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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Savannah D. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Z.B.,

Defendant and Appellant.

D061908

(Super. Ct. No. EJ3154A, B)

APPEAL from orders of the Superior Court of San Diego County, Ronald F. Frazier, Judge. Affirmed.

Z.B. appeals from orders of the juvenile court terminating her parental rights to her daughters, Savannah D. and Julia S. (collectively the "Girls"). She contends the juvenile court abused its discretion in terminating her parental rights because doing so was detrimental to the Girls' sibling relationships within the meaning of Welfare and

Institutions Code section 366.26, subdivision (c)(1)(B)(v). (All further statutory references are to this code.) We find no error and thus affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

Z.B. had a history of alcohol and drug abuse and incarceration for theft-related criminal offenses and, as a result of her inability to adequately care or provide for the Girls, they frequently lived with their maternal aunt and uncle, as well as other relatives, when they were young. In November 2003, when Savannah was five years old and Julia was two years old, they were detained at the Polinsky Children's Center after Z.B. was arrested; they were ultimately released to their maternal grandmother, with no dependency petition being filed.

Z.B. had her third child, a son (Jack D.), in May 2004. From 2005 to 2008, the Girls and Jack lived with Z.B. at the home of their maternal uncle; during this time, the uncle repeatedly sexually molested Savannah.<sup>1</sup> In addition, the Girls were exposed, directly or indirectly, to incidents of domestic violence against Z.B. by their father, and they and Jack were exposed to a bloody altercation between Z.B. and another of her brothers.

In January 2009, Z.B. had another daughter (Jamie S.). In mid-October of that same year, the Agency received a report that Z.B. had repeatedly failed to pick up Jack

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<sup>1</sup> Savannah did not report the molestations until she was in therapy during the pendency of the current proceedings. However, she told her therapist certain comments her mother made to her at the time of the molestations suggested that Z.B. knew about what was happening. Savannah's disclosures apparently led to her maternal uncle's arrest.

from school; that Savannah, Julia and Jack often showed up at school hungry and unkempt; that Savannah was often left in charge of her siblings' care; and that their home had no electricity or running water and was filthy. (*Z.B. v. Superior Court* (D060624, Jan. 5, 2012) [nonpub. opn.]<sup>2</sup>) The following day, Z.B. was arrested after coming to Jack's school intoxicated to pick him up.

The San Diego Human Health Services Agency (the "Agency") filed section 300 petitions on behalf of all four children (collectively, the Children), alleging in part that Z.B. was unable to care for them based on her alcohol abuse. The Children were placed in the home of their maternal aunt and uncle. At the time, Savannah was 11, Julia was eight, Jack was five and Jamie was eight months old.

At first, Z.B. was unsuccessful in grappling with her drinking problem; however, in February 2010, she entered a residential treatment program and began having unsupervised visits with the Children. By November of 2010 she had given birth to her fifth child, C., and moved into transitional housing.

Despite Z.B.'s progress with services, the Girls resisted visiting with her. Savannah indicated that she had no interest in visiting or reunifying with her mother and refused to participate in conjoint therapy. Although Julia was more ambivalent about reunifying, she showed symptoms of depression and anxiety that her therapist believed were attributable to visitation with Z.B. Z.B.'s efforts to reunify with Jack and Jamie

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<sup>2</sup> We take judicial notice of this unpublished opinion on Z.B.'s earlier petition for extraordinary relief challenging the referral of Julia's case to a section 366.26 hearing.

were more successful. As of January 2011, Jack began having overnight visits with her, and Jamie was placed with her on a 60-day trial basis.

Over the next several months, the Girls continued to do well in the home of their maternal aunt and uncle and to assert "very firm[ly]" their desire to stay there. By April 2011 the social worker concluded that, given the Girls' resistance to reunification, the court should terminate reunification services and set a permanency planning hearing. She also reported that the maternal aunt and uncle were committed to the Girls and supportive of the Girls having ongoing relationships with Z.B.

At the 18-month review hearing in September 2011, the court found that although Z.B. had made progress on her reunification plan, returning the Girls to her care would create a substantial risk of harm to their emotional well-being. It terminated reunification services and set the matter for a permanency planning hearing. Prior to that hearing, the court dismissed the dependency proceedings relating to Jack and Jamie.

The social worker's permanency planning hearing report acknowledged Z.B.'s significant progress with services, her consistent efforts to reunify with the Girls and her obvious love for them; however, it went on to say that, "[s]adly, the [Girls] were so traumatized and . . . hurt over the course of so many years by their mother's addiction and her failure to protect and provide for them that the relationship cannot now be easily or quickly remedied . . . ." The report concluded that any detriment to the Girls from the termination of Z.B.'s parental rights would be overcome by the many significant benefits to them of being adopted.

At the permanency planning hearing, the court found that the Girls were generally and specifically adoptable and that none of the statutory exceptions to the legislative preference for adoption applied. It denied Z.B.'s request that a guardianship be established for them, terminated parental rights and designated the Girls' maternal aunt and uncle as their prospective adoptive parents. Z.B. appeals.

## DISCUSSION

### A. *Z.B.'s Ability to Assert the Sibling Relationship Exception on Appeal*

As a preliminary matter, the Agency contends that Z.B. forfeited the right to assert the sibling relationship exception as a ground for appeal because she failed to raise it in the juvenile court. Although the forfeiture doctrine may be applied in the context of the sibling relationship exception (see *In re Erik P.* (2002) 104 Cal.App.4th 395, 402 [noting that it is the parent's burden to assert this exception at the § 366.26 hearing, and that a parent's failure to do so precludes its assertion on appeal]), its application here is a bit unclear, as Z.B.'s counsel made passing reference to the sibling relationship exception in her closing argument at the hearing. We need not decide whether this reference was sufficient to preserve the issue for appeal because we in any event conclude that Z.B. has not met her burden to establish the merits of her challenge.

### B. *The Statutory Framework: General Principles*

The purpose of the selection and implementation hearing is to provide stable, permanent homes for dependent children. (§ 366.26, subd. (b).) A juvenile court at a section 366.26 hearing must select one of three plans for the child: adoption, guardianship or long-term foster care. (§ 366.26, subd. (b)(1)-(4); *In re Taya C.* (1991) 2

Cal.App.4th 1, 7.) A plan of adoption is the legislatively preferred plan. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 923-924.) However, before terminating parental rights and ordering adoption, the court must find by clear and convincing evidence that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).) If the court finds a child to be adoptable, it must terminate parental rights unless the parent shows that a statutory exception, setting forth circumstances in which such a termination is deemed detrimental to the child, applies. (*Ibid.*)

C. *The Sibling Relationship Exception*

The purpose of the sibling relationship exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P., supra*, 104 Cal.App.4th at p. 404.) To establish the application of this statutory exception, a parent must show that the termination of parental rights would substantially interfere with the dependent child's relationships with her siblings and that the severance of those relationships would be so detrimental to the child as to outweigh the benefits of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951-953; see *In re Celine R.* (2003) 31 Cal.4th 45, 54 [the focus of the statute is on the benefits and burdens to the child being considered for adoption, not the child's siblings].)

On appeal, the parent must establish that there was no substantial evidence to support the juvenile court's finding that the exception is inapplicable. (*In re D.M.* (2012) 205 Cal.App.4th 283, 291; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) The successful application of this statutory exception as a basis for avoiding the legislative preference for adoption is "rare" and the burden on the party opposing adoption is a

heavy one. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014; *In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.)

1. *The Existence of a Significant Sibling Relationship*

The significance of the relationship between a dependent child and her siblings is a crucial underpinning of the sibling relationship exception, to be determined by a consideration of such factors as whether the child and her siblings resided in the same home, whether they shared significant common experiences and whether they had an existing strong bond. (§ 366.26, subd. (c)(1)(B); *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; see also *In re L. Y. L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) However, except as to C. (as to whom Z.B. concedes the absence of a significant relationship), the parties do not discuss the nature of the Girls' sibling relationships in any detail, but appear to assume that those relationships were significant. We proceed on the basis of this apparent assumption, but note that, other than the evidence as to the amount of time that the Girls and their siblings lived together and a few visits, there is almost no evidence as to the nature of the relationships, particularly as to Jamie.

2. *Substantial Interference*

Z.B. argues that the termination of parental rights will substantially interfere with the Girls' sibling relationships, but does not explain why this is so. The evidence in the record is essentially undisputed that, throughout these proceedings, the Girls' maternal aunt and uncle consistently maintained the Girls' sibling relationships by initially taking Savannah, Julia, Jack, and Jamie into their home and later facilitating regular visits after

Jack and Jamie were returned to Z.B.'s care; they also expressed their willingness to continue to do so in the future.

Z.B. suggests that this is not enough, arguing that there is no guarantee the maternal aunt and uncle will continue to support maintenance of those sibling relationships in the future. However, Z.B.'s speculation in this regard does not constitute evidence that the termination of her parental rights would disrupt the Girls' sibling relationships. The juvenile court was entitled to rely on the evidence of the maternal aunt and uncle's past conduct, over the course of several years, and their stated intentions to continue to foster those relationships as a basis for concluding that a termination of Z.B.'s parental rights would not substantially interfere with the Girls' relationships with their siblings. (See *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1019, disapproved on another ground by *In re S.B.* (2009) 46 Cal.4th 529, 537, fn. 5; see generally *In re D.M.*, *supra*, 205 Cal.App.4th at p. 293.)

#### DISPOSITION

The orders are affirmed.

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IRION, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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AARON, J.