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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re AMBER E., a Person Coming Under
the Juvenile Court Law.

B267679
(Los Angeles County
Super. Ct. No. CK62949)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Marguerite Downing, Judge. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and
Appellant.

Tarkian & Associates, Arezoo Pichvai for Plaintiff and Respondent.

F.P., the mother (Mother) of minor Amber E. (Amber), appeals from an order terminating parental rights to her daughter pursuant to Welfare and Institutions Code¹ section 366.26. Mother claims that the juvenile court erred in determining Amber was likely to be adopted and the beneficial parental relationship exception did not exist. We affirm.

BACKGROUND

Mother has a history with the dependency court dating back to 2006. Amber came to the court's attention, on January 10, 2011, when the Los Angeles County Department of Children and Family Services (the department) filed a section 300 petition on behalf of two-year-old Amber and her older sibling, 17-year-old D.M.²

The 2011 petition alleged that Mother had a four-year history of illicit drug use and was a current abuser of methamphetamine and amphetamine which rendered her incapable of providing regular care for the children. Mother had a positive toxicology screen for methamphetamine and amphetamine on December 29, 2010. The January 2011 petition alleged that Amber's father, R.E., failed to provide her with the necessities of life. On February 1, 2011, the department filed a first amended petition, which added allegations that Amber's father had a criminal history, including convictions of possession of a controlled substance, burglary, and grand theft. As sustained, the first amended petition alleged that R.E. had a criminal conviction for possession of a controlled substance and continuously abused substances.

The petition further alleged that D.M. was a prior dependent of the juvenile court due to Mother's illicit drug use. The prior petition was filed in April 2006, when D.M. was 13 years old. D.M. was declared a dependent of the court in June 2006 under section 300, subdivisions (b) and (c). Like the current petition, the sustained prior

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

² D.M., who is now an adult, is mentioned only when it is relevant.

petition alleged that Mother had a history of substance abuse and was a frequent user of methamphetamines and amphetamines. The prior petition also alleged D.M.'s father, E.M., had a history of substance abuse and was a frequent user of illicit drugs. E.M.'s father was an active gang member and had established a detrimental home environment by allowing known gang members to frequent D.M.'s residence. E.M. exposed D.M. to a gang lifestyle for numerous years. Mother and E.M. failed to ensure that D.M. regularly attended school. The juvenile court terminated family reunification services in March 2007. D.M. was returned to Mother on August 25, 2008, and the case was closed on February 15, 2009.

With respect to the current petition, the department received a referral on December 8, 2010, which alleged that two-year-old Amber was the victim of general neglect and emotional and physical abuse. According to the referral, Mother beat Amber, pulled her hair and slapped her on the face. Mother allegedly used drugs and alcohol on a daily basis and had ties to gangs. During the initial investigation on December 8, 2010, Mother denied using drugs and agreed to drug test the following day. However, Mother did not make herself available until December 29, 2010. At the detention hearing, the court ordered Amber and D.M. detained and granted Mother monitored visits.

In an interview on January 25, 2011, Mother denied that she was addicted to narcotics. Mother explained that she "did a line." She was going out with friends but was "clean" for a long time. She thought she had been "clean" since she got pregnant with Amber. Mother said that "Everyone makes mistakes." Mother believed that her history with the department and the juvenile court made it "appear" that she had a substance abuse problem.

The department reported that Mother had a history of associating with gang members. D.M. was AWOL and would occasionally show up and spend the night with Mother. Mother's oldest son was in prison for 19 years for attempted murder. Mother denied knowing that her son was in a gang until after he committed the crime. However, Mother stated that her son's father was a gang member, who abused her. Mother

admitted that she had been associated with a gang until she got pregnant with a different son in 1996. That son resides with his paternal relatives.

Mother explained that she liked younger guys, including the fathers of D.M. and Amber. Mother was 27 years old when she began a relationship with D.M.'s father, who was 15 years old. Amber's father, R.E., is a friend of Mother's son, who is in prison. R.E. displayed a gang tattoo and reported that he had been in and out of prison for robbery and drug convictions.

Amber was living in the home of E.G. Mother reported that she telephoned Amber every day and visited with her for two and half hours on Mondays.

The department reported that Mother raised D.M. until she was three months old. When D.M. was three months old, Mother gave D.M. to D.M.'s paternal grandmother to act as a primary caregiver. D.M. spent time with Mother after school and some weekends but resided with a paternal grandmother until she was 11. The department reported that Mother did not recognize that D.M. might resent Mother for not raising her. Mother allowed D.M. to do as she pleased because Mother felt guilty. It was not clear whether Mother's association with gangs clouded her judgment or if Mother's involvement encouraged her children to make the same poor life choices. Mother did not contact authorities when D.M., who was then subject to a protective custody warrant, contacted Mother. Mother did not want D.M. to catch Mother contacting authorities. Mother displayed an immature, childlike disposition and reversed the role of parent/child with D.M.

On March 15, 2011, the court sustained the petition as to Amber only. D.M. remained at large. The court ordered family reunification services and ordered Mother to participate in random drug testing, parenting education and individual counseling. Mother was given monitored visits.

In September 2011, the department reported that Amber remained in the foster home of E.G. Amber had a strong bond with E.G., who Amber called "Mommy." Amber would not leave from her sight. If E.G. left the room or was out of her sight, Amber would cry uncontrollably. After visiting Mother, Amber would begin to act out

and have uncontrollable temper tantrums and crying spells. Mother would tell Amber that Amber would be soon going home with Mother.

Amber had also become sexually curious and asked questions about the differences between men and women. Amber had unusual outbursts in Spanish, saying “slut slut” in Spanish whenever she saw a woman wear a dress or mini skirt. On one occasion, E.G.’s daughter walked into the bedroom and saw Amber naked lying down on the bed and almost had a three-year-old foster brother do the same thing. E.G. thought Amber was acting out because of the things she might have seen in her parents’ home. E.G. indicated that Amber’s behaviors placed her at risk of being removed from her home if Amber did not receive therapy.

Mother was participating in an outpatient drug program. However, Mother did not consistently drug test and had “no show” test results. On October 25, 2011, the department prepared a “Last Minute Information for the Court” which indicated that Mother had drug tests on September 26, 2011, and October 17, 2011, which had results indicating “substituted creatinine=none detected.” A lab technician explained that the results indicated the specimens received had more water base than urine so the results could not be read. The department assumed that Mother had tampered with the results to avoid a positive test.

Mother’s counselor in the outpatient drug program suspected Mother of purchasing diluted urine and taking it to the tests. The counselor stated Mother had not provided any information regarding home stability. Mother was giving the counselor the runaround about a home address. Mother arrived late to sessions and interrupted the group sessions. Mother’s tardiness did not leave time for one-on-one sessions.

On October 25, 2011, at the six-month review hearing, the court found Mother was in compliance with her case plan. The court ordered six more months of family reunification services for Mother.

On January 31, 2012, Mother filed a section 388 petition requesting unmonitored visits. Mother argued that she should have unmonitored visits because she had completed her drug program. The court granted Mother a hearing on the section 388 petition.

On March 1, 2012, the department liberalized Mother's visits to unmonitored visits. Mother was told not to leave Amber alone or unsupervised with the father. On March 2, 2012, Amber returned to the foster home after the first unmonitored visit. Amber told the foster mother that the father was at Mother's house and that he smelled "fucky." Amber said that the father got upset with Mother and threw a cellular telephone at Mother. The father said "F**k You." Mother told Amber not to tell the foster mother that the father was there. Mother arrived at the foster mother's home in a red truck with an adult male, a woman and a baby.

When the social worker asked about the incident, Mother said that the father was incarcerated and not at her home. The social worker confirmed that the father had recently been incarcerated for violating his parole but had been released on March 1, 2012. The social worker reduced Mother's unmonitored visits to four hours. Amber said that the visit was "okay." She told the social worker that the father was at Mother's home and smelled bad. She also confirmed that he threw a telephone at Mother and said the "F bad word."

On March 7, 2012, the court granted Mother's section 388 petition. The court granted Mother unmonitored visits, three times a week for a minimum of three hours each visit. On March 19, 2012, pursuant to Mother's request and because the visits had occurred without incident, the social worker increased Mother's visits from four to five hours.

On April 22, 2012, after a visit with Mother, Amber told the foster mother that the father was at the home during the visit. Mother and the father began arguing. The father hit Mother on her body with a closed fist. Amber yelled at the father, telling him to stop hitting Mother. When Amber was crying for him to stop hitting Mother, the father hit Amber. Amber did not have signs of marks or bruises on her body. Amber also said the father had a gun with him. Amber told the social worker that the father threw Mother against the wall and hit Mother on her body. Amber said that she got scared. Mother denied the allegations.

In April 2012, Amber's therapist reported that on intake Amber "presented with symptoms of aggression and irritability, startle response, was hyper vigilant, and engaged in tantrum behaviors that included hitting, crying, screaming, and yelling for up to two hours at a time." Amber had trouble sleeping and struggled with anxiety and fear of separation from the foster mother. Amber had the symptoms on a daily basis. Amber's symptoms improved until she began having unmonitored visits with Mother.

When the unmonitored visits began, Amber began to regress in her behaviors. Amber showed increased irritability with the foster mother and tantrums. Amber was more withdrawn and less verbal in her therapy sessions. Amber had wet the bed on two occasions on the nights she returned from visits with Mother, which had not happened before the modification. Amber appeared to be trying to adjust to the transition of being a part of Mother's life and being in the foster home, which had different rules and expectations. The therapist wrote that Amber "appears to be confused as to what exactly will happen with her and where her home is and this has resulted in increased anxiety and is a contributing factor to her recent re-emergence of symptoms."

On May 31, 2012, the department filed a "Last Minute Information for the Court" which stated that, after Amber was told that she would be returning to Mother's home, she had two incidents of urinating on herself. Mother had made the disclosure, which had caused Amber to be anxious and to change her behavior in the foster home.

In a letter dated June 25, 2012, the therapist reported that Amber had symptoms of emotional "dysregulation evidenced by crying, defiance and continued fear and anxiety about separation from [the foster mother]." Amber continued to urinate on herself "mainly" on the day after visits with Mother. Amber was confused and anxious about what her future living arrangements would look like. Amber repeatedly told the therapist that Mother told her that she would be returning home with Mother after the next court date. During a therapy session on June 21, 2012, Amber disclosed that Mother had told Amber not to tell the foster mother that Amber saw the father during a visit. Amber said that Mother "[is] not supposed to say that because that is a lie, right?"

On July 3, 2012, the department filed a section 388 petition requesting the court to change its March 7, 2012 order from unmonitored visits to monitored visits. The court granted a hearing on the department's petition.

On August 15, 2012, Mother agreed not to have anyone the department had not approved at the visits with Amber. The department agreed to withdraw the section 388 petition.

On August 29, 2012, the court held a 12-month review hearing. The court found the father was not in compliance with the case plan and terminated reunification services. The court found Mother was in partial compliance with her case plan and ordered six more months of reunification services. Mother was given overnight visits.

In October 2012, the department reported that Amber had moved two times within a month. She was replaced from the home of G.P. in August 2012 into the foster home of A.C. after Mother complained about Amber getting scrapes from playing. Mother complained that G.P. was not properly monitoring Amber. In her third foster home, Amber had adjusted well. During a home visit, the social worker noted that Amber was hyperactive and could not sit still. Amber's behavior improved when school started. The visits with Mother went well. Amber's therapist reported that, despite having been replaced into two different foster homes in a month and a half, Amber's symptoms had improved. Amber was resilient in adjusting to the latest foster home and in overnight visits with Mother. Amber was irritable and tearful in sessions. She was "restless due to the confusion and anticipation of a possible return home with her mother."

Mother had negative test results on July 12, July 25, and September 24, 2012. Mother had no shows on August 16, August 21, and September 7, 2012. Mother's test results for August 17 and October 12, 2012, indicated substituted creatinine, which meant the specimens could have been diluted. Mother explained that the drug test results could have been caused by water pills that she took to prevent her from gaining weight.

On November 13, 2012, Mother was given an extended visit during Thanksgiving. On December 10, 2012, the court found Mother in compliance with the case plan and

ordered Amber placed in Mother's home. The court ordered Mother to continue to drug test.

Within days of regaining custody of Amber, Mother did not show up to a drug test on December 18, 2012. Mother had a negative drug test on January 25, 2013. Mother had diluted tests on February 4 and March 25, 2013. On April 4, 2013, Mother tested positive for methamphetamines and amphetamines.

On April 20, 2013, the department filed a section 387 petition, which alleged that Mother was under the influence of methamphetamines and amphetamines on April 4, 2013. The petition also alleged that Mother had failed to continue to drug test.

On April 22, 2013, the counselor at Mother's outpatient drug program reported that Mother had not attended the program since she had reenrolled on October 31, 2012. On April 24, 2013, the social worker visited Mother's home. A neighbor reported that Mother and her daughter had been evicted for failure to pay rent. The neighbor stated that there were a lot of males who appeared to be gang members who frequented Mother's home. They smelled of marijuana. The social worker was able to locate Mother with assistance from a neighbor.

When the social worker went to the new residence, Mother appeared to be in "bad shape." Mother's hair was in a messy ponytail and her pajamas were dirty. Mother appeared to be coming down from drugs. Mother said the positive drug test must be a mistake and offered to drug test the next day.

The court ordered Amber detained from Mother. Mother was given monitored visits two times a week for two hours each visit.

On April 24, 2013, Amber was placed in her fourth foster home with M.H. and J.J.

On May 7, 2013, Mother stated that she did not know how she tested positive for drugs. Mother said that she had been stressed out about paying rent and bills and that her hair was falling out. Mother asked that instead of having two visits a week could she have one day a week for four hours. On May 16, 2013, Mother enrolled in an outpatient alcohol and drug program with individual counseling. On May 21, 2013, the court

ordered that Mother would have monitored visits three times a week for three hours each visit.

On June 11, 2013, the department reported that Mother had a negative drug test on May 10, 2013. Mother failed to show for a test on May 29, 2013. There was a couple with three children who were interested in adopting Amber if she could not be reunited with Mother. Also, on June 11, 2013, the court sustained the section 387 petition.

On July 12, 2013, the department reported that it was rescinding its former recommendation for reunification services. Mother had missed a drug test on June 10, 2013, and then feigned confusion over the date. Mother had missed a visit on June 12, 2013, claiming she did not have a ride. The department also reported that Mother had a recurring issue of telling Amber that they would be reunified.

On August 14, 2013, the department reported that it received a referral regarding Mother and D.M., who was now an adult. The referral stated that Mother and D.M. had been seen smoking marijuana and using other narcotics in the presence of Mother's granddaughter. There was a lot of traffic at the residence, including individuals with gang affiliated appearances. It was alleged that Mother and D.M. are involved in the sale and consumption of narcotics in the residence. A previous referral was made about Mother and D.M. at a different address but the referral was closed as unfounded. The department noted that Mother continued to be involved with narcotics and people associated with the conduct. The department continued to recommend termination of family reunification services and that the matter be set for a section 366.26 hearing.

On September 19, 2013, Mother's outpatient drug program counselor reported that Mother had been in compliance with the program. Mother had mixed drug test results between May 2013 and September 2013. Mother had negative test results, no shows and substituted creatinine results.

On September 30, 2013, the court held the disposition hearing on the section 387 petition. The court denied Mother family reunification services and set the matter for a section 366.26 hearing.

On January 30, 2014, Amber's therapist wrote a letter to the department. According to the therapist, Amber and her current foster parents had been participating in Trauma Focused Cognitive Behavioral Therapy since September 30, 2013. The therapy was aimed at the development of age-appropriate relaxation skills, feeling expression and reduction of fears regarding separation from major attachment figures. Through the foster parents' support and the treatment, Amber had improved her ability to remain regulated throughout the day, was less reactive to stressors, and had improved her history of crying and tantrums in response to stressors. Amber, however, continued to present with ongoing worry regarding her placement stability and confusion about being separated from Mother. In the therapy sessions, Amber had a strong attachment to Mother. Amber repeatedly talked about Mother in a positive manner and was expecting to reunify with her.

Amber had recently been informed that she might be adopted by a family different than the foster family, which reinforced fears she had at the beginning of the sessions. The therapist wrote: "Currently [Amber] is presenting with a lack of motivation to engage in previously enjoyed activities, increased sadness, irritability and ongoing worry in response to sudden shock of being informed she will be removed from current foster parents and adopted by another family. She has also gone back to requiring ongoing reassurance regarding her placement stability and clinging excessively to foster mother, throughout her day as well as repeatedly stating she does not want to go anywhere with potential adoptive parents and excessively pleading [with the] foster mother not to let [the social worker] take her away." Because of her current mood and increased anxiety, the therapist recommended continued mental health services.

Amber continued to live with foster parents M.H. and J.J. Amber was in therapy working on separation anxiety. During a recent session, Amber feigned repetitive coughing when the subject of adoption was raised. The therapist was not able to continue the session because of the coughing. When the therapist left, Amber stopped coughing.

The foster mother, M.H., wanted a legal guardianship of Amber because adoption was not an option with her and her spouse's ages and their family dynamics. They have

two adult biological children with special needs. M.H. also stated that she was unsure of her ability to handle Amber as she became a teenager. However, M.H. and J.J. indicated that they loved Amber and had a strong bond with her, indicating that she had won over their hearts. The department reported that, although the family expressed interest in legal guardianship, the answers were “mixed” for permanency. The department believed that adoption should remain the permanent plan for Amber. The department also noted that Amber had developed strong bonds and relationships in each of her previous foster homes where she was cared for and dearly loved.

Mother and Amber visited at Chuckie Cheese for four hours. There were no incidents to report. However, Mother would visit with Amber for two hours and then spend the rest of the visit discussing Mother’s personal issues with the foster mother. Mother also continually told Amber that Amber would be returning home soon and that they would be reunited.

On February 3, 2014, Mother filed a section 388 petition, requesting the court to take the section 366.26 hearing off calendar and issue a home of the parent order. Mother asserted that she had completed a substance abuse program, was drug testing and was having weekly visits with Amber. On February 6, 2014, the court denied Mother’s petition on the grounds there were no new evidence or change of circumstances.

In an April 2014 status review report, the department stated that Mother missed visits on March 16 and 19, 2014. Mother had not contacted Amber by telephone since March 24, 2014, or visited her since March 19, 2014.

Amber’s therapist reported that Amber had nightmares and trouble sleeping. Symptoms of restlessness and agitation had decreased. Her moods had improved since the adoption interviews were halted. Amber continued to be defiant and exhibited tantrums when her caregiver set limits. The foster parents stated that they are not interested in becoming Amber’s legal guardians.

On April 17, 2014, over the department’s objection, the court ordered that Amber not be removed from her placement with the foster parents absent a court order or emergency. The court ordered a progress report on Amber’s therapy. The court also

ordered the department to reenroll Mother in random drug testing. The matter was continued to June 17, 2014, for a progress appearance. The permanent plan hearing was continued to August 13, 2014.

On June 17, 2014, the department reported that Mother was evicted from an apartment for failure to pay rent on May 13, 2014. On May 15, 2014, Mother tested positive for alcohol. Mother had a no show on May 19, 2014. Mother had a substituted creatinine test result for May 30, 2014. Mother was hiding D.M. (who was then 21 years old) from the police. D.M. was allegedly wanted on a charge for narcotics sale and possession. A report of general neglect of D.M.'s child had been made. D.M. and Mother allegedly had a single-room apartment where they engaged in consumption and sale of narcotics, as well as sexual favors, in the presence of D.M.'s one-year-old child.

Mother continued to have a relationship with Amber's father, R.E., who is allegedly homeless. He also allegedly consumed and sold narcotics in Mother's apartment. The social worker contacted a law enforcement officer, who confirmed that there were numerous counts of drug sales and use by D.M., Mother and R.E. in Mother's former apartment.

Mother cancelled a visit on May 18, 2014. Amber was displaying less tantrums in the foster home. Amber was in therapy.

On July 3, 2014, Mother filed a section 388 petition for modification of the order denying reunification services. Mother indicated that she had completed a substance abuse program, submitted to drug tests and maintained visits. Mother indicated it would be in Amber's best interest to take off calendar the section 366.26 hearing and issue a home of Mother order. The court denied the section 388 petition on July 8, 2014, finding that there was no new evidence, no change in circumstance or any evidence that it was in Amber's best interest to modify the court orders.

In August 2014, the department reported that Amber continued to live with the foster family that could not commit to legal guardianship or adoption. Amber was placed in respite care when the family traveled to Mexico on vacation. Amber adjusted well to the home. The department requested the court to lift the do not remove order so that the

department could locate an adoptive family. Although Amber was concerned and hesitant about adoption, efforts were being made to provide reassurance, education and support to Amber.

R.E. obtained permission to attend a birthday party for his daughter Amber in July 2014. The party did not go well because the father became aggressive when a monitor told him that he was too big to go on a child's slide. Mother tested negative on June 17, and 30, 2014, and July 15 and July 30, 2014.

On August 13, 2014, the court lifted the do not remove order. The department was ordered to provide a supplemental report to address Amber's placement.

In September 2014, the department reported that Amber remained with the foster parents. Amber had a very strong bond with the foster parents. She called them "Mom" and "Dad" and referred to their special needs children as her brothers. The social worker had received calls from Amber's former foster mother, a wraparound service team member and a teacher from Amber's school, all of whom were interested in adopting her. Amber's therapist ended services on August 31, 2014, because Amber was going to receive services through a wraparound agency.

Mother had two additional negative tests. However, she also had a diluted creatinine test result on August 27, 2014. During Mother's four-hour visits with Amber, Mother interacted and bonded with Amber for part of the time. Mother would spend the rest of the visit talking to the foster mother. Amber would not listen to Mother's orders.

In November 2014, the department reported that C.G., a teacher at Amber's school, wanted to adopt her. The court ordered that the teacher and her husband have monitored visits with Amber.

On March 23, 2015, the department reported that Amber was placed with prospective adoptive parents Mr. and Mrs. G. Their monitored visits had progressed to unmonitored daytime visits and had been liberalized to overnight weekend visits. The prospective adoptive parents spent quality time with Amber. Amber liked them but missed her former foster parents. Amber was demonstrating positive adjustment to her placement with the prospective adoptive parents.

The prospective adoptive parents have no biological children of their own. They have been involved in Amber's life for about two years. They met Amber during an afternoon school tutoring program at her school where Mrs. G. is a teacher. Amber is very bonded to the couple, which is shown by loving and affectionate behavior towards each other. They have grown to love Amber and want to provide a permanent loving home for her. They provided Amber with appropriate food, clothing and shelter. They encouraged her to communicate her needs and provided her with positive reinforcement. The department reported that Amber "is easily loved by everyone she meets" and seemed to have won the hearts of her prospective adoptive parents.

Mother did not random drug test in November and December 2014, or January 2015 due to an oversight by the department. Mother had negative test results on March 13, 2015. Amber indicated that she wanted to continue visiting Mother. Mother spent a portion of the visits with Amber but still spent the balance of the visits discussing her personal issues with Mrs. H.

In June 2015, the department reported Mother was an hour late for visits with Amber on March 8, 15, and 22, 2015. On March 22, 2015, Mother took out a phone during the visit and said that Amber's father wanted to speak to her. On March 29, 2015, Mother agreed to a visit on April 3, 2015, because the foster family was leaving town for Easter. Mrs. G. called Mother and reminded her of the visit and called Mother at Amber's request four hours later. Mother eventually called at 6:05 p.m. to say she was sick. Mother rescheduled a visit for April 6, 2015, and did not call or show up for a visit.

On April 23, 2015, Mother stated she did not feel comfortable with Mrs. G. acting as the monitor. Mother said Mrs. G. was overly protective of Amber during the visits and wanted to hear every word that she and Amber said. Mother said Mrs. G. was overbearing during the visits. Mother preferred Mr. G., who seemed to trust Mother's judgment with Amber.

The department reported that Amber continued to do well in the prospective adoptive home. She had a good relationship and a close bond with the caregivers. Amber conversed openly with them and communicated her needs with ease. Although

Amber was developing a bond, she continued to struggle with the transition of the current placement. Amber likes her current placement because “they are very nice.” She, however, missed the former foster mother, Mrs. H. Amber stated that she wanted to live with Mother and did not want to be adopted. She wanted to live with her “real mom.”

Amber wrote a letter on May 19, 2015, to the prospective adoptive mother stating that Amber loved her because Mrs. G. was nice and sweet. Amber loved her because Mrs. G. took her to the movies and to school and because Amber had a “nice dad.”

On June 2, 2015, the court ordered a bonding study. The department contacted Mother on June 19, 2015, advising her that Dr. Nancy Kaser-Boyd was assigned to conduct the bonding study for Mother and Amber. Dr. Kaser-Boyd’s office was unable to contact Mother after numerous attempts. The social worker contacted Mother on August 24, 2015. Mother said she had been trying to contact the social worker but lost her contact information. Mother also said that she lost her cellular telephone. Mother said she was working from 6:00 a.m. until 9:00 p.m. Mother said that she had problems visiting Amber because Mrs. G. never answered her telephone. Mother thought Mrs. G. was jealous when Mother had contact with Amber. The social worker told Mother, if she had problems scheduling visits, she should call the social worker to contact the foster parents about the visits. Mrs. G. stated that Mother had not contacted her to schedule any visits with Amber since Amber’s birthday in the middle of July 2015.

In October 2015, the department reported that, on August 29, 2015, Mother called the social worker to say she was having a difficult time locating Dr. Kaser-Boyd’s office. On August 31, 2015, Dr. Kaser-Boyd told the social worker that the assessment could not be completed because Mother prematurely left the session before all the tests were completed.

Dr. Kaser-Boyd prepared a report which opined that Mother “may have a role in influencing [Amber’s] feelings about adoption and, so, her overall psychological health seems at issue.” Amber appeared to be very glad to see Mother. Mother gave Amber birthday gifts that she had not been able to give her in July. Amber moved around the

room but frequently returned to Mother's side. Mother responded with considerable affection, hugged her and played with her hair.

Mother said in front of Amber that Mother had "been having trouble with the social worker" and was "not getting all my visits or phone calls." Dr. Kaser-Boyd noted that Amber was old enough to get the message that Mother was not being treated fairly, which could have an effect on Amber's feeling and opinions. Dr. Kaser-Boyd stated: "It seemed evident in this interaction that [Amber] has a relationship with her mother and that [Mother] is very loving toward the minor."

In Amber's individual interview, she stated "emphatically" that she did not want to be adopted. She did not want to stay with the prospective adoptive family for good. She said she wanted "to go back to my mother." She could not identify any reason other than that she wanted to return to Mother. Amber was eager to end the discussion because she wanted to attend a party with the foster family. When the interview terminated, she ran out, hugged Mother and went happily off with the foster parents.

Dr. Kaser-Boyd stated that "it does appear that [Amber] is bonded to her mother." Dr. Kaser-Boyd reported: "This bond exists most likely because, by history, she was with her mother until she was three, and when in foster care with the woman named Maria, Mother maintained very regular contact. The minor was even returned to Mother for a period of about six months. [Amber] was quite clear, here, that she wants to be with her mother and she does not wish to be adopted. This is despite what appears to be a placement in a wonderful foster/adoptive home with very attentive and intelligent parents." Despite the advantages, Amber was attached to the natural mother and had maintained an emotional connection throughout a number of years in foster care. Because Mother was willing to communicate her troubles in the case in front of Amber, Amber was "sensitized" to Mother's point of view. Amber's adamancy about not being adopted might evolve into difficulty in being able to parent her because she might resent it. Amber might need the support of a sensitive therapist. Dr. Kaser-Boyd could not comment on whether Mother was healthy and would be able to resume parenting unless Mother completed the evaluation process.

At the section 366.26 hearing, Amber's attorney informed the court that Amber was open to adoption if she could continue to visit Mother. Amber's counsel had spoken to the prospective adoptive parents, who stated that they were willing to continue the relationship between Amber and Mother. They did not want to disrupt the relationship but wanted to offer Amber a permanent home. They would consider a legal guardianship, if the court found that there was a strong parent/child relationship.

The court found by clear and convincing evidence that it was likely Amber would be adopted and terminated Mother's parental rights. Mother filed a timely notice of appeal.

DISCUSSION

I. The Finding of Adoptability

Mother claims the juvenile court erred in its determination that Amber was adoptable. Mother argues the finding that Amber was adoptable is not supported by the evidence because of the bond between her and Amber. Mother claims the bonding study indicated that Amber was very attached to Mother and opposed to adoption. Mother claims that the court erred in not considering Amber's emotional state in assessing adoptability.

The juvenile court may only terminate parental rights based on clear and convincing evidence of the likelihood the child will be adopted within a reasonable time. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065.) "The adoptability issue at a section 366.26 hearing focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt." (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1311.) The finding is reviewed for substantial evidence. (*Id.* at p. 1312; *In re Helen W.* (2007) 150 Cal.App.4th 71, 79-80.)

In this case, the court made the finding of adoptability after Amber had been placed in the home of a prospective adoptive family. Although Amber had some issues with being adopted, Dr. Kaser-Boyd suggested that the issues could be treated in therapy. Amber was placed with a family who was aware of Amber's issues and supported her

needs, including having a relationship with Mother. Amber’s attorney advised the court that the family was willing to allow Amber to continue visiting with Mother should they adopt Amber. There was also evidence that two other families, including one of Amber’s former foster mothers, as well as a wraparound counselor, wanted to adopt Amber. Accordingly, we disagree with Mother’s claim that the adoptability finding cannot be upheld based on evidence that Amber has emotional issues related to the adoption. The fact that Amber has found prospective parents willing to adopt her is sufficient evidence that there is a likelihood that she will be adopted. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) Under the circumstances, there was sufficient evidence to support the determination that the child was adoptable.

II. The Exception to Termination of Parental Rights

Mother asserts that the juvenile court committed reversible error in failing to apply the exception to termination contained in section 366.26, subdivision (c)(1)(B)(i). There is some discrepancy between appellate courts as to whether the applicable standard of review for the determination is substantial evidence or abuse of discretion. “For years California courts have diverged in their view about the applicable standard of review for an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. Most courts have applied the substantial evidence standard of review to this determination [citations], although at least one court has concluded that it is properly reviewed for an abuse of discretion [citation]. Recently, the Sixth Appellate District has cogently expressed the view that the review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*)). The *Bailey J.* court observed that the juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists . . . is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence

of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citations.] This “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,’ is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) Under the aforementioned standards, we conclude that there was no reversible error in this case.

If a child is likely to be adopted, the preferred permanent plan, at a section 366.26 hearing, is adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) The parent has the burden of raising any relevant exception in the juvenile court. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.) Mother has the burden of producing evidence showing the exception applies. (*In re Celine R.*, at p. 61; *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

Mother claims she established the exception by showing regular and consistent visitation and that she and Amber are bonded. In considering whether the exception applies, the juvenile court should 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 Amber M.* (2002) 103 Cal.App.4th 681, 689.)

“In the context of the dependency scheme prescribed by the Legislature, . . . the ‘benefit from continuing the [parent/child] relationship’ exception [means] 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. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Mother did not show she had a parental role as opposed to a mere friendship with Amber. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854 [parents must show at least one biological parent occupies a parental role rather than a friendship].) Instead, Mother only showed frequent contact with some pleasant visits. This did not establish a parental role. Amber was seven years old when Mother's parental rights were terminated in October 2015. The dependency action was filed in January 2011 when Amber was almost three years old. Thus, Amber only lived with the Mother until she was two years old. Mother briefly reunited with Amber for about six months during the five years that the dependency proceeding was ongoing. With the exception of that period, Mother did not produce any evidence that she provided daily nurturing to Amber. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 774.)

We acknowledge that Mother continued to participate in court-ordered programs during the entire period of the proceedings but with sporadic and inconsistent success. Mother had not resolved any of the issues which brought the family to the court's attention. Mother continued with her on and off conduct which had brought the family to the court's attention in 2011. Mother abused drugs and associated with gang members. Mother continued to expose her children to her lifestyle and (apparently as recently as 2014, her granddaughter). It cannot be ignored that Mother had engaged in the same type of conduct with Amber's older sibling, who had also been a dependent of the court. That proceeding dated back to 2006. Although Mother briefly reunited with D.M., Mother resorted to her same habits, which caused the department to intervene to protect D.M. and

Amber. D.M., who is now an adult, has apparently adopted the same lifestyle as Mother, including a narcotics history, as well as gang affiliations, which Mother sanctioned in her home.

In any event, although Amber had happy visits with Mother, Mother had not provided for Amber's daily needs or care since she was two years old. Since that time for the most part, Amber had been in and out of foster placements. Thus, for the bulk of Amber's life, she was in foster care, including living with her current foster parents who wanted to adopt her.

Mother claims that she is "the only anchor in [Amber's] young life." Mother also argues that "it would cost . . . many hours in therapy to deal with this loss" if Mother's parental rights are terminated, given Dr. Kaser-Boyd's finding that there is a bond between Mother and Amber. We acknowledge that the bonding study did show that Amber was attached to Mother and did not want to be adopted. However, Dr. Kaser-Boyd also stated Amber's opinion on whether she wanted to be adopted was in all likelihood the result of Mother's communications to Amber.

In any event, the record showed that Amber was also bonded to the prospective adoptive parents, who provided stability and her daily needs. Amber happily left the evaluation with her caretakers after hugging Mother. The record also shows that Amber had a tendency to make strong bonds with whomever she was placed. For example, the foster mother with whom Amber was initially placed remained bonded to Amber and vice versa. Amber remained bonded to the second foster family, with whom she was placed for a substantial amount of time after she had to be taken into protective custody for a second time following Mother's relapse into her old habits within a few months of regaining custody of Amber.

Moreover, the record is replete with evidence that Mother's presence in Amber's life was anything but an anchor to steady Amber's young life. Instead, Mother's presence caused upheaval and emotional crises to Amber. Numerous times Mother disrupted Amber's need for stability and permanency in all of her foster placements. During the initial stages of the dependency proceeding, when efforts were made to

address Amber's behavior through therapy, Mother's visits caused Amber to regress into tantrums, nightmares, and bedwetting. Mother repeatedly told Amber that she would regain custody, which, rather than calming Amber, caused her to be stressed about what that would actually mean. This was understandable given the normalcy in the foster homes and Mother's turbulent lifestyle. For example, Amber was very vocal about witnessing a violent incident between Mother and Amber's father. During that visit, Mother, against court orders, allowed the father to be present. The father yelled profanities at Mother and threw a phone at her. In a different visit, Amber's father was striking Mother with his fists. When Amber tried to intervene by asking her father not to strike Mother, he struck Amber. Despite court orders, Mother continued to bring Amber around the father, an admitted gang member with an extensive criminal history.

Under the circumstances, the juvenile court did not err in concluding that the exception did not apply to parental rights, given the absence of evidence showing "the existence of such a strong and beneficial parent-child relationship" which "outweighs the child's need for a stable and permanent home." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) For these reasons, we are not persuaded that Mother's citation to cases such as *In re Scott B.* (2010) 188 Cal.App.4th 452, *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), and *In re Amber M., supra*, 103 Cal.App.4th 681, requires a different result.

In *In re Scott B.*, the appellate court determined the exception applied where an 11-year-old special needs child, who had lived with his mother for nine years, did not want to be adopted. (188 Cal.App.4th at p. 455.) Scott and his mother had a very close relationship, but she was overwhelmed by his needs and her health problems and could not find suitable housing for the two of them. (*Id.* at p. 456.) Scott's court-appointed special advocate repeatedly reported that it would be detrimental for Scott if the relationship was disrupted. (*Id.* at p. 471.) No such facts exist in this case. Amber was removed from Mother's custody when Amber was two years old and only briefly reunited with Mother during the five-year proceeding. Amber thus spent most of her life in foster care, where she repeatedly adjusted well when she was offered stability in her life.

An exception was found to exist in *S.B.*, *supra*, 164 Cal.App.4th 289, for a father who was the primary caretaker for his daughter for three years. (*Id.* at pp. 298-301.) His daughter was removed from his custody after he tested positive for amphetamines and admitted he had a 30-year history of methamphetamine use. (*Id.* at p. 293.) The father also suffered from posttraumatic stress disorder, which was treated with medication and therapy. (*Id.* at p. 294.) The daughter loved the father and wanted the relationship to continue. (*Id.* at pp. 296, 300-301.) An expert witness testified that it would be detrimental to the child to sever the relationship between the father and his daughter. (*Id.* at p. 294.) The father did everything that was required of him in the case plan, including remaining sober. (*Id.* at pp. 294-295.) The father also demonstrated empathy and the ability to recognize his child's needs during their visits. (*Id.* at p. 294.)

This case is similar to *S.B.* in that Mother had custody of Amber for almost three years and there was a bond between the parent and child which the bonding study showed. However, that is where the similarity ends. Mother in this case did not comply with the case plan except for the brief period prior to reunifying with Amber. Mother continued her drug use. Notably, Mother spent a portion of her visits with Amber and then would spend the balance of the visits discussing her personal issues with the monitor. Mother also did not recognize Amber's needs but imposed her own interests on Amber such that Dr. Kaser-Boyd noted that Amber's feelings about adoption were in all likelihood due to Mother's feelings. Mother repeatedly told Amber they would be reunited, causing Amber anxiety and stress. Mother also did this knowing that she was not complying with the case plan. *S.B.* provides no basis for setting aside the court's determination that the exception does not apply in this case.

An exception was found in *In re Amber M.*, *supra*, 103 Cal.App.4th 681, based on facts that showed the mother maintained regular visitation and acted in a loving and parental manner. (*Id.* at p. 690.) Amber's mother also "did virtually all that was asked of her to regain custody." (*Ibid.*) The reason for the social worker's recommendation of adoption focused on the mother's inability to provide a home for her children. (*Ibid.*) There was also evidence that termination of her rights would result in two separate

adoptions for her children. (*Id.* at pp. 690-691.) In this case, Mother did not act in a parental role for the bulk of the dependency proceeding. In addition, she did not do what was required of her to regain custody. Mother intermittently complied with the court orders and then would relapse, fail to provide drug test results or would provide suspicious urine samples. In addition, the department's recommendation of adoption was based on Amber's need for permanency and stability. This case is thus easily distinguishable on its facts from *In re Amber M.*

The cases cited by Mother are predicated upon factors which do not exist in this case. Nothing in them supports the conclusion that the juvenile court's order in this case must be reversed. Accordingly, we conclude that the juvenile court's order terminating Mother's parental rights must be upheld.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.