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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DULCE N. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

GUADALUPE A.,

Defendant and Appellant.

D062127

(Super. Ct. No. J516031A-C)

APPEAL from an order of the Superior Court of San Diego County, Carol Isackson,  
Judge. Affirmed.

Guadalupe A. appeals an order denying her Welfare and Institutions Code<sup>1</sup> section 388 petition for modification and terminating her parental rights under section 366.26. She asserts the court did not consider her children's wishes about their permanency plans, as required under section 366.26, subdivision (h), and the evidence is insufficient to support an adoptability finding. Guadalupe also challenges the court's findings the beneficial parent/child

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<sup>1</sup> Unless otherwise indicated, further references are to the Welfare and Institutions Code.

relationship and sibling relationship exceptions to termination of parental rights did not apply. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Guadalupe A. is the mother of nine-year-old Dulce N., eight-year-old Jose N. and six-year old B.N. (collectively the children), and Baby V., a nondependent infant. The children's father left the family in 2007.

In October 2005, the San Diego County Health and Human Services Agency (Agency) detained the children in protective custody after B.N. tested positive for methamphetamine at birth. Guadalupe, then 20 years old, acknowledged she had been using methamphetamine for approximately six years. The court returned the children to Guadalupe's custody under a plan of family maintenance services in August 2006 and dismissed dependency jurisdiction in August 2007. The Agency provided voluntary services to the family from November 2007 to June 2008.

In November 2009, the Agency detained the children in protective custody after they were exposed to repeated incidents of domestic violence between Guadalupe and her boyfriend. The social worker said Guadalupe genuinely loved her children but could not manage daily parenting responsibilities. Guadalupe did not comply with her court-ordered case plan. In February 2011, the juvenile court terminated family reunification services and set a section 366.26 hearing.

The section 366.26 hearing was heard over six days in September, October and November 2011 (first section 366.26 hearing). The Agency recommended the court find that the children were difficult to adopt, and continue the matter for six months to allow the social worker to locate an adoptive home for them. The Agency's request required the court to first

consider whether termination of parental rights would be detrimental to the children under section 366.26, subdivision (c)(1) (in which case there would be no need to pursue adoption). If no exceptions applied, the court would determine whether the children had a probability for adoption but were difficult to place for adoption. (§ 366.26, subd. (c)(3) [authorizing the court to identify adoption as the permanent goal and, without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within 180 days].)

Dr. Beatriz Heller conducted bonding studies between Guadalupe and the children. Heller testified Jose was enthusiastic about seeing his mother. He was very loving with her and enjoyed being with her. Jose said adoption meant "you could not see your mother ever, ever again." According to Heller, Dulce was emotionally attached to her mother. In the short term, severing Jose's and Dulce's contact with Guadalupe would not affect them because Guadalupe's visitation with the children had been irregular at times. In the long term, severing Jose's and Dulce's relationships with their mother would be detrimental to them. Heller said B.N.'s relationship with Guadalupe was not as strong as her siblings' relationships with Guadalupe. The effects of adoption on B.N. would depend on her siblings' reactions.

Social worker Jose Santana said the children loved their mother. They were well behaved, respectful, sweet children. Jose and Dulce said they wanted to live with their mother. Santana believed adoption was in the children's best interests. It was important for them to have a home, family, love, security, stability and parents who could meet their physical and emotional needs. Guadalupe was content visiting the children two hours every weekend. She did not ask to expand visitation.

The children's foster mother said Dulce was a sweet child who was doing well in school. She enjoyed visiting her mother. When Jose learned he was to be adopted, he became

very depressed. He was not sleeping well and awoke crying, saying his mother was speaking to him in his dreams. B.N. had tantrums. When Guadalupe was late for visits, the children would sit on the sofa by the window watching for her.

Dr. Martha Hillyard conducted psychological evaluations of Jose and Dulce. She testified Jose was an affectionate little boy who had signs of depression. His capacity for attachment indicated adoption could be successful. Dulce could accept an adoptive placement with a family that respected her attachment to her biological family.

The court placed greater weight on Hillyard's testimony than it did on Heller's testimony. The court described social worker Santana as credible, honest, caring, forthright and well-informed about the children. The court found that the children's mother was a symbol of family to them. During their two dependency proceedings, they were out of her care for more than three years. Guadalupe did not participate in services and did not demonstrate a commitment to her children.

After concluding the beneficial parent/child relationship and the sibling relationship exceptions to termination of parental rights did not apply, the juvenile court found the children had a probability for adoption but were difficult to place. Without terminating parental rights, the court directed the Agency to try to locate an adoptive home for the children within 180 days. (§ 366.26, subd. (c)(3).) Guadalupe appealed. This court affirmed the juvenile court's findings and orders. (*In re Dulce N.* (June 6, 2012, D061082) [nonpub. opn.] )

At the end of November 2011, the Agency placed the children in the approved adoptive home of Mr. and Mrs. L. (the L.'s). The children's transition to the L.'s care was easy and they appeared to be happy in their new home.

Prior to the section 366.26, subdivision (c)(3), hearing (second section 366.26 hearing), the court granted Guadalupe's request under section 388 to reconsider its previous findings the beneficial parent/child relationship and sibling relationship exceptions to termination of parental rights did not apply. Guadalupe asserted she continued to visit the children regularly, they enjoyed the visits, she was appropriately caring for their sibling, and B.N.'s behaviors in the L.'s home were challenging and concerning. Not terminating parental rights would be in the children's best interests because they had a strong bond with her and with each other, and there were reports of alarming behaviors in the L.'s home.

A hearing under sections 388 and 366.26 was held on June 8, 2012. The court admitted the Agency's reports in evidence, heard testimony from Mrs. L. and social worker Santana and accepted Guadalupe's stipulated testimony. The parties stipulated the court could consider the evidence from the first 366.26 hearing.

Mrs. L. said Dulce was a happy, easygoing little girl. She was slightly behind her peers academically and developmentally. When Dulce arrived in the L.'s home, they told her she could call them by their first names or "mom" and "dad." Dulce chose to call them "mom" and "dad." Dulce enjoyed her visits with Guadalupe.<sup>2</sup>

When Jose first arrived in the L.'s home, he would cry and sulk because he did not want to do his schoolwork. That problem had been resolved. Jose had fun visiting Guadalupe and was sad when the visits ended. Mrs. L. said Jose was "not really quite sure why -- why he is with us still and not with his mom." After visits, Mrs. L. would talk to Jose until he asked if he could go play.

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<sup>2</sup> During Mrs. L.'s testimony about Dulce, the court halted the testimony and asked Guadalupe to calm Baby V., noting the baby was not happy.

Mrs. L. said B.N.'s behaviors were problematic. When B.N. became angry, she would destroy items or hit and bite and scream. In December, B.N. bit Mrs. L. when Mrs. L. would not let her jump up and down in the bathtub. B.N. "cried and cried." She said, "I just feel mad. I just feel mad." B.N. bit Mrs. L. several more times after the December incident. Mrs. L. discussed B.N.'s behavior with social worker Santana and the children's therapist. After therapy, B.N. stopped biting but would still kick or punch when she was angry. B.N.'s teacher said B.N. was "a very angry little girl." She had kicked the teacher several times and slammed a desk at another child, almost breaking the child's finger. Mrs. L. and school staff developed an intervention that appeared to be working. During the last three weeks, B.N. was doing well at school.<sup>3</sup>

Mrs. L. said she and her husband were committed to adopting the children. The children were not to blame. They were angry because the adults in their lives had failed them. Mrs. L. said, "[T]hese are our kids. And I wouldn't trade them for anything."

Social worker Santana testified that Dulce, Jose and B.N. were generally and specifically adoptable. The children were young and healthy, and did not have any major developmental delays. They were friendly, social and likeable. They were placed in an approved adoptive home with a family that wanted to adopt them. In addition, there were 34 out-of-county homes interested in adopting a sibling group like the children. The Agency did not intend to place the children in separate adoptive homes.

Santana said Guadalupe was attentive and loving with the children during visits. The children enjoyed the visits and were happy to see their mother. Their relationships with her

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<sup>3</sup> During Mrs. L.'s testimony about B.N., the juvenile court noted Baby V. was very unhappy. Guadalupe left the courtroom with the baby.

were positive. When asked whether the children would suffer detriment if they did not have contact with their mother, Santana said it was not easy to answer that question. In the short term, the children would be adversely affected. In the long term, they would benefit from the permanency and stability of their adoptive home. The children appeared to be less attached to their mother than they had been at the first section 366.26 hearing.

Minors' counsel asked Santana about his field notes concerning a December 2011 incident. He had written, "[B.N.] also touched a kid at school in her private area and said her sister does that to her. When she was questioned by the school she said that that did not really happen." Santana said he recently discussed the allegation with Mrs. L. Over a hearsay objection, Santana said ". . . [Mrs. L.] would bathe both girls, [B.N.] and Dulce, in the shower tub. And the girls would start playing and kicking, and they would actually hit or kick their private parts. [¶] [O]ne day, at school, in the playground, [B.N.] fell from either the monkey bars or a slide, and she accidentally hit another child in his or her private parts." Santana believed the touching was inadvertent and did not constitute sexual abuse. He did not have concerns about sexual abuse in the home.

The parties stipulated that if Guadalupe were to testify, she would say she did not want the children to be adopted, or if they were to be adopted, she wanted them to be adopted by a family member. At visits, the children hugged and kissed her. Guadalupe and the children played together and talked, and she read to them and helped them with schoolwork.

The juvenile court found the children were likely to be adopted within a reasonable time if parental rights were terminated. Mrs. L. was credible and intelligent, and she and her husband were committed to being parents to the children. The court reiterated its prior findings about Santana's credibility. Based on Mrs. L.'s and Santana's testimony, the court

accepted the explanation the alleged sexual touching was inadvertent. The L.'s were fully aware of the children's issues and were committed to adopting them. B.N.'s behaviors, including the allegation of sexual touching, did not undermine her adoptability.

The court found Guadalupe did not meet her burden under section 388 to show an exception to termination of parental rights. The sibling relationship exception did not apply. The Agency was not considering placing the children in separate adoptive placements. The children's relationships with Guadalupe remained limited, and did not weigh more heavily than their needs for permanency and stability. The court rejected the argument B.N.'s negative behaviors were caused by her separation from her mother, stating B.N.'s behaviors were caused by her lifetime of disruption and disappointment. Noting Baby V.'s unhappiness during the courtroom proceedings, the court said Guadalupe's attention was by necessity focused on caring for her new baby and would limit her ability to appropriately interact with the children. The court found adoption was in the children's best interests and terminated parental rights.

## DISCUSSION

### A

#### *Guadalupe's Contentions on Appeal*

Guadalupe contends the evidence is insufficient to support the finding the children were likely to be adopted within a reasonable time because the social worker did not consider the children's wishes to live with their mother, B.N.'s negative behaviors and B.N.'s and Dulce's sexual acting out when evaluating their adoptability. She argues B.N.'s difficult behaviors constituted changed circumstances under section 388, and the court improperly relied on hearsay when it determined Dulce and B.N. did not engage in sexual contact. Guadalupe contends the Agency did not present evidence of the children's wishes, as required by section

366.26, subdivision (h), and the court erred when it selected the children's permanency plans without considering their wishes. Finally, Guadalupe challenges the findings the beneficial parent/child relationship and sibling relationship exceptions to termination of parental rights did not apply.

## B

### *Legal Framework for the Selection of Permanency Plans for Difficult to Adopt Children*

If the court finds that termination of parental rights would not be detrimental to the child and the child has a probability for adoption but is difficult to place for adoption<sup>4</sup> and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and, without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child, within the state or out of the state, within a period not to exceed 180 days. At the expiration of the 180-day period, another hearing shall be held and the court shall proceed pursuant to section 366.26, subdivision (b)(1), (3), (5) or (6).<sup>5</sup>

At the second hearing, the court is required to review the agency's section 366.26 report and receive other evidence that the parties may present, and make findings and orders in the following order of preference: Terminate the rights of the parent or parents and order the child placed for adoption (§ 366.26, subd. (b)(1)); appoint a relative or nonrelative guardian for the

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<sup>4</sup> A child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age or older. (§ 366.26, subd. (c)(3).)

<sup>5</sup> If the child is an Indian child within the meaning of the Indian Child Welfare Act, the court may also proceed under section 366.26, subdivision (b)(2).

child (§ 366.26, subd. (b)(3), (5)); or order the child placed in long-term foster care, subject to the periodic review of the juvenile court (§ 366.26, subd. (b)(6)). In choosing among the above alternatives, the court shall proceed pursuant to section 366.26, subdivision (c), which directs the court to first consider whether it is likely the child will be adopted. (§ 366.26, subd. (b).)

A finding of adoptability requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time." (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; § 366.26, subd. (c)(1).) The question of adoptability usually focuses on whether the child's age, physical condition and emotional health make it difficult to find a person willing to adopt that child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) If the child is considered generally adoptable, there is no need to examine the suitability of a prospective adoptive home. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) When the child is deemed adoptable based solely on a particular family's willingness to adopt the child, the trial court must determine whether there is a legal impediment to adoption. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

If the court determines the child is likely to be adopted within a reasonable time, the court 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, subdivision (c)(1)(B)(i-vi). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) At all proceedings under section 366.26, the court is required to consider the wishes of the child and act in the best interests of the child. (§ 366.26, subd. (h).)

The reviewing court determines whether the record contains substantial evidence from which the 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, 1561-1562; *In re Zeth S., supra*, 31 Cal.4th at p. 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. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*.)

## C

### *Analytical Framework on Review*

At a pretrial conference on May 16, 2012, the court clarified "what can and cannot be litigated" at the second 366.26 hearing. It said the Agency had the burden of proving the children were likely to be adopted within a reasonable time,<sup>6</sup> but the parent had to file a section 388 petition to relitigate the court's previous findings there were no exceptions that would make termination of parental rights detrimental to the children. A section 388 petition requires the petitioner to show changed circumstances and that the child's best interests require the modification requested. (§ 388.) The court said the use of a section 388 petition at a second section 366.26 hearing was generally the procedural practice in the San Diego County Juvenile Court.

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<sup>6</sup> We reject the Agency's argument the court need determine only whether a child has a "probability for adoption" at the section 366.26 hearing held after the 180-day period to locate an adoptive home for a difficult-to-place child. The "probability of adoption" standard applies when the agency seeks an extension of time to locate an adoptive home for a child who may be adoptable but is difficult to place for adoption. (§ 366.26, subd. (c)(3).) At the end of the 180-day period, section 366.26, subdivision (c)(3), directs the court to choose a permanent plan of adoption, guardianship or long-term foster care for the child and to proceed under section 366.26, subdivision (c), in making that choice. Under section 366.26, subdivision (c)(1), termination of parental rights requires the court to find by clear and convincing evidence that it is likely the child will be adopted.

The issue whether a section 388 petition is required in this context is not before this court.<sup>7</sup> We neither approve nor disapprove the practice. "It is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. [Citation.] . . . 'That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation . . . in order to insure the orderly administration of justice.'" (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351.)

However, the use of a section 388 petition as a procedural mechanism to control litigation and promote the wise use of judicial resources at a second section 366.26 hearing adds unnecessary complexity on review. After a parent's petition for a hearing to relitigate the exceptions is granted, and the court has made findings whether any exceptions to termination of parental rights apply, review of the section 366.26, subdivision (c)(1)(B), findings will generally resolve those issues. The best interests requirement of section 388 is problematic in this context because "there is no 'best interests' exception to termination of parental rights." (*In re Jose C.* (2010) 188 Cal.App.4th 147, 163, citing *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165, fn. 2.) Accordingly, we need not address Guadalupe's contentions she showed changed circumstances and that the children's best interests required the modification requested.

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<sup>7</sup> The statute is ambiguous with respect to whether the court is required to consider exceptions to termination of parental rights at a second section 366.26 hearing held pursuant to section 366.26, subdivision (c). (§ 366.26, subs. (b) & (c).)

D

*There Was Sufficient Evidence of the Children's Wishes at the  
Second Section 366.26 Hearing*

Guadalupe contends the evidence of the children's current wishes at the second section 366.26 hearing was insufficient, and therefore terminating parental rights violated section 366.26, subdivision (h). She argues the social worker did not ask the children about their wishes pursuant to court order<sup>8</sup> and the Agency did not present any evidence about the children's discussions about adoption with their therapist. Guadalupe states the children's wishes can be inferred from indirect statements they have made and their demeanor after visits, and argues that evidence indicates the children want to live with her.

At all proceedings under section 366.26, the court is required to consider the wishes of the child and act in the best interests of the child. (§ 366.26, subd. (h).) Evidence of the child's wishes may be presented by direct formal testimony in court, informal direct communication with the court in chambers, reports prepared for the hearing, letters, telephone calls to the court or electronic recordings. (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480.) The court must consider the child's wishes only to the extent those wishes are ascertainable. (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 820; *In re Joshua G.* (2005) 129 Cal.App.4th 189, 201.)

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<sup>8</sup> In September 2012, at the request of minors' counsel, the court ordered that all discussions with the children about adoption take place in a therapeutic setting.

Guadalupe has forfeited her argument on appeal. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.) Guadalupe's counsel was present when the court issued an order preventing the social worker from asking the children direct questions about their permanency plan wishes. She did not object to that order. Guadalupe did not object to the sufficiency of the Agency's assessment report. She did not cross-examine the social worker about the therapist's report. She did not call the therapist to testify about any statements the children may have made concerning their wishes. Guadalupe cannot stand silently by until the conclusion of the proceedings to raise an issue she had the opportunity to address at trial. (*Id.* at p. 222.)

Even were the issue not forfeited, we would reject Guadalupe's argument. Section 366.26, subdivision (h), does not require a direct statement from a child about a termination proceeding. (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591-1592.) Here, minors' counsel informed the court the social worker's conversations about adoption distressed Dulce and confused Jose and B.N. Under the circumstances, the court appropriately limited any discussions with the children about adoption to a therapeutic setting. There was sufficient evidence from which the court could consider the children's current wishes. The children's therapist said the children had attached to the L.'s and were settling into their home. They wrote notes to Mr. and Mrs. L. stating, "I love you mommy and daddy." The children did not show any adverse reaction when visits with their mother were cancelled. They called the L.'s "mommy and daddy." Social worker Santana said the children appeared to be less attached to their mother than they had been at the first section 366.26 hearing. The record shows the children loved their mother but were bonding to a family that had provided a safe, stable and loving home to them for more than six months and wanted to adopt them.

Further, assuming *arguendo* the children still wanted to live with their mother, their wishes did not control the court's selection of their permanency plans. Section 366.26, subdivision (h), imposes a duty on the court to consider the child's wishes and act in the best interests of the child. The court is not obligated to follow the child's wishes unless the child is 12 years of age or over. (§ 366.26, subd. (c)(1)(B)(ii).) Considering the length of time the children had been out of Guadalupe's care and her inability to provide a safe home for the children after receiving more than three years of court-ordered and voluntary services, the court reasonably concluded adoption was in the children's best interests.

E

*There Is Substantial Evidence to Support the Court's Finding the Children Were Likely to Be Adopted Within a Reasonable Time*

Guadalupe argues the juvenile court did not properly consider the children's wishes to live with her, B.N.'s negative behaviors in the L.'s home, and Dulce's and B.N.'s sexualized contact when it determined the children were likely to be adopted within a reasonable time. Guadalupe states the children want to live with her, making adoption difficult because it is contrary to the children's wishes. She argues the evidence does not support the court's finding B.N. consistently demonstrated difficult behaviors throughout the dependency proceedings and those behaviors did not change after she was placed with the L.'s. Guadalupe further contends the court erred when it relied on hearsay in finding the alleged sexual touching between Dulce and B.N. was inadvertent. Guadalupe argues the sexualized play behaviors had profound implications for the children's adoptability, and the social worker ignored those behaviors in determining the children were adoptable.

Even were Guadalupe's factual assertions supported by the record, she does not acknowledge that by the time of the second section 366.26 hearing, the children were living with an approved adoptive family committed to adopting them. "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

Thus, with respect to the finding of adoptability, it is immaterial whether B.N.'s behaviors were problematic before she was placed with the L.'s or worsened in their home, or whether she engaged in sexualized behaviors with her sister or another child. The children's ages, mental states and behaviors did not dissuade the L.'s from adopting the children. The L.'s were effectively working with the children's therapist, social worker and school staff to help B.N. moderate her behaviors. Mrs. L. observed Dulce's and B.N.'s alleged sexualized behaviors. That incident, whether characterized as inadvertent or sexually inappropriate contact, did not dissuade the L.'s from adopting the children.<sup>9</sup>

Mrs. L. testified at length about B.N.'s problematic behaviors. She did not mention any concerns about sexual acting out. The children's love for their mother did not prevent them

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<sup>9</sup> Thus, had the court excluded Santana's testimony about Mrs. L.'s observations as hearsay, the court could still conclude the children were likely to be adopted within a reasonable time. Error, if any, was harmless.

from becoming attached to Mr. and Mrs. L. as "mommy" and "daddy," and settling into their home. The L.'s had cared for the children and observed their behaviors for more than six months. When asked whether she was committed to adopting the children in view of their histories and behaviors, Mrs. L. said, "Yes. [¶] Because it's not their fault. They have been failed in their lives and they are angry. But they are going to get past that. They need -- they need their parents to step up and say, You know what, this is the way it is. This is your life. You need a permanent home. You have . . . a mom and a dad. You are not going to leave here until you get married. And that's what we want to give them. We want to give them everything."

Guadalupe does not claim, and the evidence does not show, any legal impediment to the L.'s adoption of the children. (*In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.) They were approved to adopt and committed to adopting the children. There is substantial evidence in the record to support the finding the children were specifically adoptable.

In addition, there is substantial evidence to support the finding the children were generally adoptable. Santana testified Dulce, Jose and B.N. were generally adoptable. The children were young and healthy, and did not have any major developmental delays. They were friendly, social and likeable. Dulce and Jose did not have any unusual behavioral problems. B.N. was responding to therapy and other interventions. There was no current evidence of any sexual acting out. The children were placed in an approved adoptive home with a family that wanted to adopt them, indicating they were likely to be adopted within a reasonable time by the prospective adoptive parent or by some other family. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.) We conclude there is substantial evidence to support

the court's finding that the children were likely to be adopted within a reasonable time if parental rights were terminated. (§ 366.26, subd. (c)(1).)

F

*There Is Substantial Evidence to Support the Court's Finding the Beneficial Parent/Child Relationship Exception Did Not Apply*

Guadalupe contends the evidence is insufficient to support the juvenile court's finding the beneficial parent/child relationship exception to termination of parental rights did not apply. She argues her relationships with the children were positive and should be allowed to continue, and B.N.'s negative behaviors show that termination of parental rights would be detrimental to her. Guadalupe asserts the court improperly considered her decision to have another baby and the baby's behavior during the hearing in terminating her parental rights.

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 . . . 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." (*Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575, 574.) 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." (*Id.* at p. 575.)

In balancing the benefits of adoption against the strength and quality of the parent/child relationship, the court determined the benefits of adoption outweighed any detriment to the children caused by terminating parental rights. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) If the findings are supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights. (*Id.* at p. 576.)

The record shows the children loved their mother. They had a positive, affectionate relationship with her and enjoyed visiting her for two hours each Saturday. Guadalupe's history shows she was not able to maintain her parental role. The children were removed from her custody from October 2005 to August 2006, and from November 2009 to the present. At the time of the second section 366.26 hearing, the children had been out of Guadalupe's care for a total of more than three and one-half years. While they were in her care, the children were exposed to methamphetamine use and domestic violence. They were neglected, their home was filthy and they were not properly supervised. During the 2009 dependency proceedings, Guadalupe was not compliant with court-ordered reunification services. Toward the end of the reunification period, she did not visit the children regularly. Despite an open-door policy by the children's previous caregiver, Guadalupe did not bathe the children or feed them dinner. The caregiver said Guadalupe did not show much interest in her children. According to a social worker, the case was "sad" because Guadalupe loved her children but was not able to assume daily parenting responsibilities. The children were emotionally needy.

The children met the L.'s in late 2011. The Agency planned to slowly transition the children to their home. After two overnight visits, the children asked to live with the L.'s

immediately. They adjusted well. They began calling the L.'s "mommy" and "daddy." B.N. began calling Guadalupe by her first name. The L.'s were dedicated to the children. Mrs. L. was at home with them. Mrs. L. focused on the children, working with their therapist, social worker and school to help meet their needs and stabilize them in their new home. Where Guadalupe was content to visit and play with the children two hours a week, the L.'s demonstrated commitment to parental responsibilities.

Guadalupe argues the court improperly considered Baby V.'s needs, based on her unhappy performance in the courtroom, as an impediment to Guadalupe's ability to fully attend to the children in determining the beneficial parent/child relationship did not apply. The record shows the court stated Guadalupe's ability to attend to Baby V.'s needs was not a major factor in its decision to terminate parental rights. In view of the other evidence supporting the court's finding, we conclude that error, if any, is harmless.

The record supports the finding the children's interest in a continued relationship with their mother did not outweigh their interest in the security of an adoptive placement with a family that would provide a safe, stable, loving and permanent home to them. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) There is substantial evidence to support the juvenile court's finding that termination of parental rights would not be detrimental to the children under the beneficial parent/child relationship exception. (§ 366.26, subd. (c)(1)(B)(i).)

## G

### *The Sibling Relationship Exception Did Not Apply*

The sibling relationship exception applies when termination of parental rights would substantially interfere with a child's sibling relationship, taking into consideration the nature and extent of the relationship. (§ 366.26, subd. (c)(1)(B)(v).) Guadalupe contends the juvenile

court erred when it found the sibling relationship exception did not apply. She argues that had the Agency's adoptive assessment included Dulce's and Jose's wishes to live with her, and B.N.'s acting out behaviors, the court could find that either B.N., or Dulce and Jose, were not likely to be adopted within a reasonable time, and apply the sibling relationship exception to any adoptable sibling.

Guadalupe's argument is not well taken. (See *In re Michael G.* (2012) 203 Cal.App.4th 580, 595.) We review the rulings the court made, not rulings the court could have made had other circumstances existed. Further, were the adoption assessment inadequate and the error prejudicial, as Guadalupe contends, we would remand the matter to the juvenile court for adoptability findings on an appropriate record. (*Id.* at pp. 589-590; *In re Valerie W.* (2008) 162 Cal.App.4th 1, 11-12.) We would not reach the issue of the sibling relationship exception de novo.

To the extent Guadalupe asserts the evidence is insufficient to support the juvenile court's finding the sibling relationship exception did not apply, the record contains ample evidence to support the finding. The Agency did not intend to separate the children. The social worker made diligent efforts to locate an adoptive home for the children as a bonded sibling group, found an approved adoptive home, and placed them with a family committed to adopting all three children. The court did not err when it terminated parental rights and found that adoption was in the children's best interests.

DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.