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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ASHLEY J., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

WENDY J.,

Defendant and Appellant.

D060791

(Super. Ct. No. J517613)

APPEAL from findings and orders of the Superior Court of San Diego County,  
Laura J. Birkmeyer, Judge. Affirmed.

Wendy J. appeals from an order terminating her parental rights to her daughter,  
Ashley J., under Welfare and Institutions Code section 366.26. (Further statutory  
references are to the Welfare and Institutions Code.) We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

In September 2009 the San Diego County Health and Human Services Agency (the Agency) took three-year-old Ashley J. into protective custody after Ashley complained of pain while urinating and said her maternal uncle had hurt her, pointing to her vaginal area. The Agency did not immediately locate Ashley's mother, Wendy, who was 15 years old when Ashley was born. (Ashley's father did not participate in reunification services and is mentioned only when relevant to the issue raised on appeal.)

As a child, Wendy had been sexually abused by her stepfather and removed from her mother's custody through juvenile court proceedings. After Ashley was born, she and Wendy lived with the maternal grandmother and other family members until Wendy moved out of state. Wendy left Ashley with the maternal grandmother, who had a history of involvement with child welfare services as a nonprotective parent. When Wendy found out that Ashley was in protective custody, she immediately returned to San Diego and met with the social worker.

In December 2009 the juvenile court adjudicated Ashley a dependent child, removed her from parental custody and ordered a plan of family reunification services for Wendy. At the June 2010 six-month review hearing, the juvenile court found that Wendy had made substantive progress with her case plan and continued reunification efforts.

In reports prepared for the 12-month status review hearing, the social worker stated Wendy was living in Los Angeles. She took the train to visit Ashley but cancelled or missed one of her weekly visits each month. Wendy did not contact the social worker to ask for increased visitation time. When Wendy did not attend visits, Ashley became

sad or angry. She enjoyed Wendy's visits. Wendy did not complete her case plan. She had a limited support system and was not prepared to care for Ashley.

In February 2011 the juvenile court terminated family reunification services and set a section 366.26 hearing, which was heard on October 13, 2011. The juvenile court admitted the Agency's section 366.26 reports and addendums in evidence, heard the testimony of the social worker and accepted Wendy's stipulated testimony.

The social worker reported that Ashley was a healthy child who did not suffer from any disabilities. She was developmentally on target and appeared to be a happy, well-adjusted child. She had lived with her current foster mother, L., since February 2010. The foster mother was willing to adopt Ashley if parental rights were terminated.

When the social worker first met Ashley in March 2011, she asked Ashley whether she had seen her mother recently. Ashley replied, "[L.], the one you were talking to is my mom . . . . Wendy used to be my mom but she's not my mom, [L.] is my mom." Ashley told the social worker that she saw "Wendy" every week and they had fun during their visits.

The social worker explained to Ashley that part of her job was to determine where she would live "forever." Ashley said she would want to live with "Mommy [L.]" She said, "I want to stay here forever."

The social worker observed visits between Wendy and Ashley on April 11 and 18, and May 2. Ashley referred to Wendy as "Mommy Wendy." She referred to her foster mother as "my mommy" or "my mom." Wendy did not interact with Ashley very much.

Ashley told Wendy, "You better go to work and you better buy a house and a car if you want me back."

The social worker brought Ashley to a visit on May 9. While they were waiting for Wendy to arrive, Ashley showed the social worker three pennies she wanted to give to her mother. She said one penny was for Wendy to buy a house, one penny was to buy a car and the other penny was to find a job. Wendy did not show up for the visit.

On May 26 Wendy telephoned another social worker. She said she had not visited Ashley since May 2 because she had transportation problems. Wendy acknowledged she could not take care of Ashley, saying "At this point I can't even take care of myself." Wendy did not want Ashley to be adopted. She preferred a plan of permanent guardianship that would allow her to continue to have contact with her daughter.

In her report dated September 28, 2011, the social worker reported that Wendy had not visited Ashley since May 2, 2011. The social worker did not believe Ashley had a strong parent/child relationship with Wendy but instead viewed her foster mother as her parent. While Ashley enjoyed her visits with Wendy, she did not have a strong attachment to her. In contrast, Ashley was very bonded to her foster mother. Ashley did not know her father.

The parties stipulated that if Wendy were to testify, she would state, "I love my daughter very much and want to have the chance to have her in my life. I enjoy the time I spend with my daughter and would like to continue to have a relationship with her. I do not want her to grow up and feel like her mother abandoned her."

The juvenile court found that Ashley was likely to be adopted within a reasonable time and the beneficial parent-child relationship exception to termination of parental rights did not apply, and terminated parental rights.

## I

### DISCUSSION

#### A

##### *The Parties' Contentions*

Wendy contends there is not substantial evidence to support the juvenile court's finding that Ashley did not have a beneficial parent-child relationship with her. She argues the juvenile court erred when it found the benefits of adoption outweighed the benefits of continuing the parent-child relationship because it was in Ashley's best interests to know she had not been abandoned by her mother and to receive the benefit of Wendy's guidance concerning their similar experiences as victims of sexual abuse and subjects of dependency proceedings.

#### B

##### *Legal Framework for Termination of Parental Rights and Application of the Beneficial Parent-Child Relationship Exception*

At a section 366.26 hearing, the juvenile court may select one of three alternative permanency plans for the dependent child—adoption, guardianship or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) If the child is adoptable, there is a strong preference for adoption over alternative permanency plans. (*San Diego County*

*Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809.)

If the juvenile court determines that the child is likely to be adopted within a reasonable time, as here, it is required to terminate parental rights unless the parent shows that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivisions (c)(1)(A) and (c)(1)(B). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) As relevant here, section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

This court has interpreted the phrase "benefit from continuing the [parent-child] relationship" to mean "the [parent-child] 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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, "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." (*Ibid.*)

The reviewing court determines whether the record contains substantial evidence from which the juvenile court could find clear and convincing evidence that the child was likely to be adopted within a reasonable time and for substantial evidence to support the juvenile court's finding the child will not be greatly harmed by termination of parental rights. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562; *Zeth S.* (2003) 31 Cal.4th 396, 406.) If the findings are supported by substantial evidence, the reviewing court must affirm the juvenile court's rejection of the exceptions to termination of parental rights. (*Autumn H., supra*, 27 Cal.App.4th at p. 576.)

We determine whether there is substantial evidence to support the court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the juvenile court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If there is substantial evidence supporting the juvenile court's ruling, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights. (*Autumn H., supra*, 27 Cal.App.4th at p. 576.) The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial character to support the juvenile court's finding or order. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

## C

### *Substantial Evidence Supports the Juvenile Court's Finding that the Beneficial Parent-Child Relationship Exception Did Not Apply*

Wendy does not meet her burden on appeal to show there is no substantial evidence to support the juvenile court's order. (*In re Megan S., supra*, 104 Cal.App.4th at

p. 251.) On the contrary, the record contains ample evidence to support the juvenile court's findings that the beneficial parent-child relationship did not apply and it would not be detrimental to Ashley to terminate parental rights. (§ 366.26, subds. (c)(1)(A) & (c)(1)(B)(i).) These findings are supported by the history of the parent-child relationship, the child's own statements and the social worker's expert opinion.

Wendy gave birth to Ashley when she was 15 years old. The record shows that Wendy and Ashley lived with the maternal grandmother. The grandmother reported that she was raising Ashley while Wendy partied and did not return home for days and weeks at a time. Although the record is unclear as to the date, at some point in time Wendy left Ashley in the care of the grandmother, who had a history of involvement with child protective services, and moved out of state. Wendy could not be immediately located when Ashley was detained in protective custody, and did not believe Ashley's consistent statements that she had been sexually abused by her maternal uncle.

Wendy acknowledged she could not take care of her daughter. Although she made a good effort to maintain regular weekly visitation with Ashley, commuting by public transportation from Los Angeles to San Diego, she usually missed at least one visit each month. Wendy did not visit Ashley from early May through September 2011. By the date of the section 366.26 hearing, Ashley had been in the care of the foster mother for more than 18 months. Ashley's statements to the social worker indicate that she developed a strong attachment to the foster mother and came to view her as her parent. Ashley spontaneously corrected the social worker when the social worker referred to Wendy as her mother, saying Wendy "used to be my mom" but now the foster mother "is

my mom." Ashley's attempt to give three pennies to Wendy to help her find a house, car and job suggest that Ashley had assumed a caretaking role toward her mother. From her observations of the interactions between Wendy and Ashley, and Ashley's statements, the social worker did not believe that Ashley had a strong parent-child relationship with Wendy. Thus, the record supports the reasonable inference that Ashley did not have a substantial, positive emotional attachment to Wendy, and did not view her as a parental figure. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We reject Wendy's argument the juvenile court erred in balancing the benefits of adoption against any detriment to the child from terminating parental rights because Wendy could later help Ashley overcome the trauma of sexual abuse and being a foster child. The record shows that Ashley successfully participated in therapy to deal with those issues. She was a happy, well-adjusted child who was thriving in her current placement. Further, to the extent Ashley may have felt abandoned by her mother, the record shows she was strongly attached to her foster mother, understood the concept of adoption and expressed a clear preference to stay with her foster mother in her "forever" home.

To the extent Ashley derived some benefit from her relationship with Wendy, the juvenile court reasonably concluded that the benefits of adoption outweighed any detriment to Ashley caused by terminating parental rights in view of Ashley's age, the stability of the placement and her bonded relationship with the foster mother. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) We conclude there is substantial evidence to

support the juvenile court's finding that termination of parental rights would not be detrimental to Ashley. (§ 366.26, subd. (c)(1)(B).)

DISPOSITION

The findings and order are affirmed.

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McINTYRE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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O'ROURKE, J.