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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re H.G. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MAYRA D.,

Defendant and Appellant.

D062600

(Super. Ct. No. SJ12222B-C)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Mayra D. appeals the judgment terminating her parental rights to her sons, H.G. and B.G (together, the boys), and her daughter, A.G. (we refer to the boys and A.G. collectively as the children). Mayra contends the juvenile erred by declining to apply the

beneficial relationship exception. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i); all further statutory references are to this Code.) We affirm.

## BACKGROUND

In September 2009, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for newborn A.D. because she and Mayra tested positive for methamphetamine. Mayra had a history of drug use and never participated in treatment. She admitted using methamphetamine the day before A.D. was born. Mayra had had no prenatal care since July.

A.D. was detained in a foster home. Three-and-one-half-year-old H.G. and two-and-one-half-year-old B.G. remained in their maternal grandmother's home, where Mayra had left them, under a voluntary case plan. In October 2009, the court entered a true finding on A.D.'s dependency petition, ordered her placed in foster care and ordered reunification services.

The Agency gave Mayra referrals to domestic violence shelters, but she was turned away because she did not follow safety instructions. In February 2010, the Agency learned the maternal grandmother had returned the boys to Mayra. Mayra and the boys were staying with the boys' father, Hector G., despite the fact that Hector had recently beaten Mayra and hit H.G. with a stick. The Agency filed dependency petitions for the boys based on Mayra's homelessness and the boys' exposure to domestic violence. The boys were detained in a foster home for eight days, and then moved to A.D.'s foster home. In June, the court entered true findings on the boys' dependency petitions, ordered them placed in foster care and ordered reunification services.

In September 2011, at the 18-month review hearing in the boys' case, the court terminated services and set a section 366.26 hearing. In October, following the 18-month review hearing in A.D.'s case, the court did the same. In August 2012, the court terminated parental rights.

## DISCUSSION

Mayra does not contest the finding the children were adoptable. If a dependent child is adoptable, the 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 with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial 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.) 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.) Examining the evidence in the light most favorable to the judgment (*ibid.*), we conclude substantial evidence supports the court's finding that although there had been regular and

consistent visitation, "there [was] no evidence . . . that the children would be greatly harmed . . . if their relationship with [Mayra] were severed."

Mayra displayed a pattern of being attentive to the children during supervised visits, then mistreating them once she obtained unsupervised visits, resulting in a return to supervised visits. At an unsupervised visit in June 2011, for example, Mayra left the boys in a dark room and wrapped A.D.'s head in a blanket. After the visit, the boys reported Mayra often hit them and A.D. Visits again became supervised and remained so for the rest of the case.

By the time of the section 366.26 hearing, H.G. was six and one-half years old, B.G. was five years old and A.D. was nearly three years old. A.D. had never been in Mayra's care, and the boys had been out of her care for more than two and one-half years. A.D. had lived in the foster home virtually all her life, and the boys had lived there for more than one and one-half years. The children were happy and stable in the foster home and the foster parents wished to adopt them. A.D. was strongly attached to the foster mother. The boys called the foster parents "mom" and "dad."

The children were affectionate with Mayra and enjoyed supervised visits, but ran toward the foster mother when she arrived at the end of visits. The children varied in their attachment to Mayra. A.D. had a minimal attachment, and H.G. was the most responsive to Mayra. None of the children behaved as if they were strongly attached to her. They viewed her as a playmate. Mayra brought food to supervised visits and was attentive to the children, but sometimes was overwhelmed with the task of caring for them.

Mayra 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.) 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). *In re S.B.* is therefore distinguishable from the instant case. Here, the children needed stability, and the social worker believed the benefit they would realize in a permanent home outweighed any detriment they would suffer if parental rights were terminated.

#### DISPOSITION

The judgment is affirmed.

MCINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.