

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re C.A., a Person Coming Under the
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

R.B.,

Defendant and Appellant.

C069253

(Super. Ct. No.
JD226951)

R.B. (mother) appeals after the juvenile court ordered adoption as the permanent plan for four-year-old C.A. (the child) and terminated mother's parental rights.¹

¹ The juvenile court also terminated the parental rights of the father. The father is not a party to this appeal.

Mother contends (1) the juvenile court did not comply with certain statutory requirements for tribal customary adoption; (2) the juvenile court should not have terminated parental rights because the Choctaw tribe identified guardianship as the child's permanent plan; and (3) the selection of adoption as the permanent plan is not supported by substantial evidence.

We conclude (1) mother forfeited her contentions regarding tribal customary adoption requirements because she did not assert them in the juvenile court, and, in any event, any error was harmless; (2) the trial court did not abuse its discretion in terminating parental rights; and (3) substantial evidence supports the selection of adoption as the permanent plan.

We will affirm the juvenile court order.

BACKGROUND

After receiving a referral, the Sacramento County Department of Health and Human Services (Department) made an unannounced visit to mother's home on January 14, 2008. The child and the maternal grandmother were present. The home was "filthy" with food-caked dishes and piles of broken furniture, and it was strewn with empty plastic bottles and clothes. The only exit was partially obstructed.

Mother declined family maintenance services but agreed to have the child stay with the maternal great-grandmother while the house was cleaned. Mother previously received services from Birth and Beyond, which in December 2007 described mother's home as "borderline unsafe." Birth and Beyond closed mother's case because she was uncooperative and failed to keep appointments.

When the Department returned to mother's house on January 18, 2008, the child was present despite the Department's instructions to the contrary. Although some cleaning had occurred, the home was still cluttered and smelled of urine. Mother was offered, but declined, family maintenance and informal supervision services.

The Department removed the child from mother's care and filed a petition alleging that mother failed to provide adequate care and shelter thus placing the child at substantial risk. (Welf. & Inst. Code,² § 300, subd. (b).) The juvenile court ordered the child detained with his paternal grandparents. Mother notified the juvenile court that she may have Choctaw Indian heritage. It was later determined that mother is an enrolled member of the Choctaw Nation of Oklahoma. The father indicated he is unaware of any Indian heritage.

The Department's March 2008 report for the jurisdiction/disposition hearing noted that mother, then aged 18, was previously diagnosed with depression and post traumatic stress disorder. More recently, she was diagnosed with bipolar disorder. An April 1, 2008 addendum report indicated that mother moved to a new residence. No safety concerns were noted. A second addendum report noted that mother's psychiatrist indicated she was diagnosed with major depression single episode and post traumatic stress disorder.

² Undesignated statutory references are to the Welfare and Institutions Code.

Because mother appeared to be engaged in counseling and a medication regimen, and because no further risk to the child was apparent, the Department requested dismissal of the petition. The juvenile court granted the request. Mother agreed to an informal supervision plan that required her to, among other things, (1) maintain a clean, healthy and safe residence separate from maternal grandmother (who also had a history with the Department), (2) never leave the child unsupervised, (3) complete counseling and parenting classes, and (4) keep psychiatric medication appointments.

Approximately six months after the first petition was dismissed, the Department filed a non-detaining petition alleging that mother failed to engage in informal services, stopped attending counseling, refused to drug test, had minimal boundaries and allowed inappropriate guests in her home. Mother allowed a male friend to stay with her for a couple of months, and in July 2008 the friend brought to the apartment another male friend that mother did not know. The next morning, mother woke to the unknown man sexually assaulting her. Mother's landlord reported that a number of men entered and left mother's apartment and that mother was observed walking around the apartment complex with the child in the middle of the night.

Mother said she was utilizing her services and remained willing to participate. She explained she was not refusing to drug test, but that following the sexual assault she had anxiety attacks when she attempted to provide urine samples while someone was watching her.

The juvenile court sustained a first amended petition under section 300, subdivision (b), adjudged the child a dependent, placed him in mother's care, ordered family maintenance services for mother and struck the drug testing component from mother's case plan.

Throughout the review period, mother's home was observed to be cluttered but free of safety concerns, except for the many plastic bags that were accessible to the child. Mother was obtaining counseling through the victim witness program and was using psychotropic medications. The child appeared to be doing well and had a strong bond with mother.

The juvenile court continued the in-home-placement review hearing to obtain mother's counseling reports. Meanwhile, the Department received a referral alleging the child's diapers were not being changed and he was spending most of his time with the maternal grandmother. At an unannounced home visit on June 29, 2009, mother was observed retrieving the child from the maternal grandmother's apartment and returning to her own apartment. Mother knew the maternal grandmother's history of drug use and mental health issues. The child was at the grandmother's house because the great-grandmother's house was unsafe following a drive-by shooting.

During the home visit, the child fell while trying to ride a tricycle. When mother tried to "re-direct" him, the teenage maternal aunt took the child outside to ride the tricycle even though mother instructed otherwise. The social worker opined

that mother did not "follow through" to ensure the aunt followed her wishes.

The review hearing was conducted on September 1, 2009. Mother's case plan was modified to require "4 random blood tests as arranged and directed by the Department."

The Department made another unannounced visit to mother's home in October 2009. Mother and the child were not present but there was evidence that maternal grandmother had been assaulted by an acquaintance of a friend. The next day the Department filed a supplemental petition alleging that mother had failed to benefit from services and was not compliant with drug testing and counseling. On November 10, 2009, the juvenile court detained the child with the paternal grandparents under Department supervision.

The Department subsequently filed correspondence from the Choctaw Nation of Oklahoma establishing Choctaw Indian ancestry for the child. A letter from Amanda Robinson, the children and family services social worker for the Choctaw Nation of Oklahoma, indicated that the tribe chose "to be informed of upcoming court hearings and make formal recommendations to the Court" and "request[ed] copies of all filings" in the case. The tribe stated it would cooperate and assist in the proceeding, would use all available services and personnel to reach the mutual goal of protecting the child and his heritage, and would make all recommendations and requests in writing. It urged following the placement criteria in 25 United States Code section 1915(b).

In an interview for the jurisdiction report in November 2009, mother said she received a written minute order requiring blood tests, but the social worker said she needed to give a hair sample. Mother said that when she arrived at the testing facility, the company sent her away because they only do hair testing, not blood testing. An employee at the testing agency confirmed they do not do blood tests, but he denied that mother had been sent away. He said mother became "indignant" and refused to take a hair test.

Mother added that she did not participate in counseling because she was not ready to address her sexual assault and the counselor was not addressing the boundary issues that were supposed to be addressed. Mother previously told a social worker she did not "see eye to eye" with the counselor. Mother said she asked for a new counselor but could not remember when she made the request.

Following several continuances for an Indian Child Welfare Act (ICWA) expert report, mother waived her right to a trial on the supplemental petition. The juvenile court admitted into evidence petitioner's exhibit 1, a four-page faxed copy of the "ICWA Expert Report--Addendum" dated February 12, 2010, and a copy of a four-page "signed stipulation" dated February 16, 2010. The juvenile court sustained the petition, continued the child as a dependent, placed him with his paternal grandparents, and ordered family reunification services for mother.

In the ICWA expert report, Dr. Geni Cowan recommended a finding by the juvenile court that remedial and rehabilitative

services had been provided to the family. Dr. Cowan opined it was likely the child was at high risk to suffer serious emotional and/or physical damage if he remained in mother's care, and that the child's current placement with paternal relatives was consistent with the directives of the ICWA. Dr. Cowan was unable to contact the Choctaw Nation's ICWA representative prior to completing her report.

Dr. Cowan reported that the home of the paternal grandparents had been assessed and determined to be an appropriate placement for the child. She noted that placement of an Indian child under the ICWA should be with members of the child's immediate or extended family, with members of their tribe, or in a tribally approved home. Dr. Cowan said placement with the paternal grandparents satisfied this requirement, but the tribe had not yet stated its position.

The review report opined that mother appeared to be evasive with the Department. Mother agreed to work with the social worker on being more accessible and transparent with the Department. She also agreed to work with a substance abuse specialist who would be more sensitive to the drug testing process.

The review report stated that mother was participating in counseling and making progress. The report noted that mother was having consistent and positive visitation with the child and that they shared a close bond. Mother said she understood the Department's concerns about other people in and around her home.

On August 3, 2010, the juvenile court conducted the six-month review hearing, continued the child's placement with the paternal grandparents, continued mother's services, and set a 12-month review hearing.

The report for the 12-month review hearing recommended that reunification services be terminated and that a selection and implementation hearing be set with adoption indicated as the permanent plan. The Department acknowledged that mother participated regularly in visitation and services, but it claimed her progress was limited. Although mother completed 16 counseling sessions (only missing one session) and completed seven drug tests with negative results (only missing two tests), she had not been medication compliant and continued to be dishonest with the Department regarding the identity of her psychiatrist, her living situation, and a boyfriend with whom she may have been living. Shortly after unsupervised visits were authorized in September 2010, the paternal relatives expressed concerns regarding the cleanliness of mother's home, the child's breathing difficulties and flea bites after returning from mother's home, and mother's failure to change the child's diaper during an extended visit. The Department opined that the risk of abuse or neglect if the child were returned to mother was high due to her failure to acknowledge the issues that brought the family before the court. The Choctaw Nation of Oklahoma indicated by letter that it agreed with the Department's position on terminating mother's services and moving forward with termination of parental rights.

On February 22, 2011, the juvenile court adopted the findings and orders recommended by the Department and set the matter for a selection and implementation hearing.

The Department's report for the selection and implementation hearing indicated the child was likely to be adopted and recommended termination of parental rights. The child had been with the paternal grandparents since November 2009 and looked to them for all his needs. The paternal grandparents completed adoption classes and an adoption home study. Since February 2011, mother and child were having supervised visits four hours per week and the visits were going well. The child was healthy, developing normally without delays, and his immunizations were up-to-date. He was friendly and happy and there were no concerns regarding his emotions or behavior.

Mother testified that the child showed signs of separation anxiety when the Department removed him from her care. She said the child still clings to her during visits and the paternal grandparents call mother when the child is misbehaving or will not stop crying. On an occasion when mother and the child went to a psychologist's office, the child told mother there were monsters under the couch and desk and he cried until she assured him she would not leave the room. Mother said severing the parental relationship would be detrimental because separation anxiety would become a severe problem for the child. She said his separation anxiety is accompanied by anger, he had previously screamed and hurt himself, and she believed the child

would hurt himself again. Mother said she was not aware that the child completed counseling and was no longer having tantrums or nightmares.

Psychologist Jayson Wilkenfield observed the child with mother and with the paternal grandparents. Wilkenfield opined that any emotional detriment the child may suffer as a result of termination of mother's rights would almost certainly be outweighed by the advantages that permanent placement with the grandparents would be expected to confer upon him.

Dr. Wilkenfield observed the child's interaction with mother during play activities and noted that their attention remained focused on the activity in which they were engaged. Although the child did not want mother to leave the room, there was no indication that he was ever genuinely anxious. Rather, the child appeared to be fairly astute at influencing mother's behavior, while mother seemed to lack the ability to set limits with him. At the end of the session it was not clear whether the child was concerned about separating from mother or whether he simply did not want to stop playing with his dinosaurs. When the child separated from mother he showed no indication of distress and was fairly enthusiastic when he rejoined his grandparents. The child appeared to be in a cheerful mood when they left Dr. Wilkenfield's office.

Dr. Wilkenfield also observed the child with the paternal grandparents and said that the child appeared to be relaxed and comfortable in their presence. The child was polite, attentive and compliant with the grandparents' requests and directives.

He approached the grandmother spontaneously several times for physical contact. The grandparents said the child enjoys his weekly visits with mother but does not talk much about her between visits. Dr. Wilkenfield opined that the child derived significant benefit from the stability, consistency and nurturance received from grandparents' care and that the child looks more to the grandparents than to mother as primary sources of safety and security.

In addition, Dr. Cowan, the ICWA expert, said the evidence demonstrated clearly and convincingly that the child would suffer serious emotional and/or physical damage if he were to continue in the custody of mother. Dr. Cowan noted there was no indication that mother could provide stability, consistency or nurturance, and in fact, her behavior regarding her medication regime suggested she continued to have difficulty making appropriate decisions.

Dr. Cowan concluded that active efforts were made to provide remedial and rehabilitative services to the child's family within the meaning of the ICWA, and that the child's placement with his paternal grandparents satisfied one of the ICWA preferences for placement. Nonetheless, Dr. Cowan explained "it is usually the case that tribes do not condone the adoption of Indian children away from their tribes." She said she "cannot support the child's adoption" and "would recommend instead a long-term guardianship arrangement, to allow his mother to further mature and be able to appropriately care for her child."

At the selection and implementation hearing, the juvenile court admitted petitioner's exhibit 1 (a stipulation for admission of the ICWA expert report in lieu of live testimony). The juvenile court also admitted petitioner's exhibit 2 (two pages of emails between the Department's counsel and a representative of the tribe). The tribe expressed its agreement with the child's current placement but said a long-term guardianship would be a better solution.

At the conclusion of the selection and implementation hearing, the juvenile court found: termination of parental rights is supported by evidence beyond a reasonable doubt; continued custody by mother is likely to result in serious emotional or physical damage to the child; the child is likely to be adopted; mother did not meet her burden to show that the child will be greatly harmed by severing the parent-child relationship; and mother and the tribe did not meet their burden to prove an exception to adoption.

DISCUSSION

I

Mother claims the juvenile court did not comply with certain statutory requirements for tribal customary adoption. Tribal customary adoption is "adoption by and through the tribal custom, traditions, or law of an Indian child's tribe." (§ 366.24, subd. (a).) Mother correctly points out that pursuant to sections 366.24, 366.25 and 366.26, and rule 5.725

of the California Rules of Court,³ (1) the Department must consult with the tribe regarding tribal customary adoption, (2) the Department's section 366.26 report must address tribal customary adoption, (3) the juvenile court must make a finding that the Department consulted with the tribe regarding whether tribal customary adoption is appropriate, and (4) the juvenile court must consider whether the tribe has identified tribal customary adoption as the recommended permanent plan.⁴

Mother is also correct that the Department's selection and implementation report did not indicate that the Department had consulted with the tribe regarding tribal customary adoption and

³ Undesignated rule references are to the California Rules of Court.

⁴ Section 366.24, subdivision (b), states in relevant part: "Whenever an assessment is ordered pursuant to Section . . . 366.26 for Indian children, the assessment shall address the option of tribal customary adoption." Section 366.25 provides that the assessment shall include, in the case of an Indian child, an assessment of the likelihood that the child will be adopted, when a customary tribal adoption is recommended. (§ 366.25, subd. (b)(1)(G).) Section 366.26 provides in relevant part that, in determining whether termination of parental rights is in the child's best interest, the juvenile court must consider whether the tribe has identified tribal customary adoption as the recommended permanent plan. (§ 366.26, subd. (c)(1)(B)(vi)(II).) Rule 5.725(d)(8)(C) requires the juvenile court to "consider the case plan submitted for" the section 366.26 hearing and to find that, "[i]n the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful"

did not address the option of tribal customary adoption.⁵ Moreover, the juvenile court did not find that the Department and the tribe had considered whether tribal customary adoption is an appropriate permanent plan.

Nonetheless, mother forfeited these issues by failing to assert them in the juvenile court. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 410-412; see *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739, fn. 3.)

But even if the contentions had not been forfeited, any failure to address tribal customary adoption was harmless. Section 366.25, subdivision (b)(1)(G) provides that the selection and implementation report must include "an assessment of the likelihood that the child will be adopted, *when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended.*" (Italics added.) In this case, the Choctaw tribe did not identify tribal customary adoption as the permanent placement plan, and the Department did not recommend such a plan to the juvenile court. Thus, omission of an assessment of the likelihood of tribal customary adoption was not error under section 366.25, subdivision (b)(1)(G).

⁵ Mother suggests the same error occurred at earlier review hearings because the relevant reports similarly failed to discuss tribal customary adoption. (Citing §§ 358.1, subd. (j), 366.21, subd. (d), 366.22, subs. (a), (c)(1)(G)(i).) Mother did not raise this issue in this court by extraordinary writ. (§ 366.26, subd. (1).)

In addition, a tribal customary adoption would have required adoption by a suitable member of the Choctaw tribe, i.e., a suitable member of the child's family, or an unrelated member of the tribe. The child's Choctaw heritage derived solely from his maternal relatives. Mother was sexually abused by the maternal great-grandfather, and both mother and the maternal grandmother had histories with the Department. The record does not show the existence of other suitable relatives who were members of the tribe. And even if an unrelated tribal member had been available, a tribal customary adoption would have required disrupting the child's current placement with his paternal grandparents, a placement that was entitled to preference under the ICWA (25 U.S.C. § 1915(a).), and for which the tribe expressed support.

Mother does not argue that good cause existed to depart from this statutory preference for placement with the child's extended family rather than with an unrelated member of the Choctaw tribe. Because, on the facts of this case, implementation of a tribal customary adoption would have required departure from the statutory placement preference, and no good cause for doing so was shown, the failure to consider tribal customary adoption could not have been prejudicial.

And because the selection and implementation report was not prejudicially deficient, the trial court's consideration of the report did not violate section 366.26, subdivision (b).

Mother also complains that the juvenile court failed to make the finding, required by rule 5.725(d)(8)(C), that "[i]n

the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful." But mother does not contend the juvenile court's failure to make the finding was prejudicial with respect to the issues of consultation with the tribe and active involvement by the tribe. In any event, the record contains substantial evidence that the tribe was involved in the development of the plan for permanent placement.

Mother points to another alleged deficiency. The juvenile court orally found beyond a reasonable doubt that mother's continued custody was likely to result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(f).) Counsel for the Department noted, however, that its proposed findings and orders did not include this finding. The juvenile court responded, "Well, it's going to be in the minute order. I've made the finding." Notwithstanding the juvenile court's statement, the finding was not reflected in part 8b of the original order terminating parental rights.

Thus, mother contends the juvenile court "completely skipped that part of the form." But mother is incorrect. The finding was properly included in part 8b of the corrected order filed August 23, 2011.

II

Mother further contends that the juvenile court should not have terminated parental rights because the Choctaw tribe identified guardianship as the child's permanent plan.

Section 366.26, subdivision (c)(1)(B)(vi)(II) provides, among other things, that the juvenile court should not terminate the parental rights of an Indian child if termination would not be in the best interests of the child because the child's tribe has identified guardianship for the child. Section 366.26, subdivision (c)(1)(D) adds: "If the court finds that termination of parental rights would be detrimental to the child pursuant to clause . . . (vi), it shall state its reasons in writing or on the record."

Based on this statute, mother argues that an ICWA expert's recommendation of guardianship *must* be deemed a compelling reason to determine that termination of parental rights does not serve the child's best interests. In other words, the juvenile court has no discretion in the matter. We disagree.

Mother's construction of the statute overlooks and renders useless the directive that the juvenile court state in writing or on the record its reasons for finding that termination would be detrimental. Statements of reasons presuppose that the juvenile court can exercise discretion. Where the Legislature occupies the field and leaves the court no discretion, there is nothing for the court to explain.

If termination were detrimental as a matter of law whenever the tribe identifies guardianship, the tribe's act would create

a mandatory duty to reject termination and the directive that the court shall state its reasons for doing so would serve no useful purpose. "A court should not lightly adopt an interpretation of statutory language that renders the language useless in many of the cases it was intended to govern."

(*Williams v. Superior Court* (1993) 5 Cal.4th 337, 354.) As mother concedes in a different context, "The Legislature cannot be presumed to engage in idle acts in creating statutory provisions. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22.)"

Although the juvenile court had the discretion to determine that the tribe's identification of guardianship constituted a compelling reason for determining that termination of parental rights would not be in the child's best interest, the juvenile court was not compelled to make such a determination. Our conclusion is supported by rule 5.485(b), which states: "The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child's best interest. Such a reason may include: [¶] . . . [¶] (2) The child's tribe has identified guardianship . . . for the child." (Italics added.)

Mother further argues that the ICWA expert's recommendation of guardianship somehow barred the juvenile court from finding beyond a reasonable doubt that continued custody by mother would likely result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(f).) But mother's loss of custody is

a statutory prerequisite to both adoption and guardianship. The tribe's recommendation of guardianship rather than adoption has nothing to do with the predicate determination that mother's continued custody would likely result in serious emotional or physical damage.

III

Mother also contends that the selection of a permanent plan of adoption is not supported by substantial evidence. She relies on the beneficial relationship exception.

"At the selection and implementation hearing held pursuant to 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; original italics.) There are only limited circumstances which permit 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).) The party claiming the exception has the burden of establishing the existence of any circumstances which constitutes an exception to termination of parental rights. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372-1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Evid. Code, § 500.)

One of the circumstances under which termination of parental rights would be detrimental to the minor is: "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).) 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.*, *supra*, 193 Cal.App.4th at p. 555.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant, positive emotional attachment between parent and child. (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

"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.)

"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, [citation], 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.' [Citation.] Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed." (*In re Bailey J.* (2010)
189 Cal.App.4th 1308, 1314 (*Bailey J.*)).

Bailey J.'s mention of "the undisputed facts" refers to the universe of relevant facts before the juvenile court, not to particular facts that, although themselves undisputed, exist side-by-side with other relevant facts that properly support an opposite conclusion. To prevail, mother must show that the universe of relevant facts before the court is undisputed and supports only the conclusion that favors her.

Mother cannot make the requisite showing, because there was abundant evidence supporting the juvenile court's contrary conclusion. As the juvenile court expressly found, the best evidence of the nature of mother's relationship with the child was Dr. Wilkenfield's expert opinion. After observing the

child's interaction with mother, Dr. Wilkenfield noted that the child was glad to see mother and enjoyed having her as a play partner. However, they did not have a great deal of meaningful interchange and their conversation remained focused on what they were doing at the moment. Although the child did not want mother to leave the play room, there was no indication that the child was ever genuinely anxious. Rather, the child appeared to be "fairly astute at affecting his mother's behavior, while [mother] was seen as somewhat lacking in her ability to set limits with him in this instance." At the end of the session, it was not clear whether the child was concerned about separating from mother or whether he did not want to stop playing with dinosaurs. The child showed no indication of distress at separating from mother, rejoined his grandparents "fairly enthusiastically," and appeared to be in a cheerful mood as they left the evaluation office.

Dr. Wilkenfield concluded that any emotional detriment the child may experience as a result of termination of mother's rights would almost certainly be outweighed by the advantages that a permanent placement would confer upon him. The juvenile court accepted this assessment and added that Dr. Wilkenfield was "not saying the child would be greatly harmed by termination of the parental rights."

The juvenile court also credited the paternal grandparents' remarks in their February 2010 caregiver information form. The grandparents said the child previously feared people coming to the residence because he "thought they were coming to take him

away or that we were leaving with them." At first, the child wanted the grandparents to accompany him on visits with mother. However, the child now looks forward to visits with mother but understands "he will be coming home after he visits his Mom." The child "is now confident that no one will take him away from [the grandparents] and that [the grandparents] won't leave him." The juvenile court deduced from these statements that the child "looks forward to visits with mom but that he doesn't have any detriment upon--upon leaving."

On this record, mother fails to demonstrate that the universe of relevant facts is undisputed and supports only the conclusion that the child would be greatly harmed by termination of parental rights. (*Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.)

Mother's reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) is misplaced. In *S.B.*, the father had been the primary caregiver for the first three years of the child's life. Here, in contrast, the child was removed from mother's care twice, at ages seven months and two years. Even with services in place, mother's care for the child was inadequate and he had to be removed the second time.

S.B. is distinguishable in another way. "When *S.B.* was removed from his care, [the father] immediately recognized that his drug use was untenable, started services, maintained his sobriety, sought medical and psychological services, and maintained consistent and regular visitation with *S.B.* He

complied with 'every aspect' of his case plan." (*S.B.*, *supra*, 164 Cal.App.4th at p. 298.)

Here, in contrast, mother did not recognize that her behaviors that put the child at risk were untenable, she did not immediately start services, she gave multiple reasons why she could not participate in services, she did not consistently comply with psychological services, and she never complied with every aspect of her case plan. In short, *S.B.* does not support mother's claim that she and the child had a beneficial relationship, because the facts of the cases are not sufficiently similar.

DISPOSITION

The order terminating parental rights is affirmed.

MAURO, J.

We concur:

HULL, Acting P. J.

BUTZ, J.