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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

C069046

(Super. Ct. No.  
JD226514)

J.S. (father) is the adoptive father of minor R.S. (born October 2007). Father appeals from an order of the juvenile court terminating his parental rights. Father contends the court erred by failing to find that the beneficial parental relationship exception to adoption applies to his case. As we explain, we disagree and shall affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Originating Circumstances*

R.S. was detained from his biological parents shortly after his birth, suffering from fetal alcohol syndrome and with special needs. Father's wife, O.S. (mother), became R.S.'s caretaker. In October 2009, mother and father adopted R.S. Sadly, mother was diagnosed with leukemia only weeks later, and died in January 2010.

In November 2009, the Department of Health and Human Services (Department) received an anonymous tip that mother was terminally ill and father was mentally unstable. Investigation revealed that father was suffering memory lapses that prevented him from changing R.S.'s diapers, removing R.S. from his high chair, bathing and feeding him regularly, and attending medical appointments.

In December 2009, the Department developed an informal services safety plan that involved friends coming to the home daily to assist mother with childcare. After mother's death, one of these friends reported that "no one was willing to take care of [R.S.] any further." She reported significant concerns about father's ability to care for R.S. Father was forgetting to change R.S.'s diapers and was unable to operate the dishwasher and washing machine. Further, father left R.S. in a urine-soaked car seat overnight, apparently forgetting he had a crib. Father was not feeding R.S. on a regular basis, nor was father changing R.S.'s clothing--at one point he was left in the

same clothes all weekend. R.S. was placed in protective custody the day after this report.

An adoptions worker also expressed concern about father's mental condition. She had to write down everything that was said to him, as he did not remember even speaking to her, and sometimes when they were talking he would suddenly start speaking Spanish, which was not his first language. When writing, he would sometimes write letters backwards. Father was maintaining the temperature in the home so high that R.S. was sweating profusely and becoming dehydrated.

#### *Formal Proceedings*

In February 2010, the Department filed a petition alleging that father failed to provide for R.S.'s needs, based on the claims outlined *ante*. The juvenile court detained R.S. After a contested jurisdiction and disposition hearing in April 2010, the juvenile court sustained the petition, ordered R.S. removed, and ordered reunification services. Father was referred for a psychological evaluation to determine whether he could benefit from services in the reunification period allowed by law.

The psychological evaluation did not reveal "any conspicuous decline in cognitive functioning that would interfere with [father's] ability to benefit from [services]." However, the doctor expressed "some practical concerns about his stamina and his ability to keep up with an active toddler on a day-to-day basis. The wisdom associated with [his] desire at

his age<sup>[1]</sup> to take on the role of primary caretaker for a child with multiple special needs is questionable and is seen as further evidence of a deficit in his insight into his own limitations, but there is no evidence from a psychological perspective that he would have any more difficulty than most individuals nearing 80 years of age managing responsibilities associated with providing for his child's needs as long as his health holds out."

*Six-Month Review*

The September 2010 report for the six-month review noted that father had participated in five sessions with a therapist who reported that father appeared to have learned and appreciated the concepts and skills that had been presented in the sessions, although father had expressed apprehension about his future as a single parent.

The social worker noted that during visits, father was unable to lift R.S. and had to drag him to a couch to change his diaper. In addition, "[t]here have been incidents where [father] was unable to catch the child when he took off running towards the parking lot." The social worker opined that the risk of placing R.S. in father's care would be "high," because father "has failed to demonstrate his ability to consistently meet all the needs of the child and progress in visitation. [Father] often minimizes [R.S.'s] disabilities and fails to

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<sup>1</sup> Father was born in November 1931.

realize that the child is young and additional delays may become prevalent with further development. [Father] is unrealistic in his belief that he ca[n] care for the child with limited support in the home."

Based on her assessment, the social worker recommended termination of reunification services. However, at the hearing in November 2010, the parties agreed to resolve the matter in favor of continued services. The juvenile court ordered additional reunification services and ordered father to participate in an assessment with a gerontologist.

#### *Twelve-Month Review*

The March 2011 report for the 12-month review noted that father's adult children did not support father's attempt to regain custody of R.S., and they would not be available as secondary caretakers should something happen to father.<sup>2</sup> The social worker reported that R.S., who was then three years old, "continues to be delayed in coordination, verbal communication, sensitivity to touch and sound, eating and feeding deficiencies and potty training." He was able to say only 15 to 20 understandable words and communicated his needs mainly by pointing or "hand leading." He received occupational, physical, and equine therapy.

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<sup>2</sup> These adult children had assisted their parents with R.S. when mother was ill and had also expressed to the Department father's inability to care for R.S. by himself as well as his deteriorating mental capacity and focus as mother's illness progressed.

A family services worker visited father's house and noticed several safety hazards. When she brought the hazards to father's attention, he became resistive and argumentative.

Father visited R.S. twice per week, supervised. During visits, father had to be prompted to change R.S.'s diaper. He had difficulty with the task, which could take 10 to 20 minutes. During one visit, father accused a social worker of being "against him" and began quoting biblical scriptures. He told the worker she would "die in the Armageddon" and that she was "a sinner." He questioned whether R.S.'s individualized education plan form required his signature, and he felt the form was "a trick."

The social worker opined that the risk of returning R.S. to father was "high" due to his inability to consistently meet all of the child's needs and progress in visitation. Further, he did not appear to understand R.S.'s developmental level and the need for a safe environment for R.S. at home, nor did he acknowledge his own physical limitations and how these limitations might affect his ability to care for R.S. The social worker concluded there was no substantial probability R.S. would be returned to father in the next six months and recommended termination of reunification services and setting a selection and implementation hearing with a proposed permanent plan of adoption. At the review hearing in March 2011, the juvenile court terminated services.

### *Selection and Implementation*

The June 2011 report noted the social worker's "ongoing concerns regarding the father's ability to care for the child's basic needs during the visits" and his "lack of knowledge regarding [R.S.'s] developmental status." Father's choices of toys and snacks for R.S. were "inappropriate" and included ice cream in the morning and soda in his sippy cup. Father needed reminders to change R.S.'s diaper and to assure his home was safe for the child. Father had difficulty carrying and keeping up with R.S. There was minimal interaction between father and R.S., who preferred to play by himself. R.S. kept pushing away father's hand when he tried to help him play. R.S. spent visitation sessions playing with toys while father watched him play.

The social worker opined that R.S. was specifically adoptable and recommended termination of parental rights. A potential adoptive home was located and the caregivers were interested in adoption. The potential adoptive mother was a licensed therapist with prior experience working with R.S. She had been his social worker for over two years prior to his adoption by father. Her family was able to meet R.S.'s special needs and visits with the family were going well.

On numerous occasions, the social worker attempted to explain to father the plans for R.S.'s adoption. Father did not recall their previous conversations and had to be reminded that they had spoken on several occasions. He responded to the social worker by quoting scripture and indicating that he wanted

to choose the adoptive family himself, to ensure that it was not "wicked."

At the selection and implementation hearing, father objected to termination of parental rights and the goal of adoption, arguing instead for a goal of guardianship and a finding that termination of parental rights would be detrimental to R.S.

The juvenile court found that R.S. was likely to be adopted and terminated father's parental rights. This appeal followed.

#### **DISCUSSION**

Father's sole contention on appeal is that the juvenile court erred by failing to apply the beneficial parental relationship exception to adoption and thus avoid terminating his parental rights.

##### *A. The Law*

"At the selection and implementation hearing held pursuant to [Welfare and Institutions Code<sup>3</sup>] section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]" [Citations.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

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<sup>3</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

There are only limited circumstances permitting the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) One of these is where the parent has maintained regular visitation and contact with the child *and the child would benefit* from continuing the relationship, often referred to as the beneficial parental relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) The "benefit" to the child must promote "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 (*Autumn H.*); *In re C.F.* (2011) 193 Cal.App.4th 549, 555 (*C.F.*).) Even frequent and loving contact is not sufficient to establish this benefit absent a *significant, positive, emotional attachment* between parent and child. (*C.F., supra*, 193 Cal.App.4th at p. 555; *Autumn H., supra*, 27 Cal.App.4th at p. 575.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of

the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*).

*B. Burden and Standard of Review*

The party claiming the exception has the burden of establishing the existence of any circumstances which constitute an exception to termination of parental rights. (*C.F., supra*, 193 Cal.App.4th at p. 553.)

As the party must establish the existence of the factual predicate of the exception--that is, evidence of the claimed beneficial parental relationship--and the juvenile court must then *weigh* the evidence and determine whether it constitutes a compelling reason for determining detriment, substantial evidence must support the factual predicate of the exception, but the juvenile court exercises its discretion in weighing that evidence and determining detriment. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*)). "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*Autumn H., supra*, 27 Cal.App.4th at p. 576.) "[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to

the trial judge.'" (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)<sup>4</sup>

C. *Analysis*

Clearly, father met the first prong of establishing the exception--he visited the child regularly, and the two maintained at least some degree of a relationship. But we agree with the juvenile court that father clearly failed to show that R.S. benefitted from the relationship to the degree that severing the relationship would deprive R.S. of a substantial, positive emotional attachment such that he would be greatly harmed--the necessary second prong.

While father claims his visits created a father-son bond and a loving relationship, the evidence actually showed *minimal* interaction between father and toddler, even considering R.S.'s young age and developmental disabilities. At visits, R.S. preferred to play by himself, and father would merely watch. R.S. would push away father's hand when offered it. R.S. would show no interest in certain toys until father walked away; then he would play. There was no bonding study. There was no opinion by any professional or even any layperson establishing

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<sup>4</sup> We acknowledge the parties' lengthy discussion in their respective briefing regarding the split of authority as to whether the substantial evidence standard, the abuse of discretion standard, or a hybrid standard applies in reviewing the juvenile court's rejection of exceptions to adoption. We shall apply the hybrid standard, but note that "[t]he practical differences between the two standards are not significant" in this context. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

any bond between the two; the record is simply devoid of any evidence of a father-son bond or even any significant relationship between father and R.S.

Further, the evidence shows limited acknowledgment on father's part of his often inappropriate and limited interactions with R.S. He never progressed beyond supervised visits and often refused to acknowledge and even attempt to remedy his deficits as a parent when they were pointed out to him. As issues with father's inability to meet R.S.'s basic needs originally brought this case to the Department's attention, father's lack of progress in that regard is quite concerning.<sup>5</sup> The juvenile court certainly could infer from this evidence that severing his relationship with father would not harm R.S. greatly, if at all. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Contact between parent and child will (almost) always confer some incidental benefit to the child, but that degree of benefit is insufficient to establish the exception. (See *Autumn H.*, *supra*, at p. 575; *C.F.*, *supra*, 193 Cal.App.4th at p. 555.)

Finally, father's reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) and *In re Amber M.* (2002)

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<sup>5</sup> Although father's briefing makes extensive reference to his arguably advanced age, and suggests that his parental rights were terminated solely because of his age, we do not see support for this assertion in the record. The record shows that father's acts and omissions caused the dependency proceedings to be initiated and led to subsequent events, not any age-based bias or other inappropriate motives or considerations.

103 Cal.App.4th 681 (*Amber M.*) is misplaced. Even assuming for the sake of argument that father did "virtually all that was asked" of him to regain custody (*Amber M., supra*, 103 Cal.App.4th at p. 690) and "complied with every aspect of his case plan" (*S.B., supra*, 164 Cal.App.4th at p. 293), his case is readily distinguishable.

In *S.B.*, father and S.B. had an "emotionally significant relationship" as well as a "parental" relationship. (*S.B., supra*, 164 Cal.App.4th at p. 298.) Her father was S.B.'s primary caregiver for three years; the social worker referred to his parenting as "patient and loving," and S.B. "continued to display a strong attachment" to her father for more than a year after her removal from him. (*S.B., supra*, at p. 298.) S.B. was unhappy when visits ended and tried to leave with her father, who consistently put his daughter's needs and safety before his own. (*S.B., supra*, at p. 298.) S.B. initiated physical contact with her father. (*Ibid.*) The record showed that she "derived comfort, affection, love, stimulation, and guidance" from her relationship with her father. (*Id.* at p. 300.)

In *Amber M.*, a bonding study concluded that the mother and children shared a "primary attachment" and a "primary maternal relationship," and severance of that relationship could be detrimental. (*Amber M., supra*, 103 Cal.App.4th at p. 689.) One of the children's therapists opined that the mother and child "had a strong bond and it was important that their relationship continue." (*Amber M., supra*, at p. 689.) Another therapist testified to the "positive" and "very important" relationship

between mother and child. (*Amber M., supra*, at p. 690.) The CASA (Court Appointed Special Advocate) testified that the remaining child "loved and missed [m]other and had difficulty separating from her." (*Id.* at p. 689.)

As we explained at length *ante*, in the instant case father sets forth no such evidence, and we see none in the record. His case is eminently distinguishable from *S.B.* and *Amber M.* Thus, even assuming without finding that father met every other requirement expressed by those cases on which he relies, he did not meet his burden and the juvenile court did not err when it declined to apply the exception.

**DISPOSITION**

The orders of the juvenile court are affirmed.

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DUARTE, J.

We concur:

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NICHOLSON, Acting P. J.

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BUTZ, J.