.22)

The Department reported in February 2012 that Mother had not visited the children between November 2011 and January 18, 2012. Mother first said she had not visited because she was not feeling well. She then said that Julia L. was interfering with her efforts to regain custody of the children and she did not want to see Julia L. Mother insisted Julia L. was to blame for her problems.

In late December 2011 and again in mid-January 2012, the social worker saw Abel in the vicinity of the Department's office when Mother had an appointment there. The social worker told Mother she had seen Abel with Mother. Mother admitted that she was still in a relationship with him and had only stopped seeing him briefly after the incident in which he struck Michael. Mother said she had lied about her relationship with him because she knew it would interfere with getting her children back. Mother said she had not seen the children in three months because she was trying to decide what she was going to do. Mother fluctuated between stating she wanted both children returned to her

and stating she knew she could not handle Michael but wanted to have Lucille returned to her care.

Julia L. stated she was dedicated to the children and would like to adopt them and provide them with a permanent home. Because Mother continued to make inappropriate decisions, the Department recommended that family reunification services be terminated.

In early February 2012, Mother told the social worker that she could not bear to have Julia L. monitor visits. She felt unable to parent her children when Julia L. was present. Mother then said she did not think she was going to visit the children anymore because she believed Julia L. was going to adopt the children and would not allow Mother to see them, so she felt it would be better to stop seeing them. The social worker urged her not to stop visiting unless and until she permanently lost custody.

On February 21, 2012, the matter was continued until April 5, 2012, for a contested hearing. The Department reported that Mother continued to visit the children, and it was evident to the social worker that Mother loved the children. However, visits continued to end early because Mother was ineffective at controlling the children's behavior and often became frustrated and gave up.

At the hearing on April 5, 2012, the court found that the Department and the Regional Center had been unable to work together to provide Mother with the reasonable services she required because of her special needs. The court ordered the Department to continue providing Mother with family reunification services, and continued the matter to October 4, 2012, for a hearing pursuant to section 366.25.⁴

⁴ Section 366.25 provides that if a child is not returned to a parent at the 18-month permanency review hearing (because the court determines the child's best interests would be met by provision of additional reunification services to a parent who is making significant progress but for whom reasonable services have not been provided [see § 366.22, subd. (b)]), the court may continue the case for up to six months. At the continued permanency review hearing held pursuant to section 366.25, the court must either return the child to parental custody or terminate reunification services and schedule a hearing pursuant to section 366.26 to select and implement a permanent out-of-home plan. (§ 366.25, subd. (a)(1), (3).)

V. The Section 366.25 Hearing

An interim review report dated May 31, 2012, indicated that little progress was being made in acquiring Regional Center services for Mother. In order to qualify for services, Mother had to demonstrate that she had a “qualifying condition” that was diagnosed prior to her eighteenth birthday, but she was unable to obtain her school records that would have addressed the issue. As a result, the Regional Center determined Mother was not eligible for services.

Mother’s visits with the children had improved, as she was somewhat better able to redirect the children when necessary and provide a more structured routine during visits. When the children tired of the structured activities after about 90 minutes, however, Lucille would begin to play and run around and Mother could not control her. Michael would begin building things and ignore everyone in the room. Mother told the social worker that she had informed Abel that if her children were returned to her, she would only see him when the children were not with her.

The Department filed a status review report dated October 4, 2012, stating that Mother was compliant with all of her court-ordered treatment programs and was taking her prescribed medication. The Department indicated Mother had done all that was asked of her other than terminate her relationship with Abel. She was no longer living with Christopher R. and seemed more confident and better able to care for herself. She visited the children regularly and continued to make progress in relating to the children, particularly Michael. Nevertheless, she still struggled at times to control the children’s behavior and relied on Julia L. to settle the children down. The Department considered holding the visits in a park, but decided that Mother could not control the children and keep them safe. The children said they were happy living with Julia L., but sometimes they missed Mother. The social worker reported the children became anxious when Julia L. was out of their sight.

The Department recommended terminating family reunification services and scheduling a section 366.26 permanency planning hearing.

At the status review hearing on October 4, 2012, the juvenile court ordered Dr. Collister to conduct a second Evidence Code section 730 evaluation of Mother and to review the Regional Center's denial of services. The court scheduled a contested hearing for November 27, 2012.

In a November 27, 2012 interim review report, the Department stated that during visits Mother often resorted to turning on the television in an attempt to calm the children down. During a visit in October 2012, the children were particularly active and although Mother did her best to get them to listen to her, they responded by acting out even more. The social worker started playing a movie but the children did not settle down. Mother "completely shut down" and began crying. Lucille asked Mother what was wrong and whether grandpa was being mean to her again. Mother said she was not feeling well. Michael also asked what was wrong and she responded the same way. Although the children calmed down over time, Mother continued to cry and engaged very little with the children for the duration of the visit.

On November 27, 2012, the court continued the hearing until December 20, 2012, because Dr. Collister's evaluation had not been completed. On the latter date, the parties stipulated to continue the hearing until February 21, 2013.

The Department's report dated February 21, 2013, stated that Lucille said she was happy living with Julia L., but she missed Mother and wanted to be with her. Michael said he did not want to live with Mother. Michael had begun refusing to visit with Mother or speak with her on the telephone. During a visit with Lucille, Mother attempted to redirect her when she crawled under a table and was extremely loud. Mother repeatedly warned her she would be put on time out if she did not stop, and when Lucille continued to misbehave Mother attempted to put her on time out. Lucille looked toward the social worker, smiled, and said, "watch this." She began screaming and crying and promising she would be good. Mother relented and told her to "listen to mommy." Mother continued to struggle with Lucille's behavior for the remainder of the visit. The social worker observed that Mother generally wanted the children to do what she had in mind and only played with them on her terms. She occasionally interacted with them in

activities the children chose, but generally she was not very successful in engaging, especially with Michael. Dr. Collister still had not completed his evaluation of Mother.

At the hearing on February 21, 2013, the juvenile court conducted a *Marsden*⁵ hearing at Mother's request and relieved Mother's counsel. It continued the matter to April 18, 2013, to give Mother's newly appointed counsel time to prepare.

In an interim report, the social worker noted that Mother continued to want both children returned to her care, but also said she did not believe she could care for both children together; she could only handle Lucille. Michael liked living with Julia L. and did not want to live with Mother. Lucille liked living with Julia L. but also missed Mother sometimes and wanted to be with her. In late March 2013, the social worker asked to speak to Lucille privately about Julia L.'s treatment of Lucille. When they were concluding their talk, Lucille began crying and said she was scared because she thought the social worker was going to take her away from Julia L.

The contested section 366.25 hearing finally was held on April 18, 2013. The court found that Mother had not maintained consistent contact with the children or made significant progress in resolving the problems that led to their removal from her home. She had not demonstrated the capacity to complete the objectives of the treatment plan and provide for the children's safety, protection, physical and emotional well being, and special needs. The court therefore terminated family reunification services.⁶ The court scheduled a section 366.26 permanency planning hearing.

VI. The Section 366.26 Hearing and Termination of Parental Rights

In August 2013, the Department reported that if Julia L. adopted the children she did not want them to have contact with Mother because they had difficulty processing the visits and they experienced increased behavioral problems in the days prior to and after

⁵ *People v. Marsden* (1970) 2 Cal.3d 118.

⁶ Mother filed a writ petition challenging the termination of reunification services. We denied the petition in an order entered on July 26, 2013. (*R.R. v. Superior Court*, B249593.)

the visits. Mother had stopped visiting the children in May 2013. Julia L. stated that since then Michael had begun focusing better in school and Lucille was not as anxious.

Mother told the social worker before her last visit with the children on May 1, 2013, that visiting the children was difficult for her and she did not know how much longer she would continue to visit. During the visit, Mother told the children she wanted to speak to them and told them to sit in chairs she had placed against the wall. She said if they did not start listening to her during visits they were never going to come back home. The social worker cautioned Mother not to discuss the case, but Mother continued and had to be told to stop. After the visit, Mother told the social worker she was not going to visit anymore because reunification services had been terminated and it was too difficult for her to see the children knowing they were going to be adopted. Since then, she had not contacted the Department to confirm her weekly visits nor had she visited.

The Department noted it had received a photograph of Mother and Abel standing together wearing wedding rings. The picture was taken sometime in 2013, in Las Vegas.

The Department recommended that the court terminate parental rights and free the children for adoption by Julia L., whose adoptive home study had been approved on August 13, 2013.

The section 366.26 hearing was held on August 23, 2013. Mother's counsel offered stipulated testimony, indicating Mother would testify she loves her children very much and had always wanted to visit with them. She stopped visiting after May 1, 2013, because she felt the social worker interrupted her during an appropriate interaction with the children and was not allowing her to bond with her children during visits. She denied she was telling the children they could not come home if they did not listen to her. Counsel stated that Mother objected to termination of parental rights because she was thwarted in being able to assert the beneficial relationship exception to adoption stated in section 366.26, subdivision (c)(1)(B)(i) and was not allowed to establish a parental bond. She stopped visiting only because she had been prevented from having meaningful visitation.

Counsel for the children asked the court to terminate parental rights and free the children for adoption, disagreeing that Mother’s opportunity to visit with the children had been thwarted.

The court terminated parental rights, found the children adoptable, and ordered the Department to pursue adoption as the permanent plan for Michael and Lucille. It found no applicable exception to the termination of parental rights, stating “Mother has not visited consistently with the children, nor can it be said that she has a parent/child relationship.”

This timely appeal followed.

DISCUSSION

“At a hearing under section 366.26, the court is required to select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re Edward R.* (1993) 12 Cal.App.4th 116, 122; *In re Heather B.* (1992) 9 Cal.App.4th 535, 546.) In order for the court to select and implement adoption as the permanent plan, it must find, by clear and convincing evidence, the minor will likely be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).)” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.)

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The 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).) ‘[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.’ (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*.)

A. *Maintenance of Regular Visitation*

The juvenile court concluded that Mother had not visited consistently with her children. The record adequately supports the court's conclusion in this regard. Most notably, from November 2011 through mid-January 2012, Mother stopped visiting the children entirely. She later said that it was because she was trying to decide what to do about her relationship with Abel, which she wanted to maintain but knew would interfere with reunifying with her children. Although Mother resumed visitation in February 2012, from May 1, 2013, until the time of the section 366.26 hearing in late August 2013, Mother again stopped visiting the children. At the visit on May 1, she sat the children down and attempted to issue an ultimatum to them, telling them if they did not start listening to her they would not be returning home. When the social worker reprimanded her, she responded by discontinuing her visits. She said it was too difficult to see the children when she knew they were going to be adopted. In addition, throughout these proceedings, Mother often ended her two-hour visits with the children early because she grew frustrated and exhausted with her inability to control the children's misbehavior.

We are not unsympathetic to the difficulty a parent must have in visiting with her children in a controlled environment under constant observation. However, monitored visitation was the only means available under the circumstances to permit Mother to continue to have a bond with the children and also ensure the children's safety. Instead of trying to optimize the visits, Mother insisted on maintaining a relationship with Abel, even though it was made clear to her that doing so would interfere with her ability to reunify with the children. Undoubtedly her continuing relationship with Abel played a role in the Department's decision to allow only monitored visits in the Department's office. When Mother was visiting, the record makes clear she tried very hard to implement the parenting skills she had learned, but she frequently allowed her frustration at her failed attempts to significantly interfere with the visits. In summary, the history of Mother's visitation is marked by two significant periods of time when she unilaterally decided to stop visiting the children, as well as an ongoing pattern of ending visits early out of frustration and distress.

In any event, even assuming for the sake of argument that Mother's visitation had remained entirely consistent, she was also required to demonstrate that such visitation had the effect of maintaining a substantial and *parental* bond with the children. As we next discuss, we also affirm the juvenile court's finding that she did not do so.

B. The Existence of a Beneficial Relationship and Detriment to the Children from Severing the Relationship

“Although the kind of parent/child relationship which must exist in order to trigger the application of section 366.26, [former] subdivision (c)(1)(A) [now (c)(1)(B)(i)] is not defined in the statute, it must be sufficiently strong that the child would suffer detriment from its termination.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418; accord *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1253.) ““In the context of the dependency scheme prescribed by the Legislature, we interpret the “benefit from continuing the [parent/child] relationship” exception to mean the 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. In other words, 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. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*In re Autumn H.* [(1994)] 27 Cal.App.4th 567, 575.)” (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1418; accord *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.) In evaluating the parent-child relationship, the court may consider the age of the child, the portion of the child's life spent in the parent's custody, the positive and negative interaction between the parent and the child, and the child's particular needs. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

We recognize that there is a split of authority as to whether the substantial evidence or abuse of discretion standard applies to appellate review of a juvenile court ruling rejecting a claim that one of the adoption exceptions applies. “In *In re Jasmine D.* (2000) 78 Cal.App.4th 1339 (*Jasmine*), the First District Court of Appeal acknowledged that most courts had applied the substantial evidence standard of review to this determination. (*Jasmine*, at p. 1351.) However, the First District concluded that the abuse of discretion standard of review was ‘a better fit’ because the juvenile court was obligated to make ‘a quintessentially discretionary determination.’ (*Jasmine*, at p. 1351)” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) Other courts, such as *Bailey J.*, have used a hybrid combination of the substantial evidence and abuse of discretion standards. (See *id.* at pp. 1314-1315; see also *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

We concur with the formulation of the standard of review stated in *Bailey J.*, that “both standards of review come into play in evaluating a challenge to a juvenile court’s determination as to whether the parental . . . relationship exception to adoption applies in a particular case. Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental . . . relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination. Thus, as th[e] court noted in *In re I.W.* (2009) 180 Cal.App.4th 1517, a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ (*In re I.W.*, at p. 1529.) Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.

“The same is not true as to the other component of these adoption exceptions. The other component of . . . the parental relationship exception . . . is the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding

detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951.) Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.) We adopt the approach of the *Bailey J.* court.

Accordingly, we first consider whether Mother met her burden of proving in the juvenile court that she has a beneficial parental relationship with her children. We note that Mother did not argue during the section 366.26 hearing in the juvenile court that she occupied a parental role. Rather, she argued that the Department had not allowed her to bond with the children and she therefore was thwarted in being able to assert the parental relationship exception. Arguably, she forfeited the right to argue on appeal that the exception applies. She does not press the same argument on appeal that she did below, but rather asserts that she did in fact have a beneficial parental relationship with the children. We will proceed to discuss the merits of that contention, given the importance of the issue to all involved.

The Department repeatedly indicated in its reports that Mother loved the children, and that she tried her best during visits to use the parenting skills she had learned to control their misbehavior so she could engage with them and form a parental bond. It is clear that Mother loves Michael and Lucille and has continued to have a caring relationship with them, despite the fact that they were removed from her custody under the current petition when Michael was six and Lucille was three. The children were previously removed from her custody for nine months and six months, respectively, beginning in June 2009, through the Department’s voluntary family reunification program. Thus, a significant portion of their young lives was spent out of Mother’s care. Even though Michael was somewhat older when the separations occurred, it is also clear from the record that Mother and Michael did not share a parental bond. She consistently

stated that she did not think she would be able to handle him by herself. During visits she made less effort and had less success in engaging with him, displaying a preference for Lucille, of which Michael was undoubtedly aware. Eventually Michael started refusing to visit with Mother or speak to her over the telephone.

As to Lucille, the record demonstrates that Mother shared a closer bond, but it also demonstrates that Lucille did not view her as a parental authority figure. Lucille “walked all over” Mother and often did not feel she had to mind Mother’s directives. Mother sometimes called on Julia L. to control the children’s misbehavior, even though Mother had previously refused to agree to Julia L. being the monitor for visits. Everyone involved seemed to understand that Julia L. was the parental figure as far as the children were concerned. Mother attempted to discipline the children, but she was not attuned to their desires and needs, trying instead to force the children to engage only in the activities she had prepared for the visits.

Mother had three years to reunify with the children, an unusually long time, because the Department and the court gave her every opportunity to improve her parenting skills and develop her ability to make good decisions for herself and her children, including tenaciously pursuing Regional Center services. During visits, Mother was nurturing and earnest in her efforts to provide affection, food, and toys, and in attempting to provide discipline. But she never managed to progress beyond monitored visits or to visit for a full two hours on a regular basis. Mother undoubtedly occupied a special role in the children’s lives. However, we conclude that there was sufficient evidence for the court to conclude that Mother did not establish a beneficial parental relationship with the children.

In addition, we find the juvenile court did not abuse its discretion by concluding that the benefit to the children of maintaining their relationship with Mother did not outweigh the benefit to the children of having a safe, stable, permanent home. In exercising its discretion, the court found that Mother’s relationship with the children did not constitute a compelling reason for determining that terminating parental rights would be detrimental to the children. In so doing, the juvenile court was required to determine

the detrimental impact that severance of the parental relationship could be expected to have on the children and to weigh that against the benefit to the children of adoption. (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315, citing *In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 951.) “[A] finding of *no* detriment is not a prerequisite to the termination of parental rights.” (*Jasmine*, *supra*, 78 Cal.App.4th at p. 1347, italics added.) Rather, if the court finds that the children would suffer some detriment from the severance of the relationship but would not be greatly harmed, and further finds that the benefits adoption would confer outweigh that detriment, the court does not abuse its discretion in ordering parental rights terminated. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

At times the children demonstrated a positive emotional attachment with Mother. Although the children enjoyed the visits, and Lucille in particular missed Mother sometimes, the visits were not sufficiently significant that it would work to the children’s detriment if they were discontinued. As of February 2013, Michael did not want to visit with Mother anymore. Lucille burst into tears when she thought the social worker was going to remove her from Julia L.’s custody, but did not show a similar reaction regarding not being allowed to return to Mother.

The extent of the children’s bonds with Mother—while important and meaningful to the children, and the loss of which would likely cause some detriment—could rationally be found to compare unfavorably to the benefit the children would experience from being adopted by Julia L. and becoming permanent members of her loving, stable family. Michael’s behavioral issues were being managed remarkably well by Julia L., and Julia L. was closely attentive to Lucille’s needs and development. The children looked to Julia L. for comfort, guidance, and stability. We find that the juvenile court did not abuse its discretion in concluding that the children would not be greatly harmed by severing parental rights, and that the benefit of adoption by Julia L. outweighed any benefit the children would experience from maintaining their relationship with Mother.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, J.*

We concur:

EPSTEIN, P. J.

MANELLA, J.

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.