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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re HANNAH V., a Person Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LISA V.,

Defendant and Appellant.

D060656

(Super. Ct. No. NJ013459)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia A. Bashant, Judge. Affirmed.

Lisa V. appeals the judgment terminating her parental rights to her daughter, Hannah V.<sup>1</sup> Lisa contends the juvenile court erred by declining to apply the beneficial

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<sup>1</sup> The identity of Hannah's father is unknown.

relationship exception (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i))<sup>2</sup> to termination of parental rights. We affirm.

## BACKGROUND

In February 2006, there was a report that six-and-one-half-year-old Hannah had missed two weeks of school, and Lisa was addicted to painkillers and did not supervise Hannah. The San Diego County Health and Human Services Agency (the Agency) opened a voluntary case, but Lisa did not cooperate. In September the Agency filed a dependency petition for Hannah, who was then seven years old. The petition alleged Lisa had not cooperated with the offer of voluntary services. She used pain and depression medication, causing her to sleep frequently, so Hannah was often left without an appropriate caregiver and was sometimes not properly fed. Hannah was afraid to be in the home, and the home was filthy and unsanitary. There was animal excrement on a newspaper, dishes were stacked up, papers and clothes were strewn around and Hannah's bedroom was so cluttered and dirty it was not fit for sleeping.

Hannah was detained in a foster home and then moved to a new foster home a few days later. In October 2006, the court entered true findings on the petition, declared Hannah a dependent, ordered her placed in foster care and ordered reunification services for Lisa. In June 2007, Hannah began a 60-day trial visit with Lisa. At the 12-month review hearing in November, the court restored custody to Lisa and terminated dependency jurisdiction.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

In September 2009, there were several child welfare referrals regarding 10-year-old Hannah. These included reports that she had not been to school in two years, Lisa was not feeding her and their home was filthy. In October the Agency filed a new dependency petition. The petition alleged the home was filthy and in a state of severe disrepair, with bare electrical wires coming from the wall; a large amount of rodent feces throughout the house; and trash, clothes and boxes strewn around. There was little food in the kitchen. Lisa did not provide for Hannah's education. Lisa admitted she used OxyContin excessively for pain. There were 15 bottles of OxyContin within Hannah's reach.

Hannah was detained at Polinsky Children's Center. In October 2009, the court entered true findings on the new dependency petition, declared Hannah a dependent, ordered her placed in foster care and ordered reunification services. On October 29, Hannah was moved to a foster home where she remained for the rest of the case. At the 18-month review hearing in December 2010, the court set a section 366.26 hearing. In August 2011, the court terminated parental rights.

## DISCUSSION

If a dependent child is adoptable,<sup>3</sup> the juvenile court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) One such exception exists if "[t]he parents have maintained regular visitation and contact

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<sup>3</sup> Lisa does not contest the adoptability finding.

with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "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 Autumn H.* (1994) 27 Cal.App.4th 567, 575.) If terminating parental rights "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome . . . ." (*Ibid.*) The existence of a beneficial relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs . . . ." (*Id.* at p. 576.)

Here, the court found that Lisa visited regularly and consistently. The court further found that Hannah loved Lisa and had a relationship with her, but Hannah's need for stability outweighed any benefit she would obtain from continuing the relationship. Examining the evidence in the light most favorable to the judgment (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576), we conclude substantial evidence supports this finding.

At the time of the section 366.26 hearing, Hannah was 12 years old. She had lived with the foster parents for approximately 10 months. They were committed to adopting her.

Hannah had been out of Lisa's care for more than one year 10 months during this dependency, and for more than nine months during the previous dependency. Before the dependencies, Lisa sometimes left Hannah in the care of others for weeks at a time. Thus, Hannah had been out of Lisa's care for a total of more than two and one-half years.

While living with Lisa, Hannah missed two years of school and had little interaction with other children. As a result, Hannah was behind academically and lacked social skills. In March 2010, she was given an individualized education program to address her learning disability and language delay. In May the court limited Lisa's right to make educational decisions for Hannah and appointed the foster mother as Hannah's educational representative. Hannah's grades improved and she achieved near perfect attendance. Her teachers praised her attitude and participation and said she was "a pleasure to have in class." By the time of the section 366.26 hearing, Hannah was on the honor roll.

Lisa focused on her own needs rather than Hannah's and testified Hannah "never really was that far behind" in school. Lisa never took responsibility for neglecting Hannah or for Hannah's resulting difficulties. This eroded Hannah's self-esteem and caused her to think the dependency was her fault. Eventually, therapy helped her understand it was not her fault. Her social skills improved. The foster parents helped Hannah learn basic skills she should already have known, such as doing homework and picking up after herself. As the focus turned to adoption, and with the foster parents' care and guidance, Hannah's difficulties ameliorated.

Hannah was comfortable with Lisa and called her "mom." They loved each other. Overall, their relationship was positive, and their supervised visits were generally

appropriate.<sup>4</sup> Hannah and Lisa were happy to see each other and were affectionate with one another. Hannah said Lisa took care of her by providing snacks and drinks, and described the visits as fun because she and Lisa played games. Lisa showered Hannah with gifts,<sup>5</sup> and Hannah came to expect and ask for gifts. During visits Lisa did not set any limits for Hannah, provide any guidance or help with homework.<sup>6</sup> Hannah usually separated easily from Lisa at the close of visits.

Hannah had difficulty learning to trust the foster parents and forming a bond with them, in part because she spent most weekends away from their home, visiting Lisa and a family friend. Hannah became upset when the foster parents set limits, such as when they forbade her to attend an after school program because she had not completed her homework efficiently and had lied to them. Hannah disliked the fact that the foster family did not celebrate holidays, had no pets and had an infant. Additionally, Hannah's conjoint therapy with Lisa confused Hannah, as she believed she would be returning to Lisa's care.<sup>7</sup> Over the course of the case, Hannah made contradictory statements about

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4 There was evidence that Lisa improperly spoke to Hannah about moving out of state with her, and told her what to say to the psychologist who conducted a bonding study.

5 Hannah modeled this behavior by taking property from other foster children in the home and giving it to schoolmates as a way to make friends. By contrast, the foster mother was "a good role model" and gave Hannah "gentle reminders regarding her manners."

6 The foster mother helped Hannah with homework.

7 The conjoint therapy ended in later April 2011.

where she wanted to live and whether she wanted to be adopted. She said she did not want to make that decision. She always expressed a desire for a safe home, however, and said she felt safe in the foster home. By the time of the section 366.26 hearing, she had learned to trust the foster parents and had become attached to them.<sup>8</sup> She called them "mom and dad" and was very happy in their home.

Hannah's feelings were reflected in her testimony by stipulation. She testified that "if she had her choice she would live with [Lisa], then relatives, then the [foster parents]." She wanted to be adopted; she did not want to be removed from the foster parents' home;<sup>9</sup> and she wanted to retain her surname as part of a new, hyphenated last name. She understood she had the right to object to adoption based on her age, and she did not

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<sup>8</sup> The social worker believed Hannah's bond with the foster parents could be strengthened, and intended to initiate attachment therapy for them, with a new therapist, immediately after termination of parental rights. The social worker testified that when a child had been in a home for a certain period and the focus changed to adoption, it was not unusual to start attachment therapy. Hannah and the foster parents had not participated in conjoint therapy.

<sup>9</sup> Hannah's court-appointed special advocate (CASA) questioned whether Hannah's newly stated preference to stay with the foster parents might "be motivated more by fear than a real desire to be adopted by [them]." The CASA and the social worker "asked Hannah if she was just too scared to have to start over with a new family, if she was fearful of having to attend a new school, and to make new friends." Hannah said "No," and "repeated that she want[ed] to be adopted and she want[ed] to stay with [the foster parents]." Hannah also said she did not want a guardianship.

object. When asked whether she would object to the termination of Lisa's parental rights, Hannah responded, "I want Lisa to be my mom and I want to be adopted."<sup>10</sup>

Visitation monitors observed that Lisa and Hannah were bonded. Psychologist Thomas Barnes agreed. Barnes conducted a bonding study in June 2011 at the request of Lisa's counsel, who furnished Barnes selected material from the case file. Barnes observed Lisa and Hannah together for 75 minutes and conducted separate "brief interviews" with each. He opined Hannah and Lisa had "a strong positive relationship[,] . . . terminating the bond would likely have a negative impact upon [Hannah's] mental state," and she "might suffer emotional detriment if the mother-daughter bond were to be terminated." Barnes speculated "it is . . . possible that the close bond that [Hannah] has with [Lisa] prevents her from developing them with others . . . ."

Social worker Julie Walker observed two visits between Lisa and Hannah, reviewed the Agency's records and visitation logs, consulted the previous social worker, a supervisor and Hannah's therapist, Diana Conklin, LCSW. Walker described Lisa and

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<sup>10</sup> Lisa asserts, "There is nothing in the record to indicate that Hannah understood the foster parents would have the right to cut off her contact with Lisa if the adoption was finalized." Hannah's counsel, however, had a duty to interview Hannah, determine her wishes and advise the court of those wishes. (§ 317, subd. (e)(2).) In an insightful closing argument, Hannah's counsel cited Hannah's statement that she wished to be adopted and asked the court to "hear [Hannah's] voice." "We must assume in the absence of . . . evidence to the contrary that [Hannah's] counsel complied with the code's mandate . . . ." (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 853.) Moreover, the court was required to, and did, consider Hannah's wishes and act in her best interests. (§ 366.26, subd. (h)(1).) The court expressly recognized Hannah's "internal conflict" reflected in her stipulated testimony and noted the social worker, the therapist, the CASA and others "who had long[-]term contact with Hannah" recognized her need for stability. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1335.)

Hannah's interaction as one of best friends or friendly visitors, not parent and child. Walker concluded Hannah needed stability, guidance, support and permanency, and adoption was in her best interests. Conklin agreed. Conklin had conducted conjoint therapy with Hannah and Lisa for nearly seven months. Conklin described the relationship between Hannah and Lisa as "friendly but not parental," partly due to Lisa's neglect of Hannah. Conklin noted Hannah sometimes assumed the parental role and felt she must defend Lisa. Conklin believed Hannah needed stability, support and permanency and had benefitted from the stability of her foster home. Conklin concluded "[t]he benefit of maintaining a relationship with Lisa does not outweigh the benefits [to Hannah] of a permanent home through adoption."

Lisa relies on *In re S.B.* (2008) 164 Cal.App.4th 289, in which this court concluded the juvenile court erred by declining to apply the beneficial relationship exception. (*Id.* at p. 301.) That case is distinguishable. There, the appellant father "complied with 'every aspect' of his case plan" (*id.* at p. 298), empathized with his child, recognized her needs (*id.* at p. 294) and placed her needs above his own (*id.* at p. 298). Additionally, the child "became upset when the visits ended and wanted to leave with [him]." (*Id.* at p. 294.)

Lisa also relies on *In re Scott B.* (2010) 188 Cal.App.4th 452, in which the reviewing court concluded the juvenile court erred by declining to apply the beneficial relationship exception. (*Id.* at pp. 455, 471-473.) That case is distinguishable as well. There, the mother provided her child stability, adoption might have destabilized the

child's "precarious emotional state," and continuing their visitation was the only way to spare him a "serious emotional and developmental setback." (*Id.* at p. 472.)

Substantial evidence supports the conclusion that Hannah's relationship with Lisa did not "promote[] [Hannah's] well-being . . . to such a degree as to outweigh the well-being [she] would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

#### DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.