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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSHUA M., a Person Coming  
Under the Juvenile Court Law.

B270908

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK05454)

Plaintiff and Respondent,

v.

MARIA M. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County,  
Debra L. Losnick, Judge. Affirmed.

Stephanie M. Davis, under appointment by the Court of Appeal, for  
Defendant and Appellant Maria M.

Michele Anne Cella, under appointment by the Court of Appeal, for  
Defendant and Appellant Ramon B.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County  
Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and  
Respondent.

Maria M. (mother) and Ramon B. (father), the parents of five-year-old Joshua M., appeal from a juvenile court order terminating their parental rights, contending the court abused its discretion by finding they failed to show their relationship with the child outweighed the benefits adoption would bring. Father also argues that if mother's parental rights are restored, his should also be restored. We affirm.

### **BACKGROUND**

On June 1, 2014, an ambulance transferred Joshua M., then three years old, from Pacifica Hospital to Children's Hospital Los Angeles to treat abdominal pain and vomiting caused by an infection stemming from a recent appendectomy. Medical staff observed Joshua had bruises to his chin, neck, chest, back, shoulder, and hip, and two healing fractures of his left posterior ninth and tenth (i.e., lower back) ribs, all injuries consistent with non-accidentally inflicted trauma. Neither parent explained these injuries, but mother reported she had seen father hit Joshua, even after his recent surgery, and Joshua was afraid of him. She also reported father had beaten her and the paternal grandmother.

Hospital staff reported Joshua did not know how to eat solid food, but was still using a baby bottle, and he could say only five words. He was assessed as suffering developmental delays.

Over the next several days, hospital staff and police reported mother was emotionally distant from the child, and neither parent stayed with him while he was hospitalized. Mother reported she had observed bruising on Joshua at home, and when she asked him the cause he replied, "Daddy pow pow." Two of Joshua's babysitters reported he had scrapes and marks on his body and severe diaper rash. One also confirmed father's violent behavior towards mother and said the parents would engage in verbal altercations

when mother would return home from work at 4:00 or 5:00 o'clock in the morning, and the family was once evicted for ongoing domestic violence and for maintaining a filthy apartment.

On June 8, 2014, DCFS detained Joshua and thereafter filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (e), alleging Joshua had suffered injuries consistent with non-accidental trauma caused by father, and mother knew of the abuse and failed to protect the child.<sup>1</sup>

On April 20, 2015, the court sustained the petition and declared Joshua a dependent child of the court. (§ 300, subds. (a), (b), (e).) Family reunification services were not ordered, but the court granted monitored visitation rights to both parents.

Joshua exhibited developmental progress while in foster care and had no problems socializing or communicating.

Mother attended parenting classes and domestic abuse counseling, but her therapist stated that after 18 sessions she had yet to grasp the material and was “emotionally cloudy” about protecting Joshua from abuse. Mother attended none of Joshua’s medical appointments or psychological evaluations and refused to sign a letter requesting an Individualized Education Program for him. She was observed to be “mentally foggy,” could not explain how she was learning to be a better parent, was emotionally detached from the reality that her son was being abused, and lacked the cognitive ability to understand that Joshua’s injuries were life threatening.

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code.

Mother visited Joshua weekly without incident, but the monitors reported that she seemed inexperienced as a parent and was “controlled” by Joshua.

Father visited Joshua only once. Their interactions were appropriate, but involved very little dialogue. Father brought a video and a toy, but neither were age appropriate for Joshua. Despite father’s cooperation with a social worker during his visit, he failed to attend several scheduled appointments with the social worker in order to discuss Joshua’s emotional needs, and also failed to attend scheduled visits with Joshua.

On July 14, 2015, mother filed a section 388 petition requesting a changed court order, arguing she had finished parenting classes 11 months earlier. The court denied the petition without a hearing.

Joshua had made positive adjustments in foster care and developed a close relationship with prospective adoptive parents Ms. R. and Ms. F., who had been in a domestic partnership since 2002 and lived in a large home in a residential neighborhood. They had a large family support system, many friends, and were both employed and financially stable.

In December of 2015, mother filed a second section 388 petition, arguing the court should return Joshua to her because she was attending a second round of classes for parenting and domestic violence and recognized her mistakes and was learning to be a better parent.

For the section 388 hearing, DCFS reported that mother visited Joshua weekly but was generally “extremely passive,” responded slowly when he fell out of a chair on December 29, 2015, and would not speak much to the child, sitting quietly while he directed play.

Father appeared at the hearing and objected to the court terminating his parental rights, arguing Joshua was not adoptable.

The court found that circumstances had not changed, and any change of order would not be in Joshua's best interest. It found that neither mother nor father filled parental roles in Joshua's life, and the benefit of permanence in an adoptive home was not outweighed by any detriment that would accrue from terminating parental rights. The court therefore denied mother's petition, terminated parental rights, and found Joshua to be adoptable. Joshua's current caretakers were deemed to be his prospective adoptive parents.

Mother and father appealed.

### **DISCUSSION**

Mother argues the juvenile court abused its discretion in denying her section 388 petition and in finding she failed to show her beneficial relationship with Joshua precluded terminating her parental rights. Father argues that if mother's parental rights are reinstated, his should be too.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern . . . . Then, the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability." (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26, subsection (c)(1) provides that if the court finds by clear and convincing evidence that "it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1); see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 ["Adoption, where possible, is the permanent plan preferred by the Legislature"].) The statutory preference in favor of adoption will prevail unless the parent opposing termination can demonstrate that an enumerated statutory exception applies, for example that a compelling

reason exists for determining that termination of parental rights would be detrimental to the child because the “parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)<sup>2</sup>

The “benefit” prong of this exception requires that the parent prove his or her relationship with the child ““promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) The juvenile 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 Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Even frequent and loving contact between a child and a parent may not suffice, without more, to establish the significant parent-child relationship

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<sup>2</sup> Section 366.26 provides in pertinent part that the juvenile court shall terminate parental rights and order a child placed for adoption unless it “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)(i).)

required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “*parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one” because “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

We review the juvenile court’s factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court’s discretionary decision—whether the relationship constitutes a compelling reason for determining that termination of parental rights would be detrimental to the child—under the abuse of discretion standard. (*Ibid.*)

A parent may petition the juvenile court for modification of a prior dependency order. (§ 388, subs. (a), (c).) To obtain the modification, the petitioner must show by a preponderance of the evidence that there has been a change of circumstances sufficient to warrant the changed order, and also that the new order would be in the child’s best interests. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532-535.) We review the juvenile court’s denial of a section 388 petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) “We must uphold the juvenile court’s denial of [a] section 388 petition unless we can determine from the record that its decisions “exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Mother argues her enrollment in parenting and domestic violence classes proved changed circumstances, and she understands her mistakes

and is learning to be a better parent to her son. But at the time of the section 388 hearing, the court had no assurance mother's participation in the classes would be completed successfully, if at all. The court could therefore reasonably conclude that participation in the classes 21 months after Joshua was detained showed not a changed circumstance but only a potential for change.

Further, although mother may have made an effort to improve her ability to care for Joshua, there was no showing she fully appreciated the needs of the child or the danger to which he had been subjected, or that she could provide an enriching environment for him beyond the world of monitored visitation.

Mother also failed to establish the parent-child relationship exception applied to her relationship with Joshua. The relationship never progressed beyond monitored visitation, and no evidence suggests mother attended to Joshua's physical care, nourishment, or medical needs, assisted in managing his school or personal life, or participated in such day-to-day and hour-to-hour interactions as Joshua enjoyed with Ms. R. and Ms. F.

Although mother and Joshua were affectionate toward each other and their visits were pleasant, the question before us is whether the juvenile court exceeded the bounds of reason when it concluded that their relationship did not promote the child's well-being to such a degree as to outweigh the well-being he would gain in a permanent home with new, adoptive parents. We conclude that an affectionate relationship nourished only during monitored weekly visits does not compare to the daily parental relationship created between a child and his adoptive foster parents. This case and Joshua have long cried out for consistency and permanency. Adoption is the preferred permanent plan for children in California. Accordingly, the

juvenile court was within its discretion to select adoption as the permanent plan and terminate the mother's and father's parental rights. Its orders are therefore affirmed.

**DISPOSITION**

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

WE CONCUR:

ROTHSCHILD, P. J.

JOHNSON, J.