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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.J.,

Defendant and Appellant.

E054216

(Super.Ct.No. RIJ108622)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County  
Counsel, for Plaintiff and Respondent.

Defendant and appellant L.J. appeals an order terminating her parental rights to two of her children. She contends that the juvenile court abused its discretion by declining to apply one or more of the exceptions to the statutory preference for adoption over long-term foster care or guardianship. We will affirm the order.

#### FACTUAL AND PROCEDURAL HISTORY

On July 22, 2008, three-year-old E. and his four-year-old half sister, A., were removed from their mother's care and placed in the home of their maternal aunt, Gabriela.<sup>1</sup> Their mother, L., had been arrested for child endangerment and being under the influence. L., E. and A. had been living in a motel room with L.'s boyfriend, who was arrested on the same date for child endangerment and for selling drugs and being under the influence of drugs. A witness had seen him injecting drugs intravenously in the presence of the children. Six-year-old G. was already living with the aunt. L. told the social worker that she had been living with her boyfriend for about three weeks and was aware of his heroin addiction. She moved into his motel room because he was helping her financially. She admitted that she had a substance abuse history, including methamphetamine, but stated that she had not used drugs for about four years. She did not feel that she could care for the children properly, and asked that they be placed in relative care.

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<sup>1</sup> The half sister, A., is not a party to this appeal.

L. had a history with Child Protective Services (CPS). In 2004, she disclosed that she was hearing voices which ordered her to hit her children. She admitted having a history of substance abuse since the age of 17. A. was released to her father, and G. was made a dependent of Riverside County. L. completed family reunification and family maintenance services, and G. was returned to her care.

On July 24, 2008, a petition pursuant to Welfare and Institutions Code section 300 was filed as to all three children. The petition alleged that L. had placed the children at risk of harm by being under the influence of drugs while caring for A. and E.; by allowing her boyfriend to have access to A. and E., knowing that he was a substance abuser and had an extensive drug-related criminal history; and by allowing the children to be present while the boyfriend was using, possessing and being under the influence of heroin. The petition alleged that L. had a history with Riverside County CPS and had failed to benefit from the services provided and continued to abuse controlled substances, to expose the children to a “drug lifestyle” and to place the safety and well-being of the children at risk. The allegations were found true and all three children were made court dependents on September 17, 2008.

In August 2008, the children were moved to the home of another maternal aunt, Isabel, because their aunt Gabriela needed ankle surgery and was unable to continue caring for them.

As of August 2008, L. had been visiting the children consistently and her interaction with the children was good. However, the children no longer cried when the

visits were over. L. continued to be fairly consistent with visitation until February 2009. By March 5, 2009, she had failed to visit for four weeks and had not called to cancel any of those visits. L. told the social worker she “had issues” with Isabel. When L. did visit, the social worker observed that the children appeared to enjoy the visits and appeared to be appropriately bonded to their mother.

By September 2009, L. was consistently attending counseling and was in compliance with her drug treatment plan. Her drug tests had been negative. She was also attending parenting classes. She had begun to stabilize her life and was renting a room from her sister and brother-in-law. She was having supervised two-hour visits once a week. CPS recommended allowing unmonitored and overnight visits, once all adults residing in the home were cleared.

G. and E. were each in therapy. G. missed her mother and worried about her. She had had nightmares, but they were decreasing in frequency. E. was angry and defiant.

From September 2009 to early November 2009, visitation was gradually liberalized to include weekend overnight visits. On November 10, 2009, however, L. tested positive for methamphetamine. She had failed to drug test on four occasions with no explanation. She was being dropped from therapy for lack of participation, and her therapist considered her at high risk for drug relapse. The therapist said that L. continued to take little responsibility for her own actions and blamed CPS for most of her problems. She had no stable residence and a “limited support system.” She had reported to her social worker that she was pregnant and due to deliver in September. On September 25,

2009, she informed the social worker that the baby had been stillborn. She later said she had miscarried. She did not provide any documentation as requested by CPS, and the social worker believed that the child had been born alive and was being concealed from CPS and the court.

For these reasons, in November 2009, visitation reverted to being monitored. However, on November 24, Isabel reported that L. had not requested a visit since November 5. On December 1, she failed to show up for a scheduled visit and did not call to cancel it. She did visit on December 22 and on January 5, 2010. She acted appropriately and the children appeared to be comfortable with her.

In November 2009, the children's therapist reported that G.'s nightmares were less frequent but that she continued to worry about her mother. E.'s angry outbursts and defiance were decreasing in frequency but would return after a visit with his mother. He expressed sadness "pertaining to parental figures" but happiness regarding school and other activities.

In January 2010, L. moved without notifying CPS and would not supply her new address when the social worker contacted her. She said she was moving in with her mother.

After a visit on January 5, L. did not visit the children again until April 29, 2010. The children enjoyed the visit.

At the 18-month hearing on March 3, 2010, L.'s services were terminated as to G. and E., and A. was placed with her father. The court set a selection and implementation

hearing as to G. and E. G. missed her sister and was anxious without her and had trouble sleeping. However, the siblings remained in telephone contact and had occasional visits at a park or at Isabel's home. Isabel reported that E.'s anger and defiance had decreased significantly since visits with L. were limited.

In September 2010, E. and G. were again placed with their aunt Gabriela and her husband when Isabel became unable to care for them. The children were happy to be there and adjusted well. By December, they had established a strong bond with their aunt and uncle. As of February 2011, L. had made no attempt to visit the children more than once a month, despite being told that she could visit as frequently as she wished, as the children's schedules permitted. G. was beginning to communicate some anger and frustration about her mother's inconsistency in visiting, and when she did see her mother, she was more resistant to interacting with her.

The children were happy living with their aunt and uncle, and both said they had no objection to being adopted by their aunt and uncle. Both were doing well in school and were doing well emotionally. L. still hoped that they would be returned to her, but her life and living arrangements continued to be unsettled. She was living with her brother's family, but the family reported that she would disappear for weeks at a time and spent time with friends who were chronic drug users. She remained unemployed and did not demonstrate that she had benefitted from the services she had received. In February 2011, L. appeared to have lost weight and "aged a great deal" since the social worker saw

her last. On February 16, she tested positive for methamphetamine, although she denied that she had used drugs.

CPS initiated a preliminary adoption assessment, pending the selection and implementation hearing. L. had only sporadic contact with the children, randomly showing up at the house and staying for only a short time. She did not maintain contact with CPS and did not provide a working phone number. She continued to live a “transient lifestyle,” staying with various friends.

During home visits for the adoption assessment, the children appeared to be happy and demonstrated affection toward their aunt and uncle. They followed direction very well and sought hugs from their aunt and uncle when they felt upset. G. stated, however, that she did not want to be adopted because she still hoped to return to her mother, as her mother had promised. She said that she loved her aunt and uncle and wanted to stay with them if it was not possible to return to her mother. She said she was able to talk openly to her aunt and uncle about her feelings about being adopted. E. said that he wanted to be adopted and live with his aunt and uncle always. He wanted them to be his “mom and dad.”

The selection and implementation hearing and a hearing on L.’s petition for modification of the order terminating services was held on June 8, 2011. Mother was not present. The hearing had been trailed from the previous day to enable her to attend or to participate by telephone. However, neither her attorney nor the court clerk was able to reach her by telephone on June 8. The hearing proceeded in her absence. She did not

object to any of the reports submitted by CPS and did not present any affirmative evidence. Her attorney argued that changed circumstances warranted resumption of reunification services. The court found no changed circumstances, and found that returning the children to L.'s care would not be in their best interest. Her attorney also argued that two of the statutory exceptions to the preference for adoption applied. The court found that no exception applied. It made the other necessary findings, terminated parental rights and referred the children for adoption.

L. filed a timely notice of appeal.

#### LEGAL ANALYSIS

1.

#### THE RECORD SUPPORTS THE JUVENILE COURT'S FINDING THAT NO EXCEPTION TO THE STATUTORY PREFERENCE FOR ADOPTION AS THE PERMANENT PLAN APPLIES IN THIS CASE

After termination of reunification services, the focus of juvenile dependency proceedings is on the child's needs, including his or her need for a stable, permanent home. Consequently, the statutory preference for a permanent plan for a dependent child is adoption, and if the court finds that the child is adoptable and is reasonably likely to be adopted, the court must terminate parental rights and order the child placed for adoption unless one of the exceptions provided for in section 366.26, subdivision (c) applies.

(§ 366.26, subd. (c); *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Section 366.26, subdivision (c)(1)(B) provides that even if the court finds that the child is adoptable and that there is a reasonable likelihood that the child will be adopted, the court may nevertheless decline to terminate parental rights if it finds a “compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.” L. contends that both of the foregoing exceptions apply.

*A. The Parental Relationship Exception*

The burden of proof is on the party seeking to establish one of the exceptions to the adoption preference. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) In order to prevail in asserting the parental relationship exception, the parent must demonstrate both that he or she has maintained regular visitation and contact with the child and that a continued parent-child relationship would “promote[] 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. . . . 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

L. contends that she met that burden because the record shows that she and the children shared a bond which was parental in nature and that she had maintained that relationship through consistent visitation throughout the extended dependency period, with only a brief period during which visitation was not consistent. She states that “disruption of that relationship presented a strong possibility of detriment to the children’s long-term emotional development.” The only evidence she cites in support of this contention is G.’s statement that she loved L. very much and had expressed concern “for her own wellbeing if denied future contact” with L.<sup>2</sup> She contends that “[b]ased on this record, the only reasonable inference is that the minors would be greatly harmed by the loss of their significant, primary relationship” with her.

On appeal, we review the court’s finding that the parental relationship exception does not apply under a deferential standard which has been articulated as a substantial evidence/abuse of discretion standard: “Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could

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<sup>2</sup> The social worker reported that G. said that “she loves her mother very much and would worry about her wellbeing if she is not able to be with her.” We understand this to mean that G. was concerned for her mother’s well-being rather than her own.

reasonably have made the order that he did.” [Citations.]’ [Citation.]” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) Stated another way, in order to compel reversal, the evidence in favor of *not* terminating parental rights must be of “such a character and weight as to leave no room for a judicial determination that it was insufficient to support [the] finding.’ [Citation.]” (*In re I.W., supra*, 180 Cal.App.4th at p. 1528.)

Termination of parental rights in favor of adoption is mandatory unless there is a *compelling* reason for finding that termination would be detrimental to the child. (§ 366.26, subd. (c)(1); *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) Although the record does show that L. maintained regular contact with the children throughout most of the lengthy dependency and that the children recognized her as their mother and enjoyed their visits, this is not sufficient to compel the conclusion that the parental relationship exception applied: “[T]he parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits . . . the parent must prove he or she occupies a parental role in the child’s life . . . . [Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must also show more than a relationship which may be beneficial to the child to some degree but does not meet the child’s need for a parent. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1348.)

L. had not acted in a parental role toward the children for over three years at the time of the selection and implementation hearing. This was half of E.’s lifetime and a third of G.’s. During that time, the parental role had been filled by the children’s aunt

Isabel and by their aunt Gabriela and her husband. Although L. remained a presence in their lives, she never achieved the degree of stability or responsibility necessary to provide for the children's needs for a true parent. On this record, viewed most favorably in support of the trial court's action, we cannot say that no judge could reasonably have found that the parental relationship exception did not apply or could reasonably have made the order terminating L.'s parental rights. Accordingly, there was no abuse of discretion. (*In re Robert L.*, *supra*, 21 Cal.App.4th at p. 1067.)

*B. The Sibling Relationship Exception*

To prevail on a claim that the sibling relationship exception applies, the parent must first show that terminating parental rights would substantially interfere with the child's relationship with a sibling. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) Here, L. does not explain how termination of her parental rights would substantially interfere with the children's relationship with their half sister, A. In reality, termination of L.'s parental rights with respect to G. and E. would have no effect on the children's ability to maintain their relationship with A. A.'s father had completed his case plan before the 18-month review hearing, and at that hearing the court placed A. with her father on family maintenance. The court ordered A.'s father to facilitate contact between A. and her siblings. Accordingly, the children will maintain their relationship without regard to the status of L.'s parental rights, as long as A. remains a court dependent. Once dependency jurisdiction is terminated as to A., the court will have no jurisdiction to order sibling visitation, and contact and visitation between A. and her siblings will be at

the discretion of her father. This, too, is independent of the status of L.'s parental rights with respect to G. and E. Because L. did not meet her burden of showing that termination of her parental rights would substantially interfere with the sibling relationship, the court did not abuse its discretion in finding the exception inapplicable.

DISPOSITION

The judgment is affirmed.

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MCKINSTER  
Acting P.J.

We concur:

RICHLI J.  
MILLER J.