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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.D., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.D. et al.,

Defendants and Appellants.

D060082

(Super. Ct. No. J517572)

APPEALS from orders of the Superior Court of San Diego County, Carol  
Isackson, Judge. Affirmed.

D.D. and Nathaniel K. appeal orders terminating their parental rights to their son,  
L.D., and referring the case for adoption. Nathaniel contends the court abused its

discretion by not continuing the Welfare and Institutions Code<sup>1</sup> section 366.26 hearing to allow his counsel to receive discovery and to have additional time to prepare for trial. He also asserts that if D.D.'s appeal is successful, the order terminating his parental rights must also be reversed. D.D., joined by Nathaniel, asserts the court erred by terminating parental rights because there was not substantial evidence presented to support finding L.D. is an adoptable child, and the evidence showed she has a beneficial parent-child relationship with L.D. within the meaning of section 366.26, subdivision (c)(1)(B)(i), to preclude terminating parental rights. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

L.D. became a dependent child of the Los Angeles County juvenile court in December 2008 when he was seven years old based on allegations he was at substantial risk because D.D. suffered from mental and emotional problems, including having delusions; she believed several people had sexually abused L.D.; her use of marijuana made her unable to provide adequate care; and Nathaniel had not provided for him.

D.D. reported numerous people had molested L.D., and there was a conspiracy to cover up the abuse. She admitted smoking marijuana every day and said she did this for religious and medical purposes. She denied having mental health issues although she had been diagnosed with a psychotic disorder in 2007.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise specified.

D.D. moved to San Diego and in August 2009, the case was transferred to San Diego County. D.D. participated in some services, but did not visit L.D. regularly and sometimes made inappropriate comments to him. The psychologist who evaluated her provided a provisional diagnosis of delusional disorder, persecutory type. At the 12-month hearing in January 2010, the court found there was no substantial probability of return to parental custody by the 18-month date. It terminated services and set a section 366.26 hearing. That same month D.D. gave birth to her fourth child, N.D. At the time of N.D.'s birth, N.D. and D.D. tested positive for marijuana.

The social worker assessed L.D. as adoptable. He had many admirable qualities and there were approved adoptive families interested in adopting a child with his characteristics. D.D.'s visitation had been inconsistent, she had not participated in drug treatment or sexual abuse treatment and she denied having mental health problems. L.D. enjoyed his visits with D.D. and she brought him toys, food and clothing. At times he did not want the visits to end. L.D. said he wanted to live with D.D., but also wanted a permanent home and understood she was working on her own issues.

D.D. petitioned under section 388, requesting L.D. be placed with her. At the October 2010 section 366.26 hearing and a hearing on her petition, D.D. testified she had been in counseling and had stopped using marijuana, but she continued to believe L.D. had been molested by several men as part of a conspiracy. The psychologist who conducted a bonding study testified L.D. and D.D. have a moderate bond, and he would suffer damage from severing the bond. D.D.'s therapist said therapy had helped D.D., but her underlying paranoia makes her suspicious and guarded and she will likely continue to

believe L.D. was molested. The social worker recommended adoption as the permanent plan, but said she wanted to identify a specific family before she would recommend terminating parental rights.

The court denied D.D.'s section 388 petition. It found L.D. is an adoptable child, he would not be greatly harmed by termination of parental rights, and the benefits of continuing the parent-child relationship would not outweigh the benefits he would gain from adoption. The court identified adoption as the permanent placement goal, but found L.D. was a difficult to place child and ordered efforts be made to locate an appropriate adoptive family within 180 days.

D.D. appealed. This court affirmed the orders, holding the court did not abuse its discretion by denying the section 388 petition, and substantial evidence supported the finding the beneficial parent-child relationship exception did not apply. (*In re L.D.* (June 16, 2011, D058751) [nonpub. opn.] )

Subsequent reports on L.D.'s status included a psychological evaluation. The psychologist said although L.D. had been affected by his history of neglect, his emotional and psychological function was within normal range. The psychologist recommended he be adopted into a home that would provide nurturance, consistency and structure. L.D.'s therapist said L.D. was making good progress, he was fine with adoption and understood what it meant, but L.D. did not want to hurt D.D.'s feelings or let her know that he and the therapist had completed an adoption packet.

L.D.'s court appointed special advocate (CASA) said L.D. is charismatic and a joy to be around. She reported L.D. told her he loved D.D. and sometimes said he wanted to

be with her, but he also wanted the stability of a permanent home and family. The CASA said at visits D.D. had to be continually reminded not to discuss the case with L.D.

By March 2011, L.D. was ten years old. At a hearing on March 11, he told the court, "[t]he important thing I really want to tell you is I really want to go back to my mom." L.D. said he wanted to be with someone he knew. When the court asked him if he was feeling ambivalent about being adopted or going back to D.D., L.D. agreed that was what he was feeling. The court assured him it was court's responsibility, not L.D.'s, to select a permanent plan. The court stated, "If we hurt anybody's feelings, it's going to be my decision that hurts those feelings or not." The social worker said L.D. appeared relieved to hear this statement.

A prospective adoptive family was located for L.D. in San Jose and he began visiting this family. He happily sat between them at their first meeting, and after their first visit said he had a wonderful time and was excited about visiting them again. He told his CASA they were trustworthy, but he continued to have mixed feelings about adoption. He said he loved D.D. and worried about hurting her feelings.

L.D. and D.D. continued their supervised visits. He enjoyed seeing her, but she often discussed the case with him and spent much of the time talking with the visitation monitor instead of with L.D. L.D.'s teacher said L.D. sometimes became emotional and cried before and after visits with D.D., and his worries about his situation was affecting his ability to function in school. At one visit L.D. had a panic attack. D.D. had discussed the case in his presence, he was having trouble with his math homework, and L.D. was on the other side of the room talking with the visitation monitor and dealing with N.D. After

a play set scraped across the floor, L.D. began screaming and crying and hyperventilated. D.D. held and rocked him until he calmed down.

In April 2011, Nathaniel made his first court appearance. He and D.D. both filed section 388 petitions. The court granted an evidentiary hearing on D.D.'s petition, but summarily denied Nathaniel's petition.

Nathaniel claimed Cherokee heritage, and his counsel requested a continuance to allow her to receive the case file and discuss the case with him. The court denied the request. It ordered notice be provided under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA).

In April and May 2011, at the hearing on D.D.'s section 388 petition and the section 366.26 hearing, the court denied Nathaniel's counsel's repeated requests to continue the hearings. At the hearings, the parties stipulated if L.D. were to testify, he would state he loves D.D. and would prefer a permanent plan that allows him to have ongoing contact with her.

The social worker testified L.D. is an adoptable child because he is sweet, healthy, happy, creative and has no developmental delays, and many families are interested in adopting a child with his characteristics. The prospective adoptive parents were chosen in part because they were willing to facilitate contact with L.D.'s biological relatives and L.D. had said he would prefer a family with a mom and a dad. The social worker said L.D. seemed comfortable with them and looked forward to their next visit. She said since meeting the prospective adoptive parents, L.D. had not said he did not want to be

adopted. He wanted to be with D.D., but he also wanted a stable home and did not think D.D. could provide it.

D.D. testified she was no longer sure about her allegations of L.D.'s past abuse and during visits she had discussed adoption with L.D. because he brought up the topic. Nathaniel testified he had lived with D.D. and L.D. until L.D. was about three years old, and they had had continued contact after that. He said L.D. loved him and called him "dad." He acknowledged he had known about the case by about July 2009. He said he had not used alcohol or drugs for three to four months, was employed and was living with the paternal grandmother.

The court found it would be detrimental to place L.D. with Nathaniel. It denied D.D.'s section 388 petition. It found L.D. is adoptable, there is no legal impediment to prevent the prospective adoptive parents from adopting him, and there was no showing that the beneficial parent-child relationship exception applied to the case. It terminated parental rights, but stayed the order to allow the Cherokee tribes to respond to the ICWA notice.

Subsequently, L.D. and D.D. continued to have their weekly supervised visitation. There were positive aspects to the visits, but D.D. sometimes talked about inappropriate topics. During a telephone call, D.D. told L.D. he had to make people know how much he loves her and to call her as much as he could to prove it.

L.D. moved to his prospective adoptive home in late May 2011. He resumed therapy and continued to have contact with his CASA, his former teacher and classmates, and D.D. He told his former teacher he felt loved, safe and wanted and called the

prospective adoptive parents "mom and dad." When asked to rate the home from 1 to 10, he gave it a 25.

At the continued hearing on July 5, 2011, the court considered the ICWA documentation. It found ICWA notice had been provided and ICWA did not apply. It then lifted its stay of the May 17 order terminating parental rights and ruled the order would become the order of the court.

## DISCUSSION

### I

Nathaniel contends the court erred by denying his counsel's request to continue the section 366.26 hearing to receive requested discovery and to have additional time to prepare the case. Nathaniel has not shown an abuse of the court's discretion.

#### *A. Legal Principles*

The juvenile court may grant a continuance only on a showing of good cause. "[T]he court shall give substantial weight to a minor's need for prompt resolution of his or her custody status . . . ." (§ 352, subd. (a).) "Continuances are discouraged [citation] and we reverse an order denying a continuance only on a showing of an abuse of discretion [citation]." (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

#### *B. Application*

Nathaniel has not shown an abuse of the court's discretion. He knew about L.D.'s dependency for many months, but did nothing about it. At the beginning of the case, search efforts for him were instigated. In January 2009, Nathaniel contacted the Los Angeles social worker to explain he was not in a position to care for L.D. and did not

expect to be able to do so in the near future. He conceded he had received notice in August 2009 that the case was transferred to San Diego County. He acknowledged the address listed after December 2009 in court records was a correct address for him. In February 2010, he was personally served with notice of the section 366.26 hearing and the social worker urged him to write letters and send pictures to L.D., but he did not do so until April 2011.

Nathaniel told the court he had not come forward earlier because he was having too many problems in his life. In the meantime, L.D. was in limbo, anxious about his future and feeling pressure from D.D. The court's decision to deny the request for a continuance and to make a decision about L.D.'s future, allowed him to transition into his prospective adoptive home where he felt loved and safe and was receiving the stability he needed.

Further, Nathaniel has not shown prejudice. His counsel advocated on his behalf, and he appeared and testified about his fitness as a parent. He had had little contact with L.D. for many years, L.D.'s CASA wrote that L.D. did not talk about Nathaniel and never voiced a desire to see him.

Nathaniel has not shown an abuse of the court's discretion in denying his request for a continuance and he has not shown he was prejudiced by the denial of his request.

## II

D.D., joined by Nathaniel, contends there was not substantial evidence to support the court's finding L.D. is an adoptable child. She argues because L.D. was 10 years old

at the time of the hearing, allegedly had been sexually abused and wanted to be with her and have contact with his extended family, he is not adoptable.

#### *A. Legal Principles*

Before a court frees a child for adoption it must determine by clear and convincing evidence the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) "In resolving this issue, the court focuses on *the child* -- whether his age, physical condition and emotional state make it difficult to find a person willing to adopt him." (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) Whether there is a prospective adoptive family is a factor for the court to consider, but is not determinative by itself. (*Ibid.*) "On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

#### *B. Application*

Substantial evidence supports the court's finding L.D. is an adoptable child. The social worker said he is adorable, thoughtful, sweet and had met all developmental milestones. There were five families in San Diego County and 35 families outside of the county with approved home studies interested in adopting a child with his characteristics. His CASA reported he was a joy to be with, and when they were on outings, strangers commented on his good manners and behavior. Several people who knew him, including his teacher, the vice principal at his school, and his foster mother, had at one time or

another expressed a wish to adopt him, showing that despite his age he was generally adoptable.

The psychologist who evaluated L.D. said he is resilient and recommended adoption. L.D.'s therapist opined L.D. had been making progress and was ready to be adopted. The therapist said L.D. liked the idea of adoption and understood that although D.D. loved him, she was not in a position to take care of him.

Further, L.D. was in a home with prospective adoptive parents who wanted to adopt him and had an approved adoptive home study. The social worker said this family had been selected based on characteristics important to L.D. L.D. wanted both a mother and a father and he wanted a family that would support his ongoing contact with D.D. and his extended family. The prospective adoptive parents fulfilled these qualifications. Also, they were supportive of L.D.'s emotional needs. They accommodated him making a gradual transition to their home, suggested L.D. hang pictures of those important to him in his new room and gave him a disposable camera to take photographs. Despite the prospective adoptive mother's concerns about D.D.'s history, they said they would respect L.D.'s wishes to maintain contact with his relatives following adoption.

L.D. met the prospective adoptive parents in March, then had more visits and daily telephone contact. He appeared happy when talking about them. Although he worried about maintaining contact with friends and relatives in San Diego, he was also excited about the prospect of being adopted and living in a stable home. He told his CASA he enjoyed visiting the prospective adoptive parents, and she said he appeared comfortable with them. The evidence indicated they would achieve a successful adoption.

D.D.'s arguments that the court disregarded L.D.'s wishes not to be adopted are not well taken. The social worker stated it is not uncommon for children to waver about whether they want to be adopted. At one time L.D. had said he could not choose adoption over D.D. because he had not yet even met the prospective adoptive parents, but then he discussed the type of family he would prefer. He completed an adoption packet with his therapist, and said he did not want D.D. to know about the packet because he did not want to hurt her feelings. After he met the prospective adoptive parents, he talked about the pros and cons of adoption with his teacher and his CASA. He told the social worker he wanted to be adopted by a mom and dad and appeared relieved when told the court would make the final decision. He was happy to visit the prospective adoptive parents, and, after a visit, said he missed San Jose.

In the spring of 2011, L.D. had told the social worker he was tired of being in foster care, but then said maybe long-term foster care was the better plan for him. His concern may have been caused by his foster mother becoming so attached to him that she did not want him to go, and children in his foster home telling him he should not want to be adopted. In addition, D.D. continued to talk about the case with him, making him uncomfortable.

At the March 2, 2011 hearing, L.D. told the court he wanted to be with D.D. At the April 13 hearing, after he had met the prospective adoptive parents, he did not make the same statement. When asked if there was anything the court should know, he said there was nothing, but that the visit with the prospective adoptive parents went well. At the section 366.26 hearing on April 27, the court considered evidence on L.D.'s wishes

and considered his stipulated testimony that he loved D.D. and would prefer a permanent plan that would allow him to have ongoing contact with her.

The evidence was mixed regarding L.D.'s wishes. He loved D.D., did not want to hurt her feelings and wanted to continue to have contact with her and other family members and friends. At the same time, he was excited about his prospective adoptive family and longed for the permanence and stability of an adoptive home. The court carefully weighed the evidence and determined by clear and convincing evidence that L.D. was an adoptable child. Substantial evidence supports the court's determination.

### III

D.D., joined by Nathaniel, asserts substantial evidence does not support the court's finding the beneficial parent-child relationship exception to termination of parental rights and adoption did not apply to preclude terminating parental rights. She argues the evidence showed she and L.D. had continued to strengthen their bond and he would suffer great detriment if their relationship were permanently severed. Substantial evidence supports the court's findings.

#### *A. Legal Principles*

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under

one or more of the enumerated statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.)

If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In interpreting the meaning of "benefit" in section 366.26, subdivision (c)(1)(B)(i), this court stated in *In re Autumn H.*, *supra*,

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and 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.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Jason J.* (2009) 175 Cal.App.4th 922, 936-937.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*In re Derek W.*, *supra*, at p. 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

#### *B. Application*

D.D. has not shown a lack of substantial evidence to support the court's finding the beneficial parent-child relationship exception did not apply.

Assuming D.D. maintained regular visitation and contact with L.D., she did not show he would be so greatly harmed by terminating the parent-child relationship that the benefits of preserving their relationship would outweigh the benefits of adoption.

D.D.'s visits with L.D. continued to be supervised. She often attempted to discuss inappropriate subjects with him, including talking about the case, and she appeared not to notice when topics made him uncomfortable. L.D. sometimes acted out after visits, and after one visit with D.D. zipped a hooded sweatshirt over his head and did not speak to anyone.

After N.D. was born, D.D. brought her to every visit, resulting in D.D. being forced to focus on N.D., rather than L.D., during their time together. She had difficulty considering his needs, rather than her own concerns, and spent time during visits talking with the visitation monitors instead of concentrating on L.D. L.D. struggled with his school work, but D.D. did not consistently help him with homework, once complaining it interfered with their playtime.

D.D. had neglected L.D. when he was in her care, and he was either repeatedly sexually abused or subjected to her delusions that he was being abused. She did not take responsibility for the reasons he was removed from her care. She continued to have unstable housing, she missed drug tests, and in March 2011 police were called when she had a loud argument with N.D.'s father. By contrast, L.D. was thriving in an adoptive home where he felt safe and loved and was able to maintain contact with D.D., his extended family and others who cared about him. D.D. has not shown the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)B)(i).

D.D.'s reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 is misplaced. There, this court reversed the trial court's finding that the beneficial parent-child relationship exception did not apply after concluding the child would be greatly harmed by loss of the significant positive relationship she shared with her father. The father had complied with every aspect of his case plan, frequently visited his daughter and was devoted to her. She loved him and wanted to live with him. (*Id.* at pp. 294-295.) D.D. did not make such a showing. Further, while factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is

substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the court's findings are fully supported.

DISPOSITION

The orders are affirmed.

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NARES, Acting P. J.

WE CONCUR:

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McINTYRE, J.

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O'ROURKE, J.